

## **Final Regulatory Impact Assessment**

### **Title of Proposal**

The Review of the Child Care Proceedings System in England & Wales (the Review)

### **Purpose and intended effect**

#### **Objective**

The overall aim of the Review is to ensure that resources in child care proceedings are used in the most proportionate, efficient, effective and timely way, to deliver the best outcomes possible for children and families. And that this is done in a way that is consistent with the underlying principles of the Children Act 1989. The Review covers England & Wales only.

The Review's recommendations aim to:

- Avoid court proceedings where possible or desirable;
- Improve the consistency and quality of section 31 (s31) applications to court;
- Improve case management during proceedings;
- Positively engage families and children; and
- Improve professional relationships and inter-agency working.

#### **Background**

For the purposes of this document, the term 'child care proceedings' refers to Public Law Children Act Proceedings. These are cases where the state intervenes to protect the child (rather than private law cases - involving disputes between parents etc over custody). s31 refers to section 31 of the Children Act 1989, which is the legislation under which applications for care or supervision orders can be made.

Public Law Children Act proceedings were identified in the Command Paper *A Fairer Deal For Legal Aid* (July 2005) as a steadily growing area of legal aid spend. This Review has focused on how to improve the child care proceedings system for children and families in England & Wales, whilst at the same time ensuring the sustainability of the system through better use of the resources for which the Department for Education and Skills (DfES), the Department for Constitutional Affairs (DCA) and the Welsh Assembly are responsible.

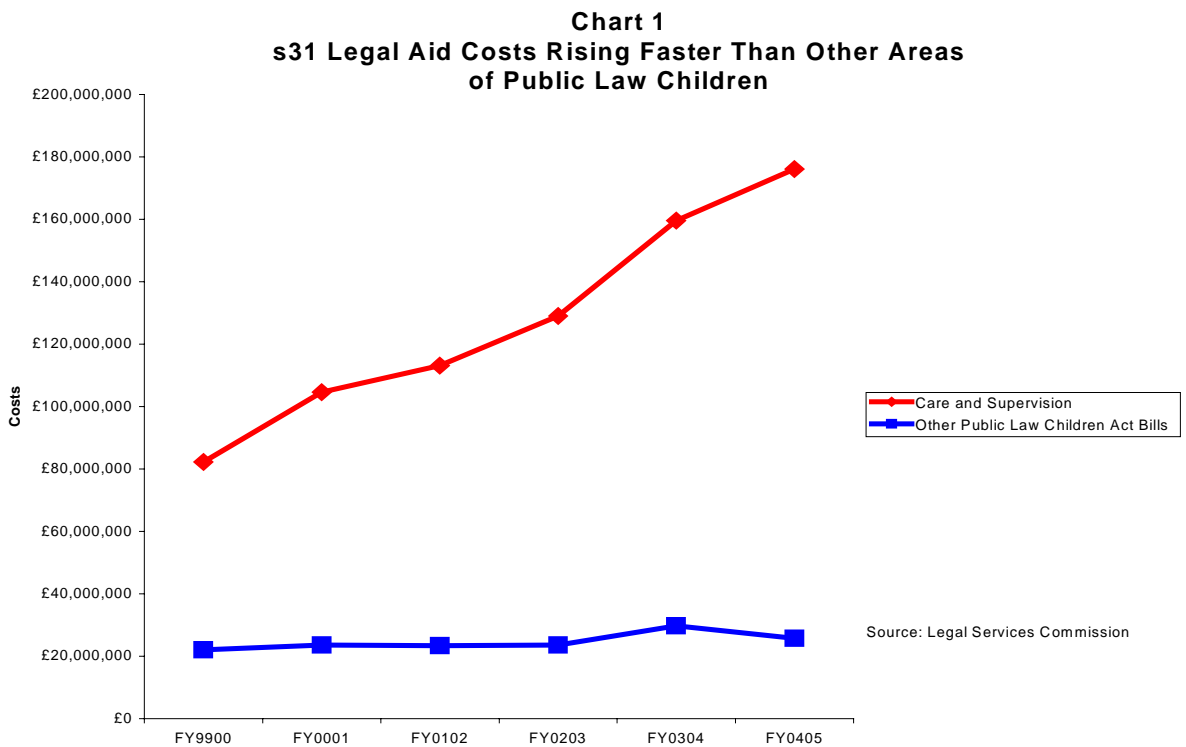
We have also considered local authority (LA) expenditure on care proceedings (within the context of overall expenditure on looked after children), the running expenses of the Children and Family Court Advisory and Support Service (CAFCASS), the costs of the judiciary and court service, and expenditure on family legal aid.

