

Impact of court delays on children's services

Financial impact modelling support

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Department
for Education



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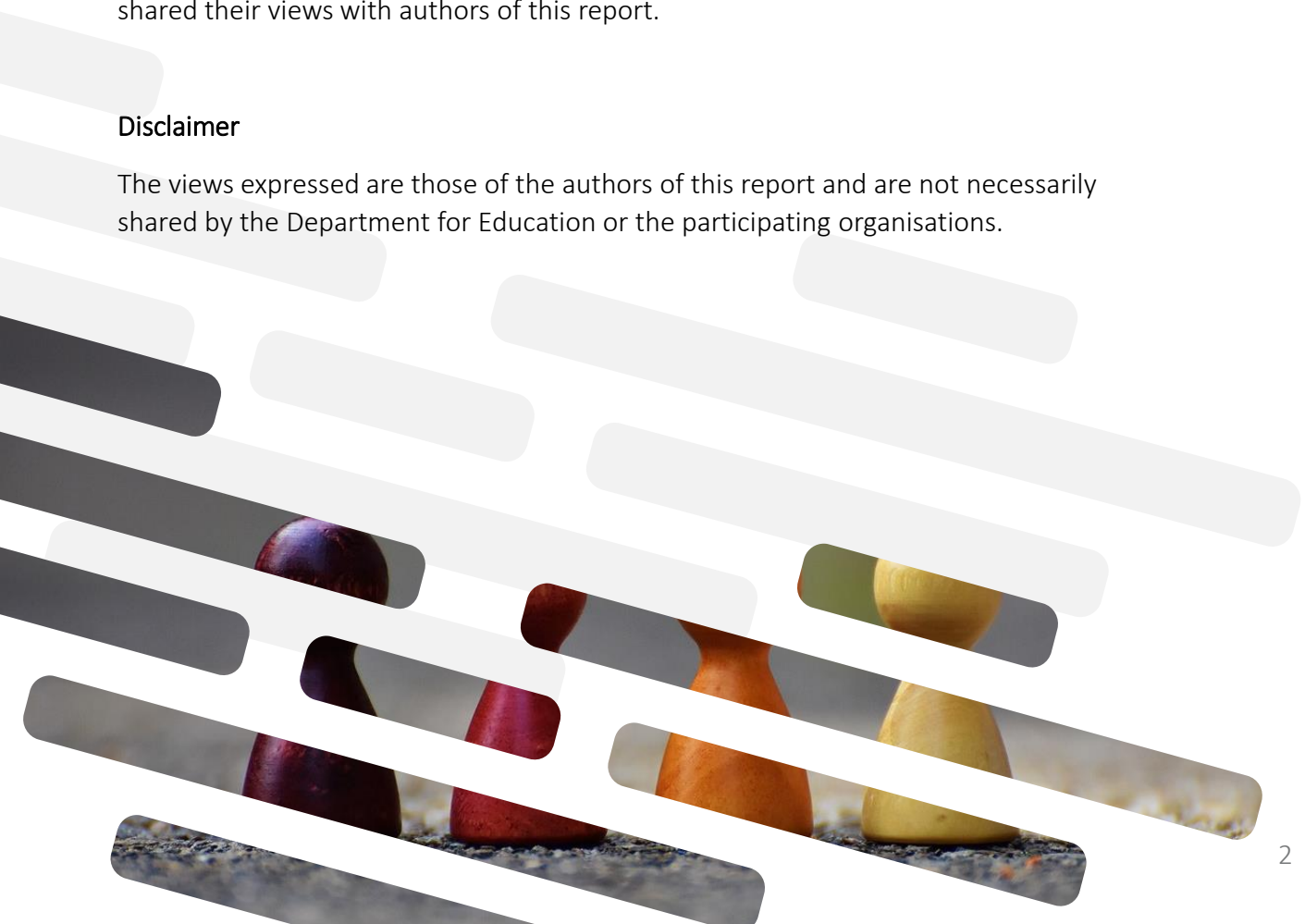
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Disclaimer

The views expressed are those of the authors of this report and are not necessarily shared by the Department for Education or the participating organisations.



Foreword

This report describes a programme of work designed to better understand the impact of delays in care proceedings on children's services. This work was commissioned by the Department for Education (DfE) and delivered by Mutual Ventures (MV) over a period from December 2021 to April 2022. The key focus has been on the analysis of the financial impact of these delays, which so far is not well researched or fully understood.

How to navigate this report:

This report is divided into four sections:

Section 1 sets the scene for this report, presenting the key objectives, a summary of the approach to the work and a brief overview of the context in which family courts operate.

Section 2 presents a high-level overview of the care proceedings process. It includes analysis of the scale of the delays nationally and discusses the root causes for the delays based on deep dive analysis with the children's services teams that participated in this project.

Section 3 outlines the multifaceted impact that court delays have, including the cost to children's services as well as broader impact on outcomes to vulnerable children and families.

Section 4 summarises the final recommendations and outlines the proposed next steps.

The report is underpinned by a bespoke **financial impact modelling tool**, which can be found in a separate **Annex**.

Executive Summary

The highlights of the report

What was done:

1. Working in partnership with children’s services teams across the country, we carried out a deep dive evidence gathering exercise. This involved workshops with frontline staff and team leaders to look at the journeys taken by children from the pre-proceedings stage to final hearings. Blocks and delays in these journeys were identified and root causes for the delays investigated. The outcomes for some of the children whose final hearing had been delayed were explored through a case study analysis. A more detailed data gathering exercise was then carried out to confirm the anecdotal evidence from the workshops and quantify the scale and impact of the delays.
2. The gathered data and information was subsequently used to build a tool which allows the user to model the financial impact of court delays for children’s services. The model can be used by individual local authorities or children’s trusts to understand the potential financial costs that delays in proceedings create. It has been also used to extrapolate the financial impact at national level.
3. While it was outside the scope of this work to propose specific approaches to reducing court delays, we outline a number of high level recommendations that would facilitate the investigation of court delays in the future, and the subsequent design of system-level and evidence-based approaches to tackling delays.

Findings:

4. **In 2021, the average duration of a care or supervision case was 45 weeks, up 6 weeks from 2020 and the highest since 2012. Only 23% of cases were disposed of within 26 weeks** – the statutory time limit introduced in the Children and Families Act 2014.
5. There is no simple, single cause of court delays. Factors contributing to delays are multiple, complex and varying from area to area. Family reasons (e.g. late presentation of relatives that can assume caring responsibilities) were the most common reason for the delays in the analysed sample of cases. This was followed by difficulties in fact finding, and use of external experts and additional assessments.
6. Modelling suggests that each **one-week reduction in average proceedings duration could generate a financial benefit of approximately £24 million** across all English local authorities.
7. The findings from this report show that through the efficient use of resources and mature cross-system leadership, more money could be released to the wider system and spent on preventative services and pre-proceedings with an aim to divert cases from courts. Not only would reducing family court delays reduce financial costs across the system, it would also improve outcomes for vulnerable children.

Tackling the delays:

7. The only way to achieve a sustainable reduction in court delays is to take a long term, whole-system approach, requiring a detailed understanding of the:
 - a. operational processes at play,
 - b. organisational behaviours within each of the component parts of the system,
 - c. extent to which services do or do not work together effectively.

7. All of the children’s services involved in this work were already aware of and often actively working to tackle court delays. However, not all of them had data on delayed cases available, or routine and consistently applied processes in place for tracking reasons for delays and measuring their impact.

8. Best practice for tackling court delays involves capturing data from every step of the journey through the system, from pre-proceedings to the final hearing and beyond, to create a rigorous, accurate picture of the process. This data needs to be used to identify the blocks and causal factors. Once the issues causing consistent delays have been identified, effective improvement strategies with focus on processes, decision making and behaviours can be designed.

9. Consistent, determined effort across the entire judiciary and children’s services system is essential to reducing court delays. Four factors are critical to achieve this:
 - a. **Enough capacity in the system to achieve the best possible outcomes:** It is necessary to ensure that caseloads are safe and systems are not operating in a constant firefighting mode, stretched and at the brink of collapse. Over the past two years, many local authorities, courts and Cafcass have required additional capacity to deal with backlogs caused by the pandemic. However, even before Covid-19, the system was under considerable pressure. Providing more capacity in the system may be needed to deal with bottlenecks, but is not a silver bullet and will not address the underlying systemic issues leading to delays.
 - b. **Improved operational control and availability of data: What gets measured gets managed.** Tackling court delays is only achievable if the journey through the system and the outcomes of decision-making throughout the process are measured rigorously and systematically. Data should be made available to front line staff, but also shared system-wide. This is about improved availability of evidence to support decision-making rather than setting up new targets (as the existing 26 week target is not adhered to and not used in practice to manage performance).
 - c. **Collaborative approach:** Colleagues from across the child protection and judiciary system must meet regularly to find shared solutions to problems as they arise, and there should be mechanisms for data sharing and escalation of issues when necessary. Local Family Justice Boards are uniquely positioned to play this role, which should be further strengthened by improved availability of data.
 - d. **Behavioural change:** Addressing court delays effectively and for the long-term may require a fundamental culture change, with system-wide outcome-focused behaviours becoming the norm. This also requires building trust between professionals.

Key messages for policy and practice:

- A. Local authorities should ensure that they **track cases throughout the whole process**, starting from the pre-proceedings stage, during proceedings and beyond for children re-entering the care system, to prevent case drift and to allow a routine analysis of root causes of delays.
- B. Local authorities should consider **employing or protecting the role of a case progression manager** who has oversight of cases, holds up-to-date data on active and closed cases, and provides a quality assurance role.
- C. Local authorities should continue to **actively monitor caseloads** of social workers, other staff involved in family proceedings as well those staff members whose workload may be affected by the number or duration of court proceedings, actively reacting to situations when caseloads become difficult to manage due to additional activity resulting from court delays or other reasons.
- D. Local authorities should look to ease practitioners' workloads through better use of **pre-proceedings in a bid to negate the need to issue care proceedings**.
- E. Local Family Justice Boards have a critical **role in monitoring, tackling and preventing delays** within their geographical footprint.
- F. Government should help coordinate efforts to **establish a single, shared and agreed 'version of the truth' across all partners working together in the judiciary system**.
- G. Government should continue to **explore the financial impact of court delays at the national level**.
- H. Government should **support local areas and systems to achieve the best possible decisions for children by improving the use of data in the family justice system**.

