

## **Justice, speed and thoroughness in child protection court proceedings: messages from England**

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### **Abstract**

This paper reports and assesses the outcomes of a pilot programme in London to reduce the duration of child protection court proceedings. The initiative, known as the 'Tri-borough Care Proceedings Pilot', was intended to reduce the usual duration to 26 weeks, ahead of national moves in that direction. The paper locates the issue of court delay in a wider political and child welfare context, highlighting the dilemmas of balancing principles of family autonomy and child safety, support and protection, thoroughness and speed, welfare practices and court processes. It compares the policy, legal and court contexts in the USA and England, showing that what might appear at first sight a local initiative actually relates to a much wider, long-lasting and international debate about how to reach important decisions about children in a reasonable timescale. The paper concludes that there will always be, and must always be, tensions between the courts, national government and local welfare agencies. The pilot shows that greater speed can be achieved by concerted effort from all the agencies, but at the same time the division of powers and responsibilities is a bedrock for protecting individual rights in liberal democratic societies. Welfare and legal practitioners alike need to appreciate this tension in child protection policy and practice, and resist recrimination when there are differences of opinion. Knowing that other countries face the same challenges can help to promote a more realistic and sophisticated understanding of the dilemmas and the implications for practice, and so help to bring about better decisions for children.

### **Keywords**

Care proceedings; juvenile dependency; Tri-borough pilot; court delay; permanence; adoption

## 1. Introduction

In countries which place high social value on both family autonomy and the well-being of children, there will always be tension and controversy about the 'right time' and the 'right way' for the state to intervene to protect children from harm. This is further intensified in liberal capitalist societies such as (but not only) the USA and England, where there is a wariness about the state taking away choice and control from individuals, as reflected in Ronald Reagan's famous quip, "The nine most terrifying words in the English language are: 'I'm from the government and I'm here to help.'" These ideological misgivings are compounded by financial and fiscal concerns: extensive state services are likely to be expensive, and require high levels of taxation. In what circumstances, therefore, and to what extent, should states prioritise voluntary engagement with families, supportive services (on a long-term basis if necessary), and tolerance of different lifestyles? When is greater compulsion required, swifter and more decisive intervention, and a priority on child safety over parental rights? The challenge, of course, is that these are not simple either-or choices; rather, both the supportive and the protective approaches are socially and politically approved in some ways, and mistrusted in others (e.g. see Parton, 2009; Dingwall et al., 1985).

These political dilemmas overlap with debates about children's needs and rights. The immediate priority is their physical safety, but beyond that there has long been awareness of the enduring psychological harm caused by early experiences of abuse, neglect and instability, and of children's psychological needs for secure attachments to safe and reliable carers throughout their childhoods and into adulthood (Howe, 2005). This in turn has led to concern, over many years, about the psychological harm caused to children by lengthy periods of uncertainty and delay in ensuring that they are brought up in a safe and secure setting (whether that is with their parent(s), kinship carers, adopters or long-term foster carers).

The notion of 'permanence' has acquired prominence in child welfare policy on both sides of the Atlantic because it brings together the political and the psychological, offering a way forward that appeals to both perspectives. In both countries, the first permanence option is for children to remain with or return to the parent(s), provided it is safe to do so, reflecting the political priority on family autonomy and psychological research on the importance of family ties. In both countries many children do return home from care within a relatively short period of time and without the involvement of the courts (for England, see Sinclair et al., 2007; DfE, 2013; for the USA, Courtney and Hook, 2012b; Children's Bureau, 2013). For children who cannot go home, the principal permanence options are adoption or kinship care, and then long-term foster care.

In the USA and the UK, there is a long history of concern about delay in reaching decisions on children involved in court cases to protect them from harm or neglect (known as juvenile dependency hearings in the USA, and care proceedings in England). The USA has federal requirements about the timescales of such proceedings but even so there are often delays (discussed in section 2.3 below). In England, the issue was one of the reasons for a review of the family justice system in 2010-11 (FJR, 2011a, b). This proposed a statutory time limit of 26 weeks for care proceedings (save for 'exceptional cases'), and the courts and welfare agencies across the country have been working towards this since summer 2013. It became a statutory requirement when the Children and Families Act 2014 came into force, in April 2014.