There are several different ways of categorising a good outcome/benefit for children and families. However, as set out in the Review's Terms of Reference, its aim is to ensure the system is as effective as possible in delivering the Government's overarching vision for children, as set out in the Green Paper [Every Child Matters](#). It states that every child should benefit from: being healthy; staying safe; enjoying and achieving; making a positive contribution; and experiencing economic well being.

As described in the Report, a range of work is underway to improve the system. Action can build on this using some existing resources and programmes to implement recommendations.

**Rationale for Government intervention**

The Review has looked exclusively at s31 cases (care and supervision). These account for the majority of public law children legal aid bills in terms of both volume and expenditure and the proportion has been increasing faster than for other public law children bills. Volumes of s31 bills have risen from 75% to 81% of all Public Law Children Act bills from 1999/00 to 2004/05 and total expenditure on s31 bills has risen from 79% to 87% of all legal aid expenditure on Public Law Children Act bills over the same period. Volumes and costs of other public law children bills (such as discharge of care orders and appeals to higher courts) are relatively static.



The Review has identified the systemic issues below, which the recommendations proposed attempt to overcome:

**Unnecessary delay:** possibly the most important driver of cost to proceedings.

**Volume:** the number of s31 legal aid bills has risen by 42% over the past five years and further increases are anticipated, so pressures on the system will continue. This highlights the need to think about the potential for advice, support and advocacy for families to avoid the need for proceedings where this is possible or desirable.

**Complexity:** arising from the increased complexity of family backgrounds and lifestyles as well as improvements in our understanding of harm to children. Research suggests

that the vast majority of cases contain multiple concerns and allegations, and multiple categories of child maltreatment. The proliferation of assessments in search of certainty where this may not be a realistic goal also drives complexity. A further driver is delay in receiving assessments and reports from expert witnesses and the attendant increases in paperwork and case duration.

**Permanency:** there is at least a perception amongst practitioners that some cases are more adversarial than they need to be (clearly there are cases where an adversarial approach is justified by the seriousness of the factual matters in issue and / or a proposal to permanently remove a child with no contact).

Groups likely to be affected are the Judiciary, legal aid lawyers, CAFCASS guardians and local authorities (particularly children's services). If, as a result of revised guidance, LAs were to make effective use of pre-application interventions which resulted in a number of cases being diverted away from court proceedings, the marginal additional cost of such interventions would be far outweighed by the savings achieved from the avoidance of lengthy care 'careers' for the affected children (the average duration of a s31 care order is 5-6 years). The draft policy guidance will be the subject of the usual consultation (in accordance with Cabinet Office guidance) and cross-Government clearance processes.

Indeed, as the case studies of two local authorities, Bedfordshire and Islington, (on pages 16 to 18 of the report) make clear, they can achieve both financial and other benefits by making concerted efforts to intervene early and effectively in the lives of vulnerable children and their families.

## **Consultation**

The Review team consulted widely throughout, placing articles in journals inviting comments from the public and holding a well-received stakeholder event. Attendees at this event included those from professional legal representative groups, groups representing children, group representing the interest of parents/families, local authority legal and children's services, guardians, the judiciary, researchers and experts. Various key stakeholders were also included in the Review's governance structure (as part of steering, working and advisory groups). Members of these groups included representatives of other government departments (e.g. DfES, Treasury), the Welsh Assembly Government and non-departmental public bodies, the Legal Services Commission and CAFCASS. The views expressed by members of these governance groups were instrumental in guiding the Review's work.