Proposed immediate next steps:

- A. **Wider dissemination, validation and roll out of the financial impact modelling tool:** Local areas participating in the project expressed views that the financial impact modelling tool gave them insight into information that was not available to them before. The ideas on how this tool could be used in practice differed (e.g. representatives from one local authority mentioned they are keen to use the tool to inform conversations with cabinet members who wanted to be better informed about the financial impact of family court delays).
- B. **Improved usability, accessibility and scope of the financial impact modelling tool:** If the wider dissemination and engagement with stakeholders supports the case for use of the financial impact modelling tool by local authorities (and / or other organisations in the family justice system), further work to improve the usability, accessibility and extending the scope of the tool should be considered.

Key data

What is the financial impact of court delays?

Estimated costs of the family justice system (public cases)

Total legal costs incurred by central and local government to bring children into care

£1.2bn

Over 10% of all direct expenditure on the children's social care system (2019/20)

Data source: The Independent Review of Children's Social Care [\[11\]](#)

Delays in family proceedings

Average duration of public law family court proceedings in 2021

45 weeks

Data source: Family Court Statistics, MoJ [\[4\]](#)

Financial impact of court delays

Estimated average impacts of reducing proceeding duration by one week

£1,146

Source: MV calculations

Financial impact of court delays

Potential savings or cost efficiency across all English local authorities if all proceedings reduced by one week

£24m

Source: MV calculations

Section 1. Introduction

The pressures on the family courts have led to significant increases in the length of care proceedings. However, so far, little is known about the financial impacts of these delays on children’s services locally and nationally.

This section provides an overview of the approach employed to analyse the financial impact of the delays. We present the key research objectives and an overview of the stakeholder engagement undertaken as part of this project. We also provide background information on the previous initiatives aimed at investigating and tackling the delays. Many of the findings of this work chime with the findings from systematic reviews delivered over the past years, showing that the issues leading to delays are not new and are difficult to address.



Project objective

Many local authorities have raised concerns with the Department for Education (DfE) about the adverse impact that court delays are having on local services, vulnerable children and their families.

In order to get a better understanding of the scale of the issue, the DfE commissioned Mutual Ventures to investigate the impact of delays in care proceedings on children's services, with a focus on the financial impact (which, to date, has not been well researched or understood). The main purpose of this work has been to track the impact of delays in public law cases within the family justice system and quantify the knock-on effects on the care system at a local and national level.

The key objective of the project is to equip decision and policy makers across all levels of government with evidence base on the financial impacts of court delays on children's services.

This report also aims to support children's services and their judiciary colleagues in their thinking about how to measure, monitor and finally streamline family court proceedings where appropriate, improving outcomes for the children and ensuring cost efficiency in the long term.

Project approach

This work was undertaken by MV in collaboration with children's services from six local areas. MV employed a structured and evidence-based approach to deliver this project, following a four-stage approach:

01 Evidence gathering

The project team collected qualitative and quantitative data through a combination of an iterative stakeholder engagement process (see below) and desk research.

02 Process mapping

A high-level process map of the interfaces between the care and justice system was developed through workshops with local stakeholders. It identifies the key bottlenecks in the system.

03 Impact modelling

We built and populated an analytical tool to model the financial impact of family court delays on children's services. We engaged with the key stakeholders to populate the tool, testing the assumptions and outputs.

04 Conclusions

The key findings from all the workstreams are summarised in this report. A separate technical report summarises the methodology behind the impact model and is available in the annex to this report.

Stakeholder engagement

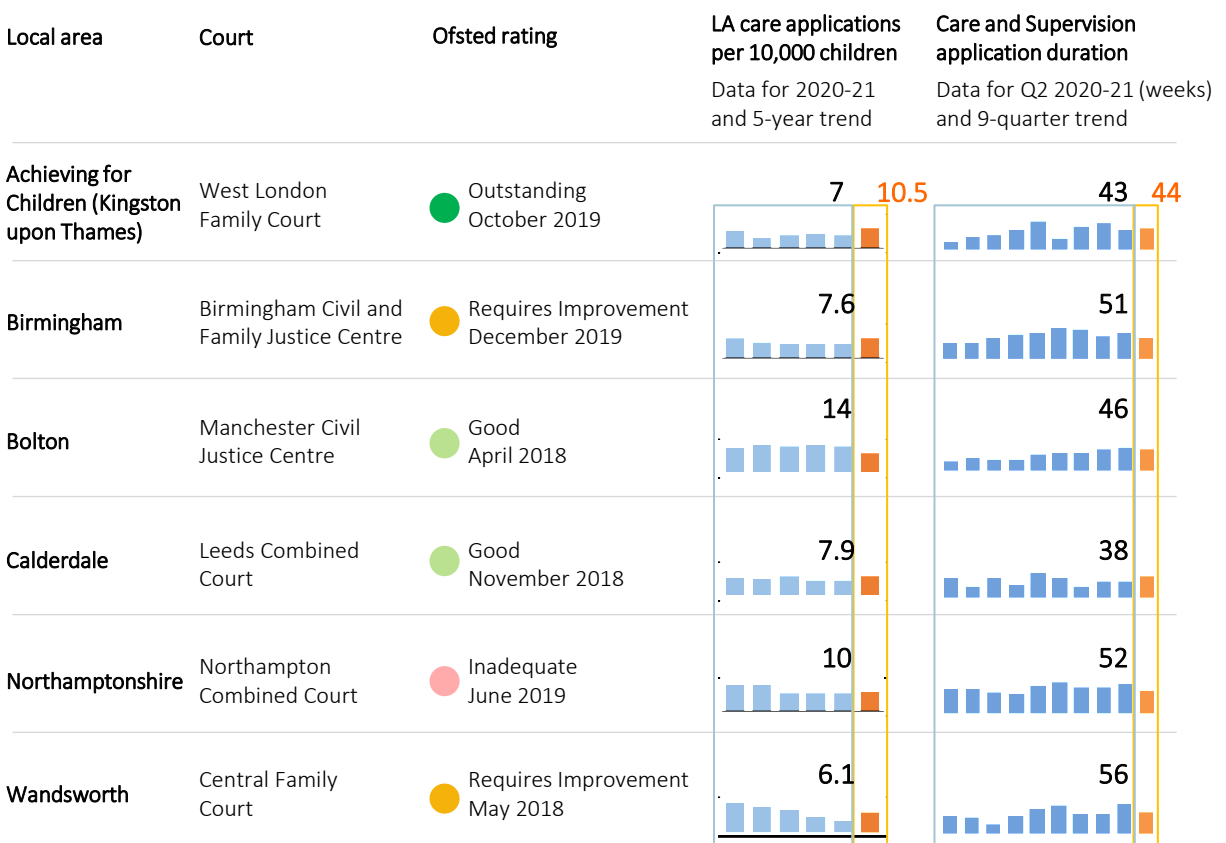
What the engagement involved

We engaged with six local authorities and children’s trusts to gather evidence on the impacts of delays in care proceedings. The representatives of children’s services participated in workshops, provided local data, and populated the financial impact tool to test and validate it.

How the stakeholders were selected

The children’s services that took part were identified using pre-defined selection criteria to ensure a diverse group in terms of geography and organisational type. Nationally reported statistics were used to baseline the cohort and ensure none were outliers or in particular need of enhanced support to turnaround their care proceeding processes. The average duration of care and supervision applications in the cohort was 48 weeks, close to the national average of 44 weeks. Local children’s services were only engaged in the project if they were ready to progress with work at pace. In fact, several of the local areas initially approached and invited to take part in the project were not able to participate in this research due to limited capacity.

Figure 1. Local areas participating in the project.



Source: Own analysis based on Cafcass data [1] and [2].

LA 5-year trend national average in 2020-21 LA 9Q trend national average in Q2 2020-21

Principles underpinning the stakeholder engagement and data analytics

Stakeholder engagement was critical to develop the evidence base and improve our understanding of the financial impact of court delays.

As this research covers an area with no previous robust cost studies, estimations and assumptions have been made to address data gaps. All the assumptions were informed and tested by the participating local areas.

We acknowledge that different numbers may be arrived at using alternative estimates and assumptions. However, this report has erred on the side of caution, so the figures are likely to be underestimates.

We have used a well-tested methodology. All assumptions have been developed and tested with the participating local areas and are based on their first hand experiences. The box to the right presents the key principles that underpinned the stakeholder engagement.

1

Data triangulation



The evidence gathering process, while designed to be pragmatic and minimise the time demand on already stretched services, was extensive and leveraged a number of techniques and sources: workshops with practitioners, case study analysis of delayed cases and historical data analytics. This combination of sources provided a ‘single version of the truth’ about the operational intelligence on care proceedings.

2

Frontline staff perspective



We engaged directly with front line practitioners (social workers, lawyers), gathering and analysing their views on day-to-day issues and the impact of court delays.

3

System-wide perspective



While the key focus of the work has been on children’s services, we have also engaged other stakeholders (including representatives of Cafcass and a DFJ), to ensure the system-wide approach.



Context

Family court delays are by no means a recent development. There have been long-standing concerns from central government, judiciary and others about the duration of care proceedings and their impact on children. This has given rise to a number of reviews and initiatives aimed at investigating and tackling the delays. Many of the findings of this project chime with the findings set out in research carried out over the past decades (see summary to the right).

The Children Act 1989 was a piece of legislation in which avoiding proceedings delays was one of the key objectives. However, despite the intentions of the Act, delays have been growing longer. By 2011, they were taking over a year on average. Concerns about the increasing number, duration and cost of cases led the government to commission a review of the family justice system, chaired by David Norgrove. The **Family Justice Review** proposed in 2011 a statutory time limit of 26 weeks for care proceedings, unless an extension was necessary to resolve the case. This was accepted by the government and included in **the Children and Families Act 2014**. In April 2014, the new **Public Law Outline (PLO)** for care and supervision proceedings came into force, introducing a number of procedural and administrative changes. As a result, the average length of public law proceedings had reduced, but 26 weeks remained a challenging target.

Following a steep rise in the number of public law proceedings seen in 2016 and 2017, the **Public Law Working Group** was set up by the President of the Family Division to address the operation of the child protection and family justice systems. Findings from this group were published in May 2021 and included a number of recommendations to tackle court delays.

The Covid-19 pandemic has added pressure to an already stretched system and has aggravated family court delays. It also required children's services and judiciary colleagues to adapt to new ways of working, including working remotely.