But the emphasis on permanence and timeliness brings its own challenges. The imperative of swiftness, important though it may be to minimise psychological harm to children, fits awkwardly with the gravity of the decisions to be made. Such life-changing matters require thorough evaluation and proper consideration. The 26 week target has, inevitably, provoked concern from family rights campaigners and parents' advocates about the risks to fairness and thoroughness (Bar Council, 2012; TCSW and FRG, 2013).

This paper reports on an evaluation of a pilot programme in London, the 'Tri-borough Care Proceedings Pilot', which ran from April 2012-March 2013. It was intended to work towards the 26 week target ahead of national moves in that direction, and offer lessons for other areas in how best to achieve it. We describe the pilot and the main findings, and reflect on the wider challenges of balancing support for families and protection for children, thoroughness and speed, welfare practices and court processes. In order to contextualise the pilot and draw out the wider debates, we start by comparing key elements of the policy context, legal framework and court processes in England and the USA. We write as English researchers and acknowledge that this shapes our view of the American landscape, but there is considerable interest from policy makers, academics and welfare practitioners about the possibilities and limitations of learning from other countries, and we hope the paper will contribute to that discussion; and even when there are no direct lessons to be transferred, a benefit of international comparisons is to help one look at one's own country in a fresh light. What might appear at first sight a local initiative actually relates to a much wider, long-lasting and international debate about how to reach important decisions about children in a reasonable timescale.

## **2. Permanence, the law and the courts**

In both the USA and the United Kingdom, child welfare policy and legislation reflects wider concerns about family autonomy and permanence. The importance of timely decision-making for children has been recognised in both countries for at least four decades. One of the seminal texts in this field, for instance, Goldstein et al. (1973) was written by three psychoanalysts, two American-based and one British-based. It looked at 'all legislative, judicial, and executive decisions generally or specifically concerned with establishing, administering or rearranging parent-child relationships' (page 5), emphasising the harm caused to children by protracted periods of uncertainty. A well-known British text published in the same year (Rowe and Lambert, 1973) concerned itself with 'drift' across the whole care system, not just delay within the courts, and had at its core the same concern about the

psychological harm that delay can cause to children. Recent research, on both sides of the Atlantic, into the impact of abuse and neglect in a child's early years on their neurological and psychological development, has further raised awareness of the importance of clear assessments and decisive intervention (Centre on the Developing Child, 2012; Brown and Ward, 2012).

In both countries, there have been numerous policy initiatives over the last twenty years to promote adoption as a way of ensuring permanent, safe and loving homes for children in care who cannot go back to their birth families. In both countries, adoption proceedings are separate from child protection proceedings, but child protection cases may end with an order that permits the relevant agency to place the child in a prospective adoptive placement without the birth parents' agreement. In the USA this is called termination of parental rights; in England the equivalent step is called (since 2006) a placement order. This does not actually terminate the parents' 'parental responsibility' (the term in English law for parental rights and duties), but allows the local authority to restrict their exercise of it, and to share parental responsibility with the prospective adopter(s) once the placement is made. When the adoption order is finally made, this extinguishes the parents' parental responsibility and gives it solely to the adopter(s).

However, the fact that a child is available to be placed for adoption does not necessarily mean that he/she will be. Some of the children are 'hard to place' because of physical or intellectual disabilities, or other health needs. Others have significant emotional and behavioural difficulties because of their experiences, and some are too old to be easily placed for adoption – hence the emphasis on timely intervention and decision-making.