The Advisory Group, in particular, provided a forum for robust discussion between stakeholders, who presented a range of opinions on issues put to them by the Review team. This allowed the team to share thinking as it developed, and for emerging ideas to be debated and challenged by experts in the field and representatives of key professional bodies. It also allowed stakeholders to raise their own concerns. One example of a useful debate which was explored in this forum concerned the merits (or otherwise) of various methods of early intervention. Consultative input such as this has been of great value to the Review team.

## **Options**

It should be noted that although volumes have increased over the last few years, the threshold of harm, as set out in the Children Act 1989<sup>1</sup>, continues to be met in the vast majority of cases.

### **Option 1 - Do nothing**

Doing nothing will not address the problems identified by the Review or improve outcomes for children. Additionally it will fail to control the increase in legal aid costs, and not enable changes to the system to be made that would benefit children, families and practitioners involved. There is a risk that rapidly increasing costs could have an adverse affect on the workings of the systems or the outcomes for children.

### **Option 2 - Adopt Review Recommendations**

Implementation of the review recommendations can put the current system on a more sustainable footing, improve outcomes for children and families and deliver cost savings.

It must be emphasised that any benefits in terms of outcomes and resources will only accrue through consistent and robust implementation of the recommendations. Interagency co-operation will be required. Practice Directions may need to be changed along with the President of the Family Division's 'Protocol'<sup>2</sup>.

These recommendations are designed to reduce the length of proceedings and to ensure that children only become looked after by the local authority once all other safe alternatives have been properly explored. These alternatives include both support for families so children can remain at home and greater use of kinship care.

The Review's recommendations, some of which are explored below, are set out in summary on pp 3-7 of the Final report.

### **Costs and Benefits**

#### **The proposed changes will affect:**

Children and Families  
Her Majesty's Court Service  
Local Authorities  
CAFCASS  
DCA  
DfES  
The Judiciary  
The Welsh Assembly

### **Option 1 – Do Nothing**

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<sup>1</sup> *Children Act 1989*, section 31(2): 'A Court may only make a care order or supervision order if it is satisfied - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.'

<sup>2</sup> *The Protocol for Judicial Case Management in Public Law Cases (2003)* - The Protocol is a statement of best practice case management, the implementation of which is dependent upon the management of family proceedings by the specialist family judiciary.

No appreciable benefits and increasing costs. Costs in public law family legal aid rose from £129.5m in 2002/03 to £160m in 2003/04. Without any action to improve procedures, further substantial rises are likely.

## **Option 2 – Adopt the Review recommendations**

### **Impacts of Immediate Recommendations**

The Review's immediate recommendations are those that could be implemented within 12 months under the current legislative framework. It is worth repeating that these savings are dependent on proper implementation of recommendations (and the method of such, which is yet to be finalised). Cost savings from each immediate recommendation are achieved by reducing delay and / or increasing the number of cases that are addressed without recourse to court proceedings.

Costs / savings have been calculated both for the overall system (excluding the costs of accommodating looked after children, and recognising the impact on fees for HMCS of fewer cases) and for legal aid and are still work in progress.

### **Recommendation - Document in simple language for all parties**

- That the aims of the Local Authority case and proposed care plan are clearly laid out in a short document in simple language to facilitate communication with families about the nature of the local authority concerns, what the key issues in the case are and the proposed interim care plan;
- This short document is provided and explained to parents (and directly to older children) to ensure that they understand that the local authority is applying to court and the basis of the local authority's concerns. It should subsequently form part of the application to court and be revised and re-circulated, if necessary, in light of the key issues identified at the first court hearing.

Overall savings are approximated to be in the low millions per year when at full implementation, savings to legal aid will be slightly lower.

### **Recommendation - Pre-proceedings Engagement of Families**

- More consistent use of pre-proceedings initiatives such as Family Group Conferences (FGCs).

Overall savings are approximated to be of order £10 million per year when at full implementation, as are legal aid savings.

### **Recommendation - Combining existing pre-proceedings guidance and best practice on case preparation into one document**

- That all existing pre-proceedings guidance and best practice on case preparation should be combined into one document (which could be used as a checklist) and issued to local authorities as statutory guidance;
- That a Practice Direction covering the minimum the court expects of every s31 application in a way that dovetails with this statutory guidance should also be issued.

Overall savings are approximated to be of order £10 million per year when at full implementation, savings to legal aid will be slightly lower.