1996

Dame M. Booth, Avoiding Delay in Children Act Cases [6]

Research undertaken by a senior judge which identified the *'proliferation of expert witnesses'* as a widespread cause of delays.

2011

Family Justice Review [8]

The review identified two major factors behind the delays: a culture of mistrust between local authorities and the courts, and an awareness, from all sides, of the extreme seriousness of the decisions to be made. Together, these lead to routine commissioning of additional assessments, duplication of work and *'a vicious cycle of inefficiency and delay'*.

2011

Tri-borough Care Proceedings Pilot [5]

One of the key features of the pilot that led to achieving the 26-week timeframe was the appointment of a 'case manager' to have an overview of cases brought to court, to advise social workers on the quality of assessments, to liaise with the courts, and to troubleshoot if cases were losing momentum.

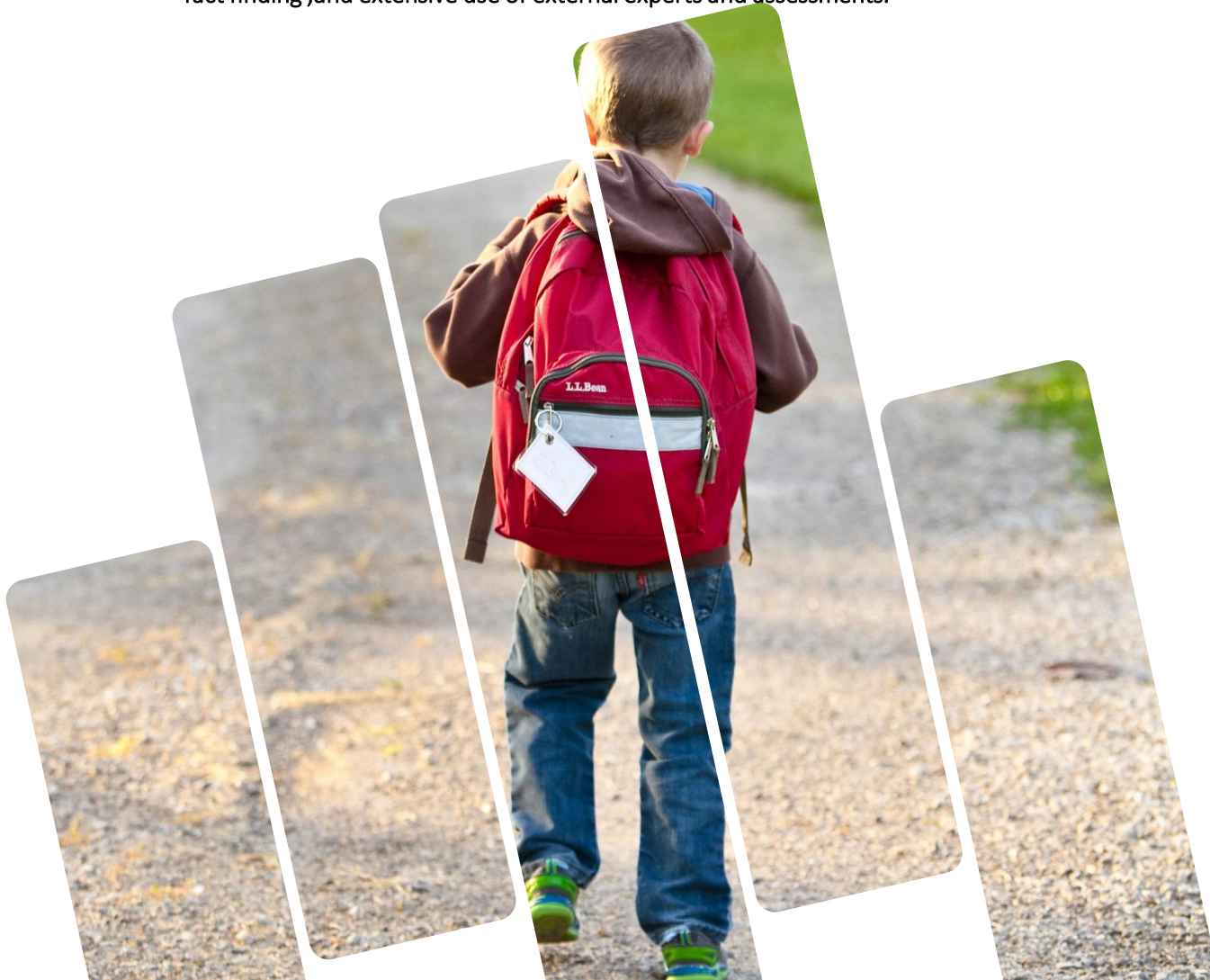
2021

Public Law Working Group Recommendations [12]

Includes a comprehensive issue analysis. It points out there are too many unnecessary hearings and too many experts involved (in particular, ISWs and psychologists), which leads to cases breaching the 26-week time limit.

Section 2. Challenge overview

This section provides an overview of the scale and the reasons for court delays based on qualitative and quantitative data analysis. In 2021, the average duration of a care or supervision case was 45 weeks, the highest since 2012. We looked at a number of factors to explore a potential correlation with the average duration of cases. The analysis found that there may be some relationship between the Ofsted rating and speed of disposals. However, outstanding local authorities do not seem to outperform those that are good or require improvement. On the other hand, there is no statistically significant correlation between the number of disposals and duration of cases. A qualitative snapshot case study analysis looking at the longest cases from two local areas confirmed that there is no single cause for the delays. The longest cases are impacted by a combination of factors, including family circumstances, difficulties with fact finding, and extensive use of external experts and assessments.



Scale of the challenge

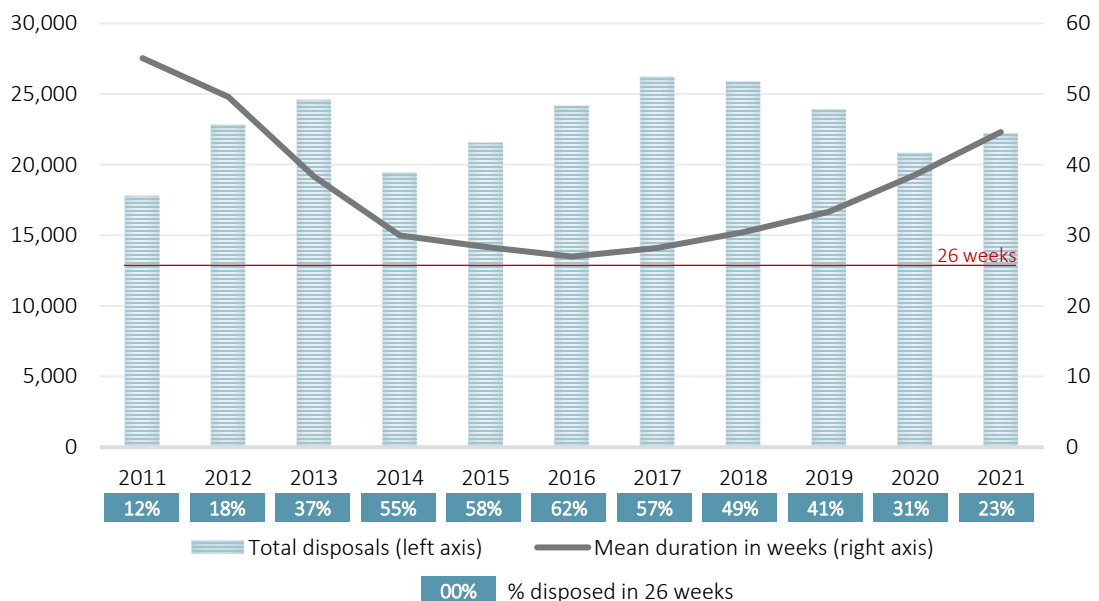
National performance: average case duration and disposals

Family Court Statistics published by the Ministry of Justice show that the average time for a care and supervision case to reach first disposal was 47 weeks in October to December 2021, up 5 weeks from the same quarter in 2020. At nearly 11 months, this is a very significant proportion of an infant’s or a child’s life.

Throughout the whole year of 2021, the average duration of a care or supervision case was 45 weeks, up 6 weeks from 2020. This is the highest average case duration since 2012. Only 23% of cases were disposed of within 26 weeks – the statutory time limit introduced in the Children and Families Act 2014. This is a decline of 8 percentage points compared to 2020.

Figure 1 presents a comparison of three data series (number of disposals, average duration and percentage of cases disposed within 26 weeks) over the period of eleven years in England and Wales. The average duration of public law cases has never reached the statutory threshold of 26 weeks. It was lowest in 2016 (27 weeks). The highest number of disposals (26,220) was recorded in 2017. Since then, the number of cases disposed annually started declining and the average duration of cases continued to increase. This trend was reversed in the last year, when the total number of disposals rose compared to the year before, while the average duration of cases continued to grow.

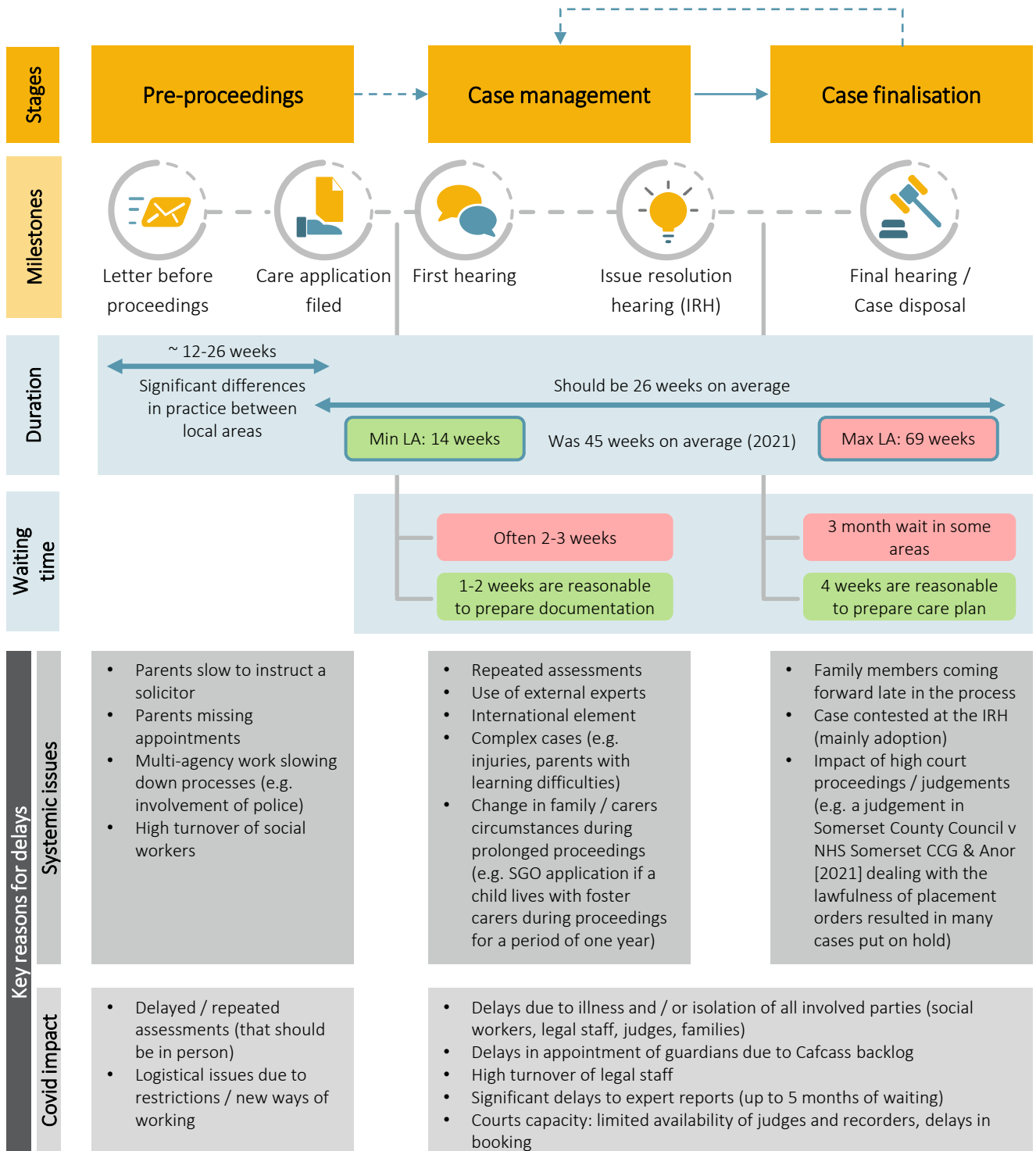
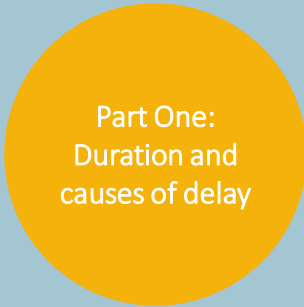
Figure 1. Summary statistics on the time to first definitive disposal for care proceedings in the Family courts of England and Wales, annually 2011 – 2021.



Source: Own analysis based on MoJ Family Court Statistics [4].

Spotlight: Public Law Outline (PLO) process mapping

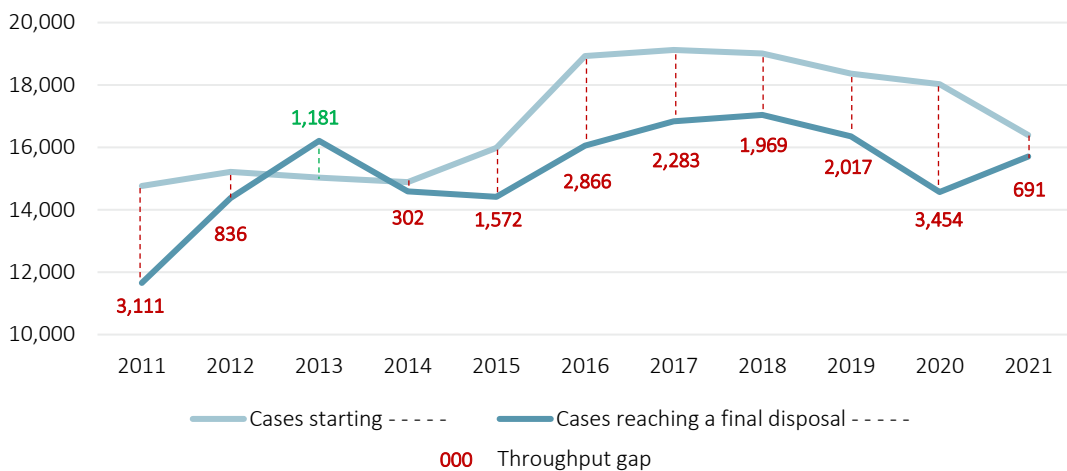
We have engaged front line social workers, team managers and local authority lawyers to map the PLO process in their local area and get the understanding of the recent issues, root causes of delays and impact they have on various parts of the system. The diagram below provides a high-level overview of the process mapping workshops. The [second part of the process map](#) is included in Section 3 and looks at the impact of court delays.



National performance: impact of Covid on courts throughput

The impact of Covid-19 on public law proceedings is visible when analysing the court throughput data, i.e. numbers of cases starting and reaching a final disposal within a given year (see Figure 2). In 2020, there was the lowest throughput of work through the family courts recorded, which means that cases were ending more slowly than new cases were coming in. This resulted in a throughput gap of 3,454 cases. In 2021 this gap was nearly closed. However, a drop in new applications in 2020 and, in particular, in 2021 compared to the levels from before the pandemic indicates that the ‘demand’ was depressed during periods when lockdown restrictions were in place. This suggests that the judiciary system has not returned to the state from before the pandemic – the view that is also supported by a representative of Cafcass who participated in this project (see the [spotlight on Cafcass perspective](#)).

Figure 2. Children Act, public law cases starting and concluding in Family courts in England and Wales, annually 2006-2021.

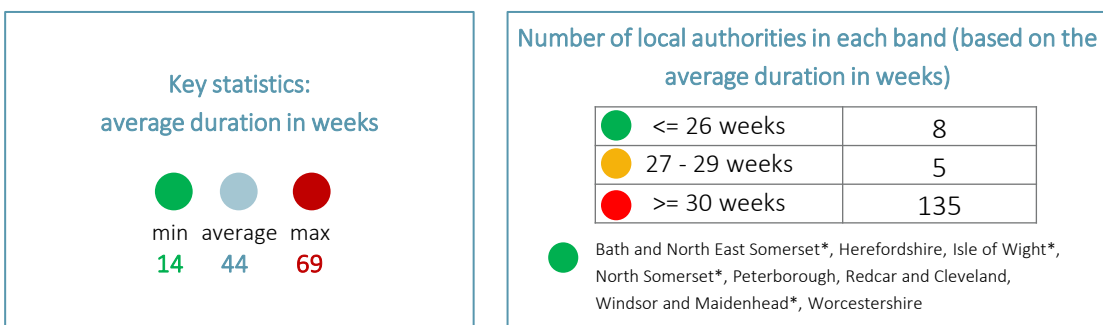


Source: Own analysis based on MoJ Family Court Statistics [4].

Local authority performance: average case duration

Data on care and supervision cases duration published by Cafcass gives insight into averages broken down by individual local authorities. Figure 3 shows a summary of local authority performance in Q2 of 2021-22 (the latest available data). Over this period, only eight local authorities had the average duration of cases equal or less than 26 weeks. However, four local authorities in this group had only 5 or fewer disposals within the analysed period (indicated with the asterisk on the below figure).

Figure 3. Summary of care and supervision case duration statistics by local authority, Q2 2021-22.



Source: Own analysis based on Cafcass Statistics [1].

Spotlight: Cafcass perspective

Covid-19 had a profound impact on children and families, across all aspects of their lives. It had also put enormous pressure on Cafcass. Cafcass caseloads have significantly increased from the combination of restored new demand and sustained slowdown in court disposals. In addition, there is a 'hidden economy' of work that Cafcass guardians undertake as being the first line of contact for families and children. During the pandemic, these contacts often intensified as cases were delayed and families were struggling with the overall uncertainty around the proceedings and other aspects of their lives.

In November 2020, Cafcass reached a tipping point when it could no longer safely allocate work to social workers within the prescribed timescales. Social worker and social work manager capacity had to be significantly increased. The business case put forward to the Ministry of Justice resulted in an increase of social worker capacity by approximately 10%. However, the overall impact on caseloads has been limited due to the record levels of active cases open to Cafcass.



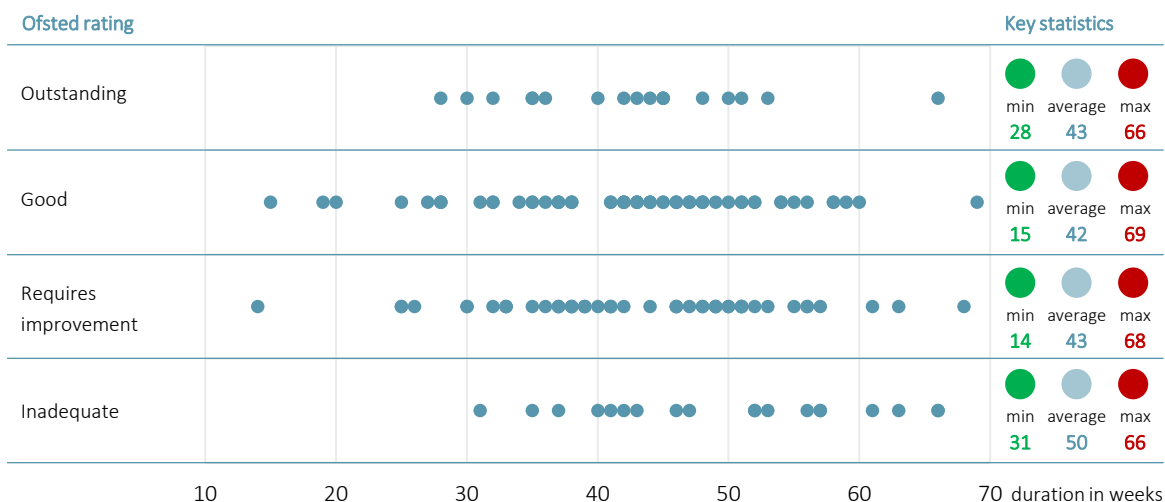
Despite the significant efforts of the entire family justice system, we are in a very challenging place. Last year, we saw the highest level of judicial sitting days historically (as most hearings were virtual). However, the disposal per sitting rates are lower than before Covid. We have over 1,000 children on cases open over one year. It is an improving picture, but the system has not recovered to the case throughput levels of March 2020.



Local authority performance: average case duration vs Ofsted rating

The analysis of the average case duration broken down by local authority Ofsted rating shows there may be some relationship between the overall effectiveness of children’s social care services and speed of disposals (see Figure 4). For instance, inadequate local authorities have the longest average case duration (50 weeks, as opposed to 44 for all local authorities). However, outstanding local authorities do not seem to outperform those that are good or require improvement. In addition to this, there are clear outliers in most of the groups.

Figure 4. Distribution of average case duration in Q2 2021-22 broken down by Ofsted inspection rating of children’s social care overall effectiveness.

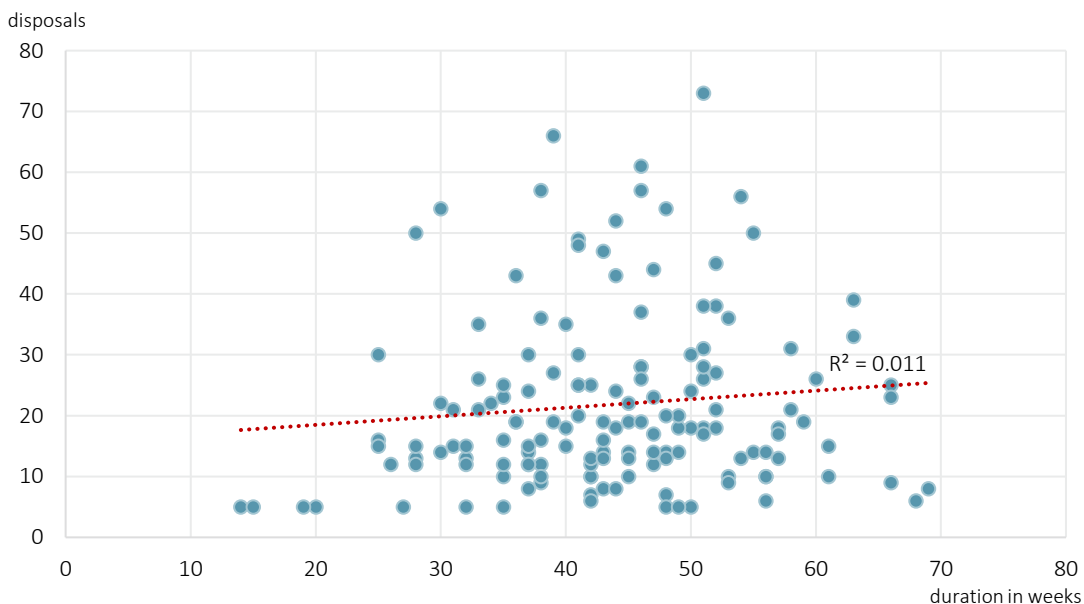


Source: Own analysis based on Cafcass [1] and Ofsted data.

Local authority performance: average case duration vs number of disposals

Analysis of the data shows no statistically significant correlation between the number of disposals and the average duration of cases in local authorities (see Figure 5).

Figure 5. Distribution of local authorities by the average case duration and number of disposals in Q2 2021-22.

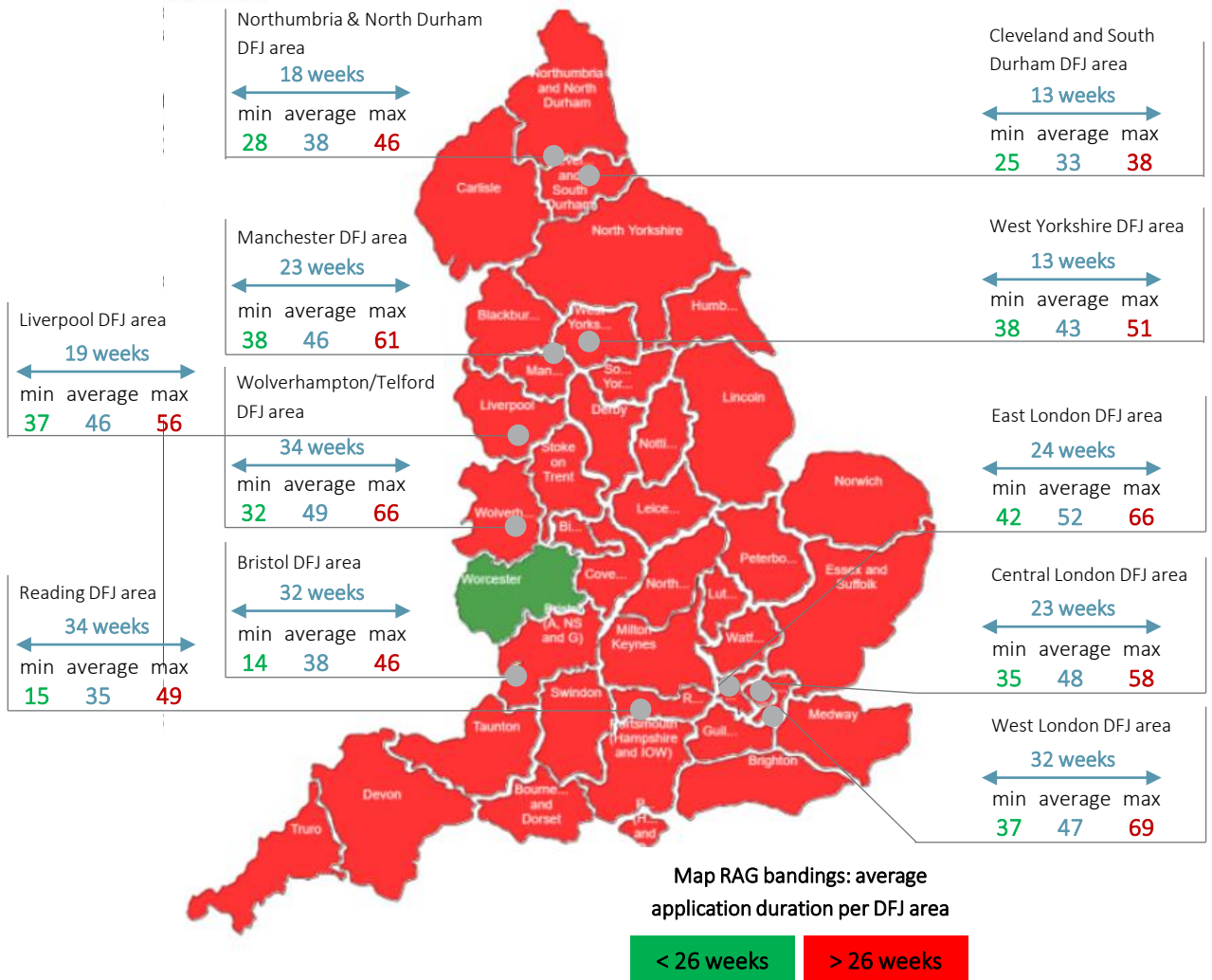


Source: Own analysis based on Cafcass data [1].

Designated Family Judge area performance: average case duration

Cafcass produces ‘heat maps’ showing how each Designated Family Judge (DFJ) area is performing in relation to the PLO target of 26 weeks. See Figure 6 for the heat map showing latest data on the average duration of care and supervision applications. To investigate differences in duration of cases within individual DFJ areas, we have provided additional layer of information summarising the key statistics on the duration of cases in local authorities in DFJ areas that cover five or more local authorities.

Figure 6. Care and supervision application duration by DFJ areas in Q2 2021-22.



Source: Cafcass heat map and own analysis based on Cafcass data [1].

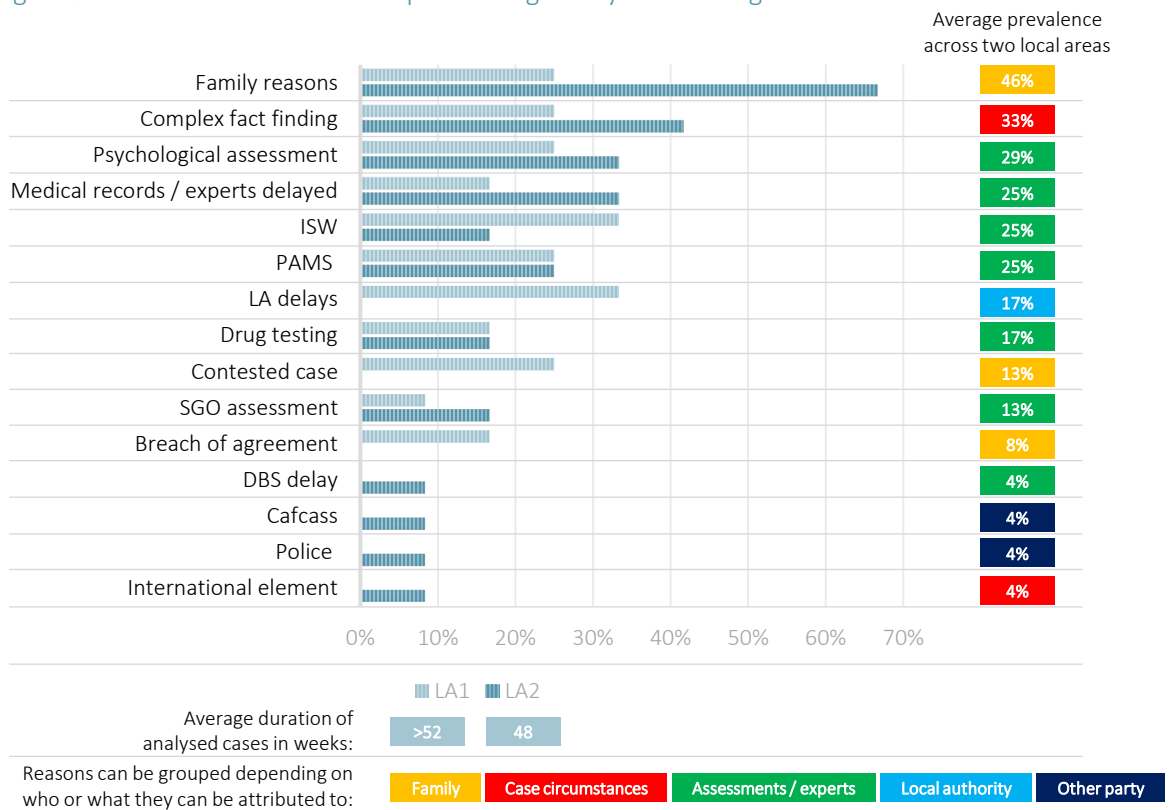
The analysis shows that there are significant differences in duration of cases between local authorities located within the same DFJ area (ranging from 13 to 34 weeks of difference between the best and worst performing local authority within a single DFJ area). For instance, in the Bristol DFJ area the local authority with the longest timelines (Gloucestershire) has the average case duration over three times longer than the local authority with the shortest average case duration (North Somerset). Assuming that court resources are allocated equally between all local authorities within a given area, this suggests that court capacity is not the key factor influencing the court delays. Other factors specific to local authorities or individual cases may be playing a more important role.

Cause of delays

Reasons for care proceedings’ delays are complex and are often caused by the way the system as a whole functions. Some of the delays may be unavoidable; complex cases will require more time and specialist input to conclude. This is recognised by law and practice – the Children and Families Act (2014) that introduced a statutory time limit of 26 weeks for care proceedings included a provision allowing for extension if it is necessary to resolve the case justly. However, other factors such as capacity pressures, availability of data to support decision making, organisational culture, and disconnect between services, lead to what can be described as ‘avoidable delays’.

We carried out a snapshot case study analysis looking at the 24 longest cases from two local areas participating in the project. The qualitative assessment of social workers identified the factors underpinning delays to public law court proceedings. The prevalence of the key reasons contributing to delays of the longest cases is shown below in Figure 7.

Figure 7. Prevalence of reasons for proceedings delays in the longest cases.



Source: Own analysis based on a case study research in two local areas.

The analysis confirmed that there is no single cause for the delays. The longest cases in each local area were found to have a combination of close to three different reasons contributing to the delay, creating a complex set of factors that cannot be solved by a single solution. The distribution of reasons differed between the two local areas. However, it is not clear if this is due

to the delay factors being system specific. The differences can also stem from the qualitative nature of the analysis and varying approaches of social workers who undertook the mapping of the delays.

On average, **family reasons** were the most common reason contributing to the delays in the analysed sample of cases. They affected 46% of the analysed cases. Usually, these were linked to late presentation of fathers or other relatives who could assume caring responsibilities for children. In addition, some highly case specific family circumstances have also been mentioned, such as the delay to final hearing due to the oldest child sitting GCSEs or the delay due to mother being pregnant and giving birth to another child during proceedings. While these reasons are not directly linked to social work, whether additional investment in time and resources at the pre-proceedings stage could help prevent some of these delays further down the line could be explored.

Complex fact finding is usually an issue in cases of alleged non-accidental injury, abuse or other situations that require multi-agency fact finding, involvement of police and forensic medical experts. It has been cited as a cause for delay in 33% of the analysed cases.

The analysis confirmed that additional **assessments or external experts** being approved by the courts in public law proceedings are contributing to the delays in care proceeding – a finding that has been well evidenced in previous family court system reviews referenced in this report. The issue is most acute in relation to the instruction of psychologists (29% of analysed cases), followed by the delays attributed to other medical experts (25%), ISWs (independent social workers) (25%), issues with PAMS (parenting assessments) (25%) or drug testing (17%).

Only one local area identified factors on their side that contributed to the delays. In 33% of the analysed cases in this local authority **lack of capacity or social worker change** is believed to contribute to the delays.

Interestingly, only one analysed case has been delayed due to the **international element** (case concerning a mother having a refugee status and not speaking English as her first language). Anecdotally, in conversations with front line staff this was believed to be much more of a frequent issue. However, the prevalence of this factor will depend on the demographic profile of the local area and can differ significantly across the country.

Spotlight: A Designated Family Judge perspective

The family justice system operates on a cliff edge due to a combination of factors. All parts of the system have limited resources. This includes social workers, guardians, judges and other court employees, operating at or beyond their capacity, which is unsustainable in the long term. The system also needs to deal with increasingly complex cases that reflects endemic problems in society, including an increasing number of complex cases dealing with older children and teenagers.

An excessive use of expert assessments, in particular ISWs and psychological assessments, is one of the reasons causing unnecessary delays to proceedings. External expert assessments may be useful in particular cases (e.g. the ISW may support local child protection services that struggle with workload and consistency of work due to a high turnover of social workers). However, in many cases additional assessments do not add value or are not proportionate for the purpose of decision making. This has already been on the courts' radar for some time and many circuits are working actively to reduce the need for expert reports or further assessments. However, it is a huge task, whose success will depend upon a cultural shift, including recognising that local authority and Cafcass social workers are true experts and are subject to robust internal quality assurance processes.



We are in a 'perfect storm' situation, with a number of reasons contributing to the delays in proceedings. Remote hearings during Covid allowed us to eat into a backlog of cases. But this created an additional pressure on already overstretched local authority and Cafcass resources. The whole system is on a cliff edge.



Section 3. Impact analysis

Our financial impact modelling suggests that each one-week reduction in average proceedings duration could generate a financial benefit of approximately £24 million across all English local authorities. In addition to this, social workers involved in this project painted a picture of a system that too often leaves the most vulnerable children in limbo for an extended period of time. Not only would reducing family court delays reduce financial costs across the system, it would also improve outcomes for vulnerable children.



Financial impact

We have modelled the potential financial impact on local authorities of reductions in three drivers of proceedings costs:

1. the average proceedings duration,
2. the average number of hearings per proceeding,
3. the average number of non-Local Authority assessments per proceeding.

The modelling focuses purely on costs incurred by local authorities and does not consider costs incurred by other parties (including HMCTS and Cafcass) that are not passed on to the local authority.

This modelling is based on a set of assumptions derived from a combination of the following sources:

- a) Data and estimates provided by the six local authorities / trusts participating in this project;
- b) The most recent Cafcass data on volumes and average durations of proceedings by local authority [\[1\]](#),
- c) Family Courts data on numbers and outcomes of PLO proceedings [\[4\]](#),
- d) DfE data on numbers and characteristics of children in care and numbers of adoptions,
- e) Legal Aid Agency guidance on the remuneration of expert witnesses in family cases.

Whilst we have sought to ensure that the assumptions are as fair and robust as possible, they do contain a high degree of uncertainty due to data availability limitations and the inherently variable nature of proceedings. The financial impact estimates that follow should therefore be viewed as indicative and treated with some caution.

Estimated financial impact of delays in care proceedings:

1

Estimated average impacts of reducing proceeding duration by one week

(Notes 1-3)

- Placement cost saving per proceeding per week: £919 (Note 1)
- Legal staffing cost impact per proceeding per week: £227 (Note 2)

2

Estimated average impacts per hearing avoided

(Note 4)

- Legal staffing cost impact per hearing: £622
- Social work staffing cost impact per hearing: £467
- Barrister cost saving per hearing: £2,500

3

Estimated average impacts per non-LA assessment

(Note 5)

- External expert cost saving per assessment: £844

Across all English local authorities, these assumptions would result in an estimated cost impact of £24 million pounds per one-week reduction in average proceedings duration (Note 6).

Note that these cost impacts may not all represent cashable savings. Whilst the placement, barrister and external expert savings will generally be cash expenditure, the social work and legal staffing costs will for many local authorities represent reductions in staff workload that may be more difficult to convert to a cashable saving.

Notes:

1. Placement cost savings are assumed to result from the average placement cost per week being higher during proceedings than following the completion of proceedings for the following primary reasons:
 - a) An estimated 15% of proceedings are assumed to require a residential parent and baby assessment during proceedings, at an estimated average cost of £4,000 per week;
 - b) Whilst an estimated 35% of proceedings are assumed not to incur placement costs during proceedings, this is assumed to increase to 45% post-proceedings (plus an additional 30% only eligible for post-proceedings support costs on a means-tested basis).
2. The legal staffing cost impact is based on a mix of solicitor, legal assistants and administrative support, and is assumed to be provided by in-house local authority legal teams. In reality, some local authorities acquire this legal support from external organisations in which case the costs and potential savings may be higher.
3. A reduction in case duration will also affect social work staffing requirement. However any reduction in workload is likely to be at least partially offset by the workload required of social work teams post-proceedings. For simplicity and to be cautious, any reduction in proceeding duration is assumed to have a net zero impact on social work staffing costs.
4. Each additional hearing is assumed to require an additional two days of solicitor time and two days of social work time (including managerial support) to prepare for and attend the hearing. On average, each hearing is also assumed to incur external barrister cost of £2,500.
5. The average cost per external assessment assumes 15-30 hours of expert time at an average of £100 per hour with 25-50% of these costs being charged to local authorities.
6. The national estimated cost impact assumes an average one-week reduction in case duration across all local authorities, with an associated reduction in the number of hearings of one hearing avoided per six cases (as data suggests on average one hearing per six weeks duration). No reduction in non-LA assessment is assumed for this estimate.

Impact on outcomes

Comprehensive analysis of impact of family court delays on outcomes has been outside the scope of this analysis. However, this work would not be complete if we focused only on financial impact, not looking at experiences of the key individuals impacted by the proceedings, including children and their families. This section summarises the views of social workers and other experts participating in this study on the impact of delays in care proceedings on outcomes.

Impact on children

According to Family Court Statistics published by MoJ, 27,077 children were subject to public law applications in 2021 [4]. 21% of the applications were filed for infants under 1. According to Cafcass, 45% of infants under 1 and 55% of children aged 1-5 are in proceedings lasting more than 26 weeks [7]. This means that vulnerable infants and children are often waiting in unstable family homes or emergency foster placements before a court decides if they will be taken into care. The delays to proceedings have a significant impact on all aspects of their lives, including the immediate safety, overall wellbeing and further development.

45% of infants under 1 and 55% of children aged 1-5 are in proceedings lasting more than 26 weeks, with delays consuming highly significant periods of their young lives.



Social workers involved in this project painted a picture of a system that too often leaves the most vulnerable children in limbo for an extended period of time. They voiced concerns about the psychological and developmental harm caused to children by lengthy periods of uncertainty, noting that consequences of this situation for children are significant if they are prevented from making lasting emotional relationships, developing trust and building attachments. In the most extreme cases, their development and healthy emotional growth may be negatively affected.

These findings are consistent with information reported by other participants of the judiciary system, including Cafcass [7]: “Children and young people have told us that delay in proceedings about them is the single most difficult issue for them. It compounds the uncertainty and fear about the future that is already such a frightening part of their lives and for many it is also affecting their mental and emotional health, let alone the planning for permanent arrangements”.

Impact on families and carers

Public law cases require a fine balancing act of providing support for families and protection for children. The children – their safety and wellbeing – are at the heart of the family justice system, which also means that the impact of court delays on outcomes is usually analysed through the lens of children’s outcomes. However, delayed care proceedings may also have a significant negative impact on the involved adults, including parents, family members and carers.

The professionals we spoke to noted that delays in court proceedings can be very distressing to parents who may have their children taken away from them, particularly if they have learning difficulties. In addition to this, cases where prospective carers (e.g. matched adopters) were left in limbo for an extended period of time were also reported, in some cases leading to placement breakdown.

However, cases where a delay provided an opportunity for families to make the required changes and resulted in families staying together were also reported (mainly at the pre-proceeding stage of the process).

Impact on professionals

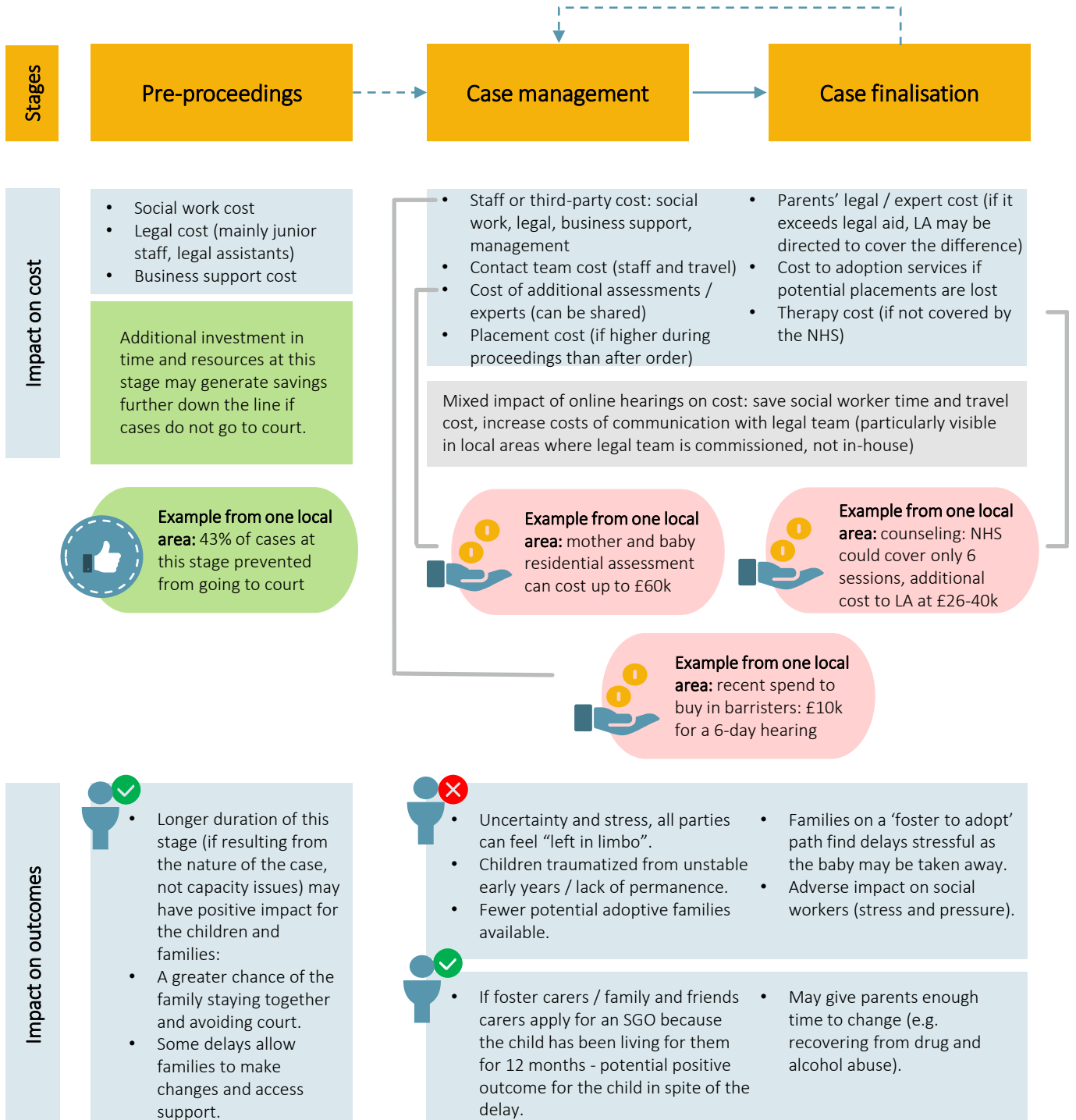
The professionals involved in this project noted increasing workload pressures on social workers, lawyers and judges. Increased caseloads often require staff to work at or beyond their capacity, leading to work related stress and burnout. For local authorities, this may compound the difficulty with recruiting and retaining children’s social workers, leading to heavy reliance on agency staff, which in turn may have a negative impact on retaining consistent quality of evidence, further contributing to court delays. This is in line with recent national figures published by the DfE, which show that the number of children and family social workers leaving during the year 2021 (4,995) was up by 16% compared to 2020 and the highest in the last 5 years [\[3\]](#).

Some social workers participating in the research also noted that the adversarial nature of care proceedings can be a stressful experience. In addition to this, they felt particularly distressed when observing a negative impact that protracted care proceedings had on children, especially in cases where in their professional opinion the balance of speed and thoroughness has not been preserved, leading to the case lasting longer than perhaps necessary.

Part Two
Impact of delays

Spotlight: Public Law Outline process mapping

This is the continuation of the results of the process mapping workshops undertaken with several children’s services teams as part of this project. More detailed information on the cost impacts of delays is included in the technical annex.



Section 4. Conclusions and recommendations

The below section summarises the key conclusions emerging from this work. We argue that determined effort across the entire judiciary and children’s services system is essential to reducing court delays, proposing practical recommendations on what various stakeholders could do to act on the findings from this work. Many of the recommendations from this project are consistent with earlier research, including the recommendations of the Family Justice Review and the Public Law Working Group.

This section also includes the overarching considerations for policy and practice, as well as the potential immediate next steps related to the dissemination and use of the financial impact tool.



Conclusions

Public law proceedings are significantly delayed, which creates a significant cost to the system and has a negative impact on outcomes. Consistent, determined effort across the entire judiciary and children’s services system is essential to reducing court delays. Across the local areas involved in the project, from both the data captured and the discussions held with staff, the findings gave a reflection of systems that are struggling with capacity, routine access to data that gives insight into root causes of delays and their impact, as well as risk averse practice and behaviours that in some cases may prevent parts of the judiciary system to work as effectively together as they might.

This work identified the following four principle factors to be addressed to tackle court delays. Many of these are consistent with earlier research, including the recommendations of the Family Justice Review [\[8\]](#) and the Public Law Working Group [\[12\]](#):

1. **Right capacity in the system to achieve best possible outcomes:** While this is not the sole solution to the issue, it is necessary to ensure that caseloads are safe and systems are not operating in a constant firefighting mode, stretched and at a brink of collapse.
2. **Improved operational control and availability of data:** What gets measured gets managed. Tackling court delays is only achievable if the journey across the system and the outcomes of decision-making throughout the process are measured rigorously and systematically, and the resulting data is shared system-wide. This is about improved availability of evidence to support decision-making rather than setting up new targets (as already the 26 week target seems to be unhelpful and not adhered to in practice).

Effective operational control can be facilitated by these practical actions:

- **Establishing a single, shared and agreed ‘version of the truth’ across all partners working together in the judiciary system, on the basis of data that everyone understands and accepts as accurate:** At the national level, data from various systems and sources (HMCTS management information, Cafcass, DfE) should be linked and made publicly available to ensure that the effectiveness of the process and outcomes are measured, monitored and communicated across the entire system. This could build on the existing linked datasets (Data First), but with improved accessibility of data and insights, leveraging the previous experiences of the Children in Family Justice Data Share project, which promoted openness and transparency in use of family justice statistics (see next page for more information).



The only way to achieve a sustainable reduction in court delays is to take the long term, whole-system perspective. This should build on existing collaboration between Government, ADCS, Cafcass and judiciary.

Data sharing in the judiciary system

There are a couple of examples of administrative data sharing arrangements between family justice agencies to leverage and build on going further:

1
2

The **Data First** [\[10\]](#) aims to unlock the potential of the wealth of data already created by MoJ by linking administrative datasets from across the justice system. It is only available to accredited researchers.

The **Children in Family Justice Data Share (CFJDS)** project [\[9\]](#) (currently discontinued) linked information from HMCTS, Cafcass and DfE to enable more detailed analysis (e.g. Cafcass data was used to identify local authorities for each case, DfE data, where available, was used to identify the ethnic groups and SEN among the children in the sample). The linked data was made publicly available through a number of data exploration and visualisation tools:

Public Law Application to Order (PLATO) tool: an overview of the public law applications and orders in England and Wales between 2010 and 2018, showed how the patterns of these vary over time and by geographical area.

Who Are The Children (WATCH) tool: an overview of the profile of all children who entered the family justice system between 2010 and 2016, including their gender, age, ethnicity and SEN.

Children And Their Outcomes (CATO) tool: showed educational outcomes and demographics for children in the Family Justice System, joining insight from the PLATO and WATCH tools.



- **Ensuring clarity of ownership of every aspect of the data collection and reporting process:**
Given the complexity of the judicial and child protection system, it is critically important that the data management processes are managed as tightly as possible. This project showed that data from other parts of the system (e.g. financial information on cost of placements or information on placement mix during and after proceedings) is required to ensure there is a robust body evidence on what is happening across the system and what is the overall impact of court delays. Routine data collection and reporting processes should involve a broad selection of professionals from across the system.
- **Building a clear pathway for data and how it is used at all levels,** from the frontline decision makers at individual case level, to leaders at organisation / system level, right through policy makers (see examples in the box below).

1

Local level



If you are a case progression manager: use real time data on open and recently closed cases to provide a quality assurance role, identifying the underlying causes of blocks. Identify cases at risk of not meeting the 26 week timeline and troubleshoot if they loose momentum.

If you are a financial lead in social care: analyse full costs incurred by the local authority to bring a child into care on regular basis (including staffing costs, legal costs, third party costs, placement costs). Build a cost benchmark for an average case and identify the true cost of delayed proceedings to your organisation.

2

Regional level



Common datasets on court proceedings should be available to all members of the Local Family Justice Boards, which will allow all parts of the system to identify common issues and discuss how they can be tackled.

3

National level



Work with system leaders to ensure there is a clear and unified vision for how to tackle court delays, underpinned by robust and up-to-date evidence base, rather than perceptions and anecdotal evidence.

- 3. Collaborative approach:** Colleagues from across the system must meet regularly to find shared solutions to problems as they arise, and there should be mechanisms for data sharing and escalation of issues when necessary. Local Family Justice Boards that bring together the key local agencies, including decision makers and front-line staff to achieve significant improvement in the performance of the family justice system in their local areas, are uniquely positioned to play this role. Currently there are significant differences in how various Local Family Justice Boards operate (e.g. one local authority participating in this research had access to detailed datasets generated from the HMCTS management system for all authorities within the area; the same dataset was not available to other local authorities in different regions). Operations of Local Family Justice Boards should be underpinned by accurate and appropriate data on care proceedings made available to all the local partners (see point 2 above).
- 4. Behavioural change:** Addressing court delays effectively and for the long-term may require a fundamental culture change in the family justice system, with system-wide outcome-focused behaviours becoming the norm. This also includes departure from focusing on procedures and risk-aversity to a more relationship-based practice. Building trust between professionals remains a key priorities.

In particular, this requires a shift in culture and practice with regard to the use of expert witnesses in care proceedings, particularly independent social workers and psychologists. In some cases, additional assessments add little value to the information available to the judiciary to make a decision, yet they add costs and cause delays to the process. Social workers and children’s guardians have the expertise to make professional judgments and assessments in many aspects of the cases. While there must be a mechanism for judges to question the local authority's assessment, use of additional expert witnesses should be limited, for example to cases that require specialist knowledge. The default position should involve the courts taking full advantage of the expertise available to them from the local authority’s social workers and children’s guardians, allowing them to use their professional judgment and accepting they have the most detailed knowledge of the case.

Messages for policy and practice

Local authorities

- A. Local authorities should ensure that they **track cases throughout the whole process**, starting from the pre-proceedings stage, during proceedings and beyond for children re-entering the care system, to prevent case drift and allow a routine analysis of root causes of delays. This should include a systematic identification of causes of delays against a standardised list of factors, allowing for a system wide analysis without the need to carry out an ad hoc case analysis. Data from other sources (e.g. finance, information on placement mix) should also be used on regular basis to understand the financial impact of court delays on local authority's finances.
- B. Local authorities should consider **employing or protecting the role of case progression manager** who has oversight of cases, holds up-to-date data on active and closed cases and provides a quality assurance role. The case manager also has a critical role to play in facilitating good working relationships within the court arena. This role requires job-specific skills and previous experience, to ensure that case managers can provide support and mentoring to case holding social workers, and 'trouble shoot' if cases lose momentum. Based on the financial modelling undertaken in this project, there is emerging evidence that this post could be funded with savings generated thanks to reduced duration of proceedings.
- C. Local authorities should continue to **actively monitor caseloads** of social workers, other staff involved in family proceedings as well those staff members whose workload may be affected by the number or duration of court proceedings, actively reacting to situations when caseloads become difficult to manage due to additional activity resulting from court delays or other reasons. It is important to identify parts of the system working with onerous workloads, and to ensure safe levels of resourcing and specialist training.
- D. Local authorities should look to ease practitioners' workloads through better use of **pre-proceedings in a bid to negate the need to issue care proceedings**. The emphasis on partnership with parents and a multidisciplinary approach to addressing the identified needs of families (e.g. through Family Group Conferencing) is the key factor in successful pre-proceedings. This may require an investment in time and resources in the short term, but should ease the pressure on the system in the long term.

Local Family Justice Boards

- E. Local Family Justice Boards have a critical **role in monitoring, tackling and preventing delays** within their geographical footprint. Local authorities should continue to build relationships within this arena and share examples of good practice. **Standardised datasets** allowing tracking all open cases within the local area should be available to all the local stakeholders to help identify system-wide issues that may contribute to court delays.

Central government (DfE / MoJ)

- F. Government should help coordinate efforts to **establish a single, shared and agreed ‘version of the truth’ across all partners working together in the judiciary system**. This is not a new recommendation. The Family Justice Review [8] found that disparate standalone IT systems and the lack of communication and co-ordination across government departments and agencies led to inefficiencies and delays within the system. In spite examples of good practice in this area, further work is required to maximise the use of existing systems and data sources. Better access to data at the national level should be facilitated, with data from various systems and sources (HMCTS management information, Cafcass, DfE) linked and made publicly available in one place to provide more robust evidence on which to make sound policy decisions for children and their families. This could leverage the existing Data First dataset, but with improved transparency and accessibility to data for external stakeholders for the public good.
- G. Government should continue to **explore the financial impact of court delays at the national level**. The ‘Paying the Price’ report [11], published as a part of the Independent review of children’s social care chaired by Josh MacAlister, showed the importance of building a better understanding of the spend on the current system (including legal costs incurred by central and local government to bring children into care). It argued that we cannot afford, in financial or moral terms, to keep on with more of the same. Building on the ongoing programme of work, the government should continue to explore how to address key evidence gaps in family justice. The analysis of cost of the family justice system, in particular potential cashable or efficiency savings resulting from tackling the delays, is critical to make informed recommendations on how to better allocate resources, how to improve practice and where to invest to avoid poor outcomes for children in the family justice system.
- H. Government should **support local areas and systems to achieve the best possible decisions for children by improving the use of data in the family justice system**. This includes an analysis to get a better understanding of the impact of court delays on children’s services and to identify potential areas for improvement.

Proposed immediate next steps

The above section summarised the overarching considerations for the policy and practice that emerged from this work. In this section we outline the potential immediate next steps related to further development and dissemination of the financial impact modelling tool that was developed during this project.

- A. Wider dissemination, validation and roll out of the financial impact modelling tool:** Local areas participating in the project expressed views that the financial impact modelling tool gave them insight into information that was not available to them before. The ideas on how this tool could be used in practice differed (e.g. representatives from one involved local authority mentioned they are keen to use the tool to inform conversations with their cabinet members who wanted to be better informed about the financial impact of family court delays). We recommend the tool is shared with a wider group of local authorities (e.g. through ADCS), to allow for its further validation and gradual roll out to interested organisations.

- B. Improved usability, accessibility and scope of the financial impact modelling tool:** If the wider dissemination and engagement with stakeholders supports the case for use of the financial impact modelling tool by local authorities (and / or other organisations in the family justice system), a further work to improve the usability and accessibility of the tool should be considered. The tool, currently available in excel, could be set up as an online data exploration and visualisation tool, which aims to present the data in an innovative and interactive format that is useful for practitioners, decision makers and researchers alike. In addition to this, a more detailed analysis of the impact at the national level could be considered. For instance, analysis based on a case level information available to accredited researchers through the Data First dataset (as opposed to the publicly available data sources used to inform the tool at this stage) would provide additional depth to the analysis.

Definitions and jargon buster

Key terms relevant for this report

Pre-proceedings – A formal stage entered once a local authority notifies parents its concerns mean it is considering court.

Public Law Cases – When a local authority makes an application for an order to safeguard the welfare of a child, the cases are usually referred to as public law cases. There are a number of different orders that a local authority can apply for but the most common are care orders, supervision orders, emergency protection orders and secure accommodation orders. **This report only looks at Public Law Cases (as opposed to Private Law Cases).**

Public Law Outline (PLO) – The Public Law Outline sets out the duties local authorities have when considering taking a case to court to ask for a care order to take a child into care or for a supervision order to be made. This is often described as initiating public law care proceedings. Under the Public Law Outline (2014) and the Children and Families Act 2014, guidance states that care and supervision proceedings should be completed within 26 weeks.

Acronyms

Cafcass – the Children and Family Court Advisory and Support Service, a non-departmental public body in England set up to promote the welfare of children and families involved in family court

DFJ – Designated Family Judge

DfE – Department for Education

HMCTS – Her Majesty’s Courts & Tribunals Service

ISW – Independent Social Worker

MoJ – Ministry of Justice

References

Data sources:

- [1] Cafcass, Case duration per quarter broken down by local authority, Quarterly data 2021-22, <https://www.cafcass.gov.uk/about-cafcass/our-data/quarterly-data-2021-22/>
- [2] Cafcass, Official Demand Statistics, Data for the period ending March 2022, Updated 5 April 2022 <https://www.cafcass.gov.uk/about-cafcass/our-data/>
- [3] DfE, Children's social work workforce 2021, Updated 24 February 2022 <https://www.gov.uk/government/statistics/childrens-social-work-workforce-2021>
- [4] MoJ, National statistics: Family Court Statistics Quarterly, October to December 2021, Updated 8 April 2022 <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021/family-court-statistics-quarterly-october-to-december-2021>

Literature:

- [5] Beckett Ch. *et al*, Concluding Care Proceedings Within 26 Weeks: Messages from the Evaluation of the Tri-borough Care Proceedings Pilot, Centre for Research on Children & Families
University of East Anglia
https://ueaeprints.uea.ac.uk/id/eprint/50297/1/UEA_12_months_evaluation_Triboro_care_proceedings_May_2014.pdf
- [6] Booth, Dame M., *Avoiding Delay in Children Act Cases*, London, Lord. Chancellor's Department, 1996
- [7] Cafcass, Partners e-bulletin May 2021 <https://www.cafcass.gov.uk/2021/05/19/partners-e-bulletin-may-2021/>
- [8] Family Justice Review, November 2011
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf
- [9] MoJ, Children in Family Justice Data Share
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696108/children-in-family-justice-data-share.pdf
- [10] MoJ, *Data First: An Introductory User Guide. Harnessing the potential of linked administrative data for the justice system.* February 2022
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1056236/data-first-user-guide-version-7.0.pdf
- [11] *Paying the Price, The social and financial costs of children's social care*, The Independent Review of Children's Social Care <https://childrensocialcare.independent-review.uk/wp-content/uploads/2021/11/Paying-the-Price.pdf>
- [12] Public Law Working Group, *Recommendations to achieve best practice in the child protection and family justice systems*, March 2021 https://www.judiciary.uk/wp-content/uploads/2021/03/March-2021-report-final_clickable.pdf