### *2.1 Permanence and the law in the USA*

In the USA, primary responsibility for child welfare services is with the individual states, each with its own legal and administrative system. However, in order to receive federal funding for certain programmes, states must comply with federal legislation and requirements (CWIG, 2012a; Keenan,

2006). States are required to make 'reasonable efforts' to prevent the removal of children from their families, or to reintegrate them if they have been separated (CWIG, 2012a; Berrick, 2011), and there is a strong emphasis on timescales for decision-making. Nationally, of the 241,000 children who left care in the year ending 30 September 2012, just under half did so within a year, and just over half went back to parents or other primary carers; but of the 102,000 children waiting to be adopted, more than half had been in care for over two years (Children's Bureau, 2013: 3, 5). The Adoption Assistance and Child Welfare Act 1980 established a time limit of 18 months after the initial placement in out-of-home care for the court or relevant administrative body to decide the long-term future placement for child. The Adoption and Safe Families Act 1997 shortened the time limit for decision-making by requiring 'permanency hearings' to be held no later than 12 months after the child enters care. It also required that states initiate proceedings to terminate parental rights after a child has been in care for 15 of the previous 22 months, but allows for this not to happen if the child is in kinship care or it is not considered to be in the child's best interests (CWIG, 2012a; Edwards, 2007). It introduced financial incentives for states to increase the number of adoptions. There is still the requirement of reasonable efforts at reunification, but states are allowed to specify exceptions where services are not required. They are also expected to make reasonable efforts to find adoptive placements for children, including concurrent planning for rehabilitation or adoption (D'Andrade and Berrick, 2006). Critics have argued that the time limits are too rigid and have not been backed up by sufficient resources to improve welfare and court practice (Guggenheim, 2000; Guggenheim and Gottlieb, 2005).

More recently, the Fostering Connections to Success and Increasing Adoptions Act 2008 gave increased support for kinship placements, by introducing federal funding for states to make assistance payments to kinship carers who had taken on legal guardianship of the child, and for programmes to help strengthen family links. An emphasis on kinship care is consistent with the wider social and political emphasis on family autonomy and self-responsibility, and a relatively restricted role for the state.

Kinship care may be arranged under a range of different legal arrangements (CWIG, 2010, 2013). Federal legislation requires states to consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, but specifies adoption as the preferred legal status: *42 US Code 671(a)(19), 675(1)(F)*. The US Department of Health and Human Services advises that legal options such as guardianship ‘do not provide the same level of permanency available through adoption ...’ (CWIG, 2012b: 4).

## *2.2 Permanence and the law in England*

As for the situation in England, concern about the duration of court cases involving children was one of the drivers behind the introduction of the Children Act 1989. So too were the goals of giving a clearer legal framework for preventive and family support services, and ensuring more effective planning for children in care. Note here that, while the judicial system is the same in England and Wales, the other countries in the United Kingdom, Scotland and Northern Ireland, have their own court and policy systems, although the UK Supreme Court is the final domestic court of appeal for most matters. Beyond that, the UK is a signatory to the European Convention on Human Rights, and cases which turn on a Convention right may, ultimately, be taken to the European Court of Human Rights in Strasbourg. A core concept in European human rights law is ‘proportionality’, that any intervention by a state in the private and family lives of its citizens must be necessary and proportionate to the risks or harm in question, and must follow due process with appropriate procedural safeguards. Adoption without the parents’ consent is permitted if it is in the best interests of the child but is considered an extreme step, only to be taken in ‘exceptional circumstances’ where there is an ‘overriding requirement pertaining to the child's best interests’ (Johansen v Norway [1996] ECHR 31, para 78). This has become a crucial issue in light of government policy in England to increase the number of children adopted from care (see section 5.1 below).

The Children Act 1989 is still the principal piece of legislation for child welfare services in England, but has been substantially amended over the years. The primary responsibility on local authorities is

to 'safeguard and promote' the welfare of children in their area who are in need; and, so far as is consistent with that duty, promote their upbringing by their families by providing a range of supportive services (s. 17 of the Act). We should note here that social work services for children and families in England are still underpinned by a range of universal services, such as the national health service and a national social security system, although these are under extreme pressure due to large cuts to welfare budgets and current government ambitions to further reduce the role of the state (Watt, 2013). So there are competing requirements of family responsibility, state support and child protection, and questions of when and how best to intervene are crucial. As one of its guiding principles, the Children Act states in s. 1(2) that in any proceedings regarding the upbringing of children, '... the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child'. Case law subsequently clarified that 'planned and purposeful' delay was acceptable if it was in the child's interests, but (as will be discussed below) a culture of delay in the courts has caused some cases to go beyond what many would consider reasonable.

The political and psychological benefits of permanence have led to government-led initiatives to try to get more children adopted from care, and speed up the time that this takes. Tony Blair, the Labour prime minister from 1997-2007, whose own father had been adopted, took a personal interest in the topic and led a review of adoption in 2000 (DH, 2000). This led to new legislation, the Adoption and Children Act 2002, and adoption targets for local authorities. In the Conservative-Liberal Democrat coalition government, the senior politician in the Department for Education (also responsible for children's social care) from 2010 to 2014 was Michael Gove, himself an adopted person. There has been increased pressure on local authorities to get more children adopted, with the publication of a new action plan and 'adoption scorecards' to compare their performance (DfE, 2012, 2014). In 2012-13, almost 4,000 children were adopted from care, the highest figure since 1992; the average length of time between entering care and being adopted was 2 years 7 months, with a quarter having been in care for more than three years (DfE, 2013).

There is also an increased emphasis on kinship care, and as in the USA this may be done under a variety of legal arrangements with varying degrees of state intervention (DfE, 2011). The Adoption and Children Act 2002 introduced a new order of 'special guardianship', intended to support long-term care of children by relatives or friends by giving the guardians parental responsibility for the child. It does not terminate the parents' parental responsibility, but gives the special guardians the authority to act independently of them. Government guidance reflects the principle that children should be brought up by family or friends if possible, and all local authorities are expected to have a published policy on this (DfE, 2011).

### *2.3 Timeliness and the courts in the USA*

The US court system has a number of set steps in child protection cases, although timings for them vary considerably between states, and are not always prescribed (CWIG, 2011; see also NCJFCJ, 1995; Badeau and Gesiriech, 2003; Jones, 2006; Edwards, 2007; Zinn and Cusick, 2014). If court proceedings are initiated when a child is removed, there should be a preliminary protective hearing (also called the emergency removal or shelter care hearing) within a very few days. There is then an adjudicatory hearing (also called the trial or fact-finding hearing). Either at the same time or later there is a dispositional hearing, which decides where the child should be placed, at least temporarily. There are then review hearings to check the child's well-being, consider whether the plan is still appropriate and the progress being made. These should take place at least every six months and may be undertaken either by the court or a panel known as a foster care review board. (In practice, reviews can be cursory: Hoyano and Keenan, 2007: 100.) Then comes the permanency hearing, and if appropriate the termination of parental rights hearing. National data are not available on the duration of juvenile dependency cases (Karatekin et al., 2014: 65), but a study of cases in Illinois, 2000-05, found that just over a quarter had a dispositional order within 6 months, and three-quarters within a year (Zinn and Cusick, 2014: 92). But a quarter took over a year to reach the

dispositional hearing, and some (4%) took over two years. In the year after their dispositional hearing, only about a fifth of the children left care for reunification, kinship care or adoption.

Delays occur for a variety of reasons (Guggenheim and Gottlieb, 2005; Summers and Shdaimah, 2013; Zinn and Cusick, 2014). These may be to do with the cases, but court processes are also significant. These include adjournments (or 'continuances') because of commissioning additional assessments, non-compliance with court orders about assessments or filing dates, appeals and insufficient time listed for the hearing. Guggenheim and Gottlieb (2005) catalogue a number of examples of very lengthy delays in the New York courts, observing that court delay not only 'puts off the best outcome' and 'makes the child suffer uncertainty', but 'in some cases ... precludes forever the outcome that would be in a child's best interest' (2005: 570).

Initiatives to improve the quality and timeliness of child care proceedings include the Model Courts Project led by the National Council of Juvenile and Family Court Judges (NCJFC, n.d.) and the federally-funded Court Improvement Programme (CIP, n.d.). Typical initiatives include greater use of 'alternative dispute resolution' processes (e.g. mediation, family group decision-making); improved administrative, timetabling and monitoring procedures; training for judges, lawyers and social workers, including joint agency-court training; and judicial continuity (see NCWRCLJI, 2011; Freundlich, 2010; Festinger and Pratt, 2002; Courtney and Hook, 2012a; Karatekin et al., 2014).

#### *2.4 Timeliness and the courts in England*

As for England, the expectation when the Children Act 1989 was implemented (in 1991) was that care proceedings would normally be completed within 12 weeks, but within a short time it became clear that this target was not being met and was, in many ways, unrealistic. Hunt et al. (1999), in a study of cases brought in the early years of the Act, argue that such a target only made sense if there was a clearly defined issue, known from the beginning, for the court to decide. They found that this was applicable only in a small minority of cases. In the majority such proceedings are a process of

assessment, change and negotiation, rather than simply one of adjudication. The 2013-14 reforms in England aim to change the culture of care proceedings, towards a more adjudicatory model, with tighter case management by judges. As part of this, there are strong requirements on local authorities to come to court with well-prepared cases and clear plans. In any just and rational system, however, there must be scope for the process to be extended to deal with new circumstances or new information; as we shall see, getting this balance right is one of the challenges for the reforms.

Delays caused by a proper sense of the gravity of the decision have been compounded by a culture of mistrust between the courts and local authorities, and mutual blame (FJR, 2011a; compare similar observations of the US system by Wattenberg et al., 2011). For example, there has been a tendency for the courts to order repeat assessments by independent experts almost as a matter of course, discounting the pre-proceedings work by local authority (Masson et al., 2008, 2013); this in turn has made local authority managers reluctant to commission expensive assessments outside proceedings.

Furthermore, courts have been reluctant to make a final order until they are certain about the care plan for the child, because under English law the court has no on-going power of review once it has made a final order. (There is a statutory scheme for regular reviews within local authorities, led by employees who are independent of the line management of the case: DCSF, 2010.) The research evidence is that local authorities do genuinely try to implement the court-ordered care plan (Hunt and Macleod, 1999; Harwin et al., 2003), but the children will often have substantial and changing needs, and so the authority may, quite properly, have to change the plan to respond (FJR, 2011a: 111). So the situation in England is the same as the USA: the search for certainty can become counter-productive if it is too long drawn-out, worsening a child's chances of reaching and settling in the secure home they so badly need.

The combination of legal requirements, court culture and the quest for certainty meant that care proceedings in England had, until the recent reforms were introduced, become extremely protracted

(FJR, 2011a: 84, 111). Cases completing in the year ending June 2011 had taken, on average, 56 weeks (FJR, 2011b: 5, 103-4). Cases taking more than two years were not uncommon (Beckett and McKeigue, 2003; Cassidy and Davey, 2011). There had been two significant attempts to address this through procedural changes and tighter case management in the courts, the *Protocol for Judicial Case Management* in 2003 (LCD, 2003) and the *Public Law Outline* five years later (Judiciary of England and Wales, 2008), but to no sustained effect. The Family Justice Review of 2010-11 sought to cut through the knot by recommending a statutory time limit of 26 weeks.

### **3 The Tri-borough Care Proceedings Pilot**

The Care Proceedings Pilot was an initiative led by three local authorities in London to rise to the challenge of the 26 week limit. The authorities are the Borough of Hammersmith and Fulham, the Borough of Kensington and Chelsea, and the City of Westminster, which collaborate on various aspects of service provision under the collective name of 'the Tri-borough authorities'. They are among the more prosperous local authorities in the Greater London area, and have a combined population of somewhat over half a million people. The pilot itself involved not only the local authorities but the local judiciary and court services, as well as Cafcass (the Children and Family Court Advisory and Support Service). Cafcass is agency which, in the English system, provides social workers known as 'children's guardians' to represent the interests of children in the courts. The median duration in the Tri-borough area in the year prior to the pilot (2011-12) was 49 weeks.

Key features of the pilot project included the appointment of a 'case manager', whose brief was to have an overview of cases being considered for and brought to court across all three boroughs, advise and support social workers during proceedings, liaise with the courts and 'trouble shoot' if cases lost momentum. Additionally, there were agreements with providers of independent assessments to reduce the time to complete their assessments, and the Tri-borough fostering and adoption service also undertook to complete their assessments of possible kinship carers (or others, such as family friends) more quickly than previously. Four children's guardians were identified to

work on the Tri-borough cases. There was a commitment from the courts to try to ensure judicial continuity for Tri-borough cases, and to apply robust case management in order to avoid unnecessary assessments and hearings. Quarterly review meetings took place, involving all the agencies and private practice solicitors, to identify and share the learning points from the pilot. A multi-agency management committee oversaw the implementation of the pilot as a whole.

The Centre for Research on Children and Families at the University of East Anglia was commissioned by the Tri-borough authorities to undertake an independent evaluation of the pilot. The study received ethical approval from the School of Social Work at the university. In addition to establishing the extent to which delay in care proceedings had in fact been reduced and the target duration of 26 weeks achieved, we looked at what changes in practice had occurred, whether the changes had impacted on the quality of decision making, how quicker timescales had affected those involved, and whether delays had been pushed elsewhere in the system. The report of the evaluation is available on-line (Beckett et al., 2014).

### *3.1 Quantitative data*

During the pilot year there were 90 cases with commencement dates between 1st April 2012 and 31st March 2013, involving 128 children. Data was collected from the local authorities on the start and end date of each case, the ages of the children involved, the reasons for the proceedings, the number of assessments carried out during the proceedings, the final order and the plan at the conclusion. Data was also collected on a number of pre-court milestones (see section 4.3), to give a measure of the duration of work and deliberation before the cases came to court.

In addition to the database of all 90 pilot cases, the three local authorities provided similar information on the court and pre-court periods on all cases in the preceding year, April 2011 to March 2012, enabling the creation of a comparator database. Coincidentally this 'pre-pilot' cohort

also comprised 90 care proceedings cases (131 children). This allowed comparisons to be made between the pilot year results and those for the pre-pilot year.

### *3.2 Qualitative data*

The views of key stakeholders were sought, and semi-structured interviews or group discussions were conducted with 21 professionals. All interviews and discussions were recorded with the permission of those taking part, and opinions on key themes were analysed, thematically (Boyatzis, 1998) noting areas where there was broad consensus and areas where there were differing views. From the local authorities, we interviewed the case manager; four team managers; five social workers; and four local authority solicitors (interviewees were drawn from across all three boroughs). We also spoke with three Cafcass guardians, three private family solicitors, two district judges, and two court legal advisers. Given that the aim of the interviews was to compare pilot and pre-pilot practice, we did not interview children and parents, since they would not be in a position to make such comparisons. However, we did conduct a focus group with four young people from the in-care council of one of the boroughs, in order to obtain their perspectives on the balancing of speed and thoroughness (reported in Beckett and Dickens, 2014).

## **4 Findings**

### *4.1 Duration of care proceedings*

The Tri-borough pilot was successful in achieving its key aim of reducing the length of care proceedings. The median duration of care proceedings that commenced in the pilot year was 27 weeks, as compared to 49 weeks in the previous year, a reduction of 45%. If one excludes the nine cases that went to the Family Drug and Alcohol Court, the median was 26 weeks ('FDAC' is a specialist care proceedings court aimed at helping parents address their substance abuse problems, based on the US model of Family Treatment Drug Courts: see Harwin et al., 2014).

Reductions were achieved through the planned routes of shortening the time for parenting and kinship assessments, prompt appointment of children's guardians, improvements in the social workers' evidence, clearer planning of what further evidence might be required, monitoring of cases and tighter case management by the judges. The number of assessments and interim hearings were reduced. Many of the changes were relatively small, for example to shorten the standard length of time for a parenting assessment from 16 weeks to 12, but considerable change was achieved overall through their cumulative impact. (Beyond these practice and procedural changes, other factors which affect the duration include the order made, the ages of the children, and the size of the family: these are discussed further below.)

A key step was for the local authorities to start the court case with detailed proposals about possible further assessments, rather than leaving it to discussions on the day of the first hearing, or in the week or two following. As a local authority lawyer put it:

We spend more time forward planning; we spend more time ensuring that ... everything is already in place. We know what assessments are going to be proposed, we know what the time scales are going to be, we have identified the expert, not waiting until we get to court and other suggestions being put forward, we have identified somebody, we know what their availability is.

There was widespread agreement from interviewees that the role of the case manager had been vital in helping to improve the quality of social workers' planning and written work, and helping them to respond promptly and effectively to the views of other parties. This in turn had helped to boost social workers' confidence, which was seen as another benefit of the programme.

Judicial continuity was not always achieved, but more significant was the approach of the judge or magistrates. There was one judge who had been nominated to hear most of the pilot cases, and she spoke of taking a more robust approach to timetabling and whether further assessments really were

required or not. Inevitably there were different views on this, reflecting the different experiences of interviewees. Some complained that there were still repeated and (in their view) unnecessary assessments, but overall there was a reduction in the number of assessments, as the statistics showed. The judge described what she saw as a change of approach:

... we are much more focused on delay and it has improved my case management. In the old days I would have said, 'God, this is the last chance for this child to remain with their parent' ... But you know one is much more focused, I mean I have become much tougher, much tougher about another assessment ...

Prompt appointment of children's guardians at the start of the proceedings to the cases was seen as beneficial (this had been a national difficulty, but by the time of the pilot things were improving anyway, not just in the Tri-boroughs). The high level of skill and experience of the team of children's guardians was also seen as significant. Overall, the high degree of inter-agency commitment and cooperation was said to be vital.

#### *4.2 Court outcomes*

The main orders in care proceedings are care orders alone (with a variety of possible plans, including reunification, kinship care or long-term foster care); care and placement orders together (in practice, rarely used for children aged over 4; and many younger children are not made subject to them either); supervision orders (typically, with the child remaining in or returning to parental care); special guardianship orders (typically for the child to live long-term with a member of the extended family); and residence orders (these could be used to settle which parent the child lives with, or other carer).

The breakdown of orders in the pilot and pre-pilot years, and median duration for each category is shown in Table 1. (We only have outcome data for 83 cases in the pre-pilot year.) In cases where different orders were made for different children in a sibling group, the order shown is for the

youngest child (there were only five such cases in the pilot year, compared to 20 where the same order was made for all the siblings involved). It can be seen that the pattern of orders is broadly similar from year to year. The number of care orders only had fallen, and the number of special guardianship orders had risen, but these differences are not statistically significant.

**Table 1:** Court outcomes and median durations

Order made	Pre-pilot year (n = 83)	Pilot year (n = 90)
	N (%) median duration	N (%) median duration
Care order only	19 (23%) 50 weeks	13 (14%) 25 weeks
Care order and placement order	11 (13%) 39 weeks	13 (14%) 24 weeks
Supervision order only	20 (24%) 45 weeks	24 (27%) 29 weeks
Residence order / RO + SO	14 (17%) 52 weeks	12 (13%) 29 weeks
Special guardianship order	13 (16%) 53 weeks	22 (24%) 29 weeks
No order/other order made	6 (7%)	6 (7%)

Duration is not only affected by the practice and procedural matters described earlier, but by key features of the cases themselves. Notably, these include the plan for permanence and order sought; whether the case involves a new-born baby; and whether it involves a single child or a sibling group.

There were more cases involving new-born children in the pilot year than the year before, reflecting the national policy drive for earlier intervention (Allen, 2011; Munro, 2011). In the pilot year, proceedings were started within the first week of the child's life in 27 cases (30%), double the figure for the previous year. The median duration of cases ending in care and placement orders was 24 weeks, but for new-born baby cases ending this way it was 19 weeks. Planning must have started

before the child was born in order for matters to progress at this speed, an issue discussed further below.

The proportion of cases ending in care and placement orders combined was almost exactly the same over the two years. We can conclude, therefore, that the shorter timescales of the new regime do not necessarily lead to *more* children on adoption plans, but the changes do seem to have speeded this up.

The proportion of cases ending in special guardianship orders rose from 16% to 24%. This may reflect the other policy priority, greater use of kinship care, although the small numbers in the pilot preclude generalisations; but other research suggests an increase in special guardianships since 2013 (Ipsos MORI, 2014: 45). The overall median duration of these cases was 29 weeks, which can