#### Recommendation - Revised First Hearing

- That the scope and timing of the First Hearing is revised to incorporate steps 1-3 of the Protocol for Judicial Case Management in Public Law Cases (2003). The additional aims of the hearing should be to identify the key issues in the case as early as possible, to examine the interim care plan for the child, to agree what expert evidence is required, and to agree the points that need to be included in a draft letter of instruction;
- That the short, simple language document prepared by the local authority at the gateway meeting should form part of the application to court and be revised and re-circulated in light of the key issues identified at the first court hearing; and
- That the listings procedures are changed to ensure that listing times take account of any time needed for the parties and their advocates to meet outside the presence of the judiciary and to avoid such meetings taking place whilst the judiciary is waiting.

Overall savings are approximated to be of order £10 million per year when at full implementation, savings to Legal Aid will be slightly lower.

*Strategic Recommendations will take longer to approve/action and would be unlikely to deliver savings before 2009/10 so have not been costed.*

Cost estimates have been made based on initial assumptions that may change. There is a well rehearsed scarcity of robust data in this area, partly due to the number of agencies involved and the different units of comparison, making firm cost/benefit analysis challenging.

Total potential savings from immediate recommendations are predicted to be in the low tens of millions annually by financial year 2009/10, with the legal aid fund the major beneficiary.

#### Race Equality Impact Assessment

A race equality impact assessment was carried out as part of this RIA. Proposals were analysed as part of the 'screening' stage of the assessment, and it was our judgement after this was carried out that the proposed policies would have minimal relevance to the race equality duty.

The recommendations concerning information summaries for parents whose children are subject to care proceedings<sup>3</sup>, and more regular communication from social workers to children involved<sup>4</sup> will need to be implemented with regard to the needs of those who are not fluent English speakers.

#### Small Firms Impact Test

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<sup>3</sup> P.21, paragraph 5.6 of Final Report

<sup>4</sup> P.21, paragraph 5.7 of Final Report

As the impacts are largely confined to the public sector and the courts there will be no appreciable impact on small firms.

**Competition Assessment**

As the impacts are largely confined to the public sector and the courts there are no appreciable competition issues

**Enforcement, sanctions and monitoring**

Work is already being taken forward by various parties to improve the child care system, reduce delay etc. Local Authorities will need to play a key role if the changes proposed are to have a positive effect. It is important that local authorities have the freedom to respond to demands and priorities in their own areas. However if proper measures are not put in place, to allow overall performance to be assessed and to incentivise change, there is a risk that key recommendations will not be acted upon.

**Implementation and delivery plan**

Improving efficiency in the system, and outcomes for children, depends critically on the full and timely implementation of the recommendations. This is where some previous work has proved less than effective. Both sponsoring departments are committed to full and timely implementation. To ensure this takes place, a ministerially led group is to be formed, which will include DCA, DfES and Welsh Assembly ministers. The purpose of this group will be to ensure a high-level oversight of progress, clear accountability for the implementation of the review and reduction in delay in handling care applications. There will also be a Delivery Board of senior officials which will deal with more detailed implementation issues.

**Post-implementation review**

This will be completed in light of the agreed implementation strategy.

**Summary and recommendation**

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 - Do nothing	None	Further substantial rises in legal aid costs highly likely. Overall system costs would not be tackled. Significant qualitative problems identified with the current system would remain unresolved.
2 - Adopt recommendations	Potential system savings predicted to be in the low tens of millions annually by FY 2009/10. Legal aid fund the major beneficiary. Robust implementation of recommendations	If, as a result of revised guidance, LAs were to make effective use of pre-application interventions which resulted in a number of cases being diverted

	will help us deliver better outcomes for children subject to such proceedings.	away from court proceedings, the marginal additional cost of such interventions would be far outweighed by the savings achieved from the avoidance of lengthy care 'careers' for the affected children (the average duration of a s31 care order is 5-6 years). The draft policy guidance will be the subject of the usual consultation (in accordance with Cabinet Office guidance) and cross-Government clearance processes.
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**Declaration and publication**

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed:**

**HARRIET HARMAN**

**Date:**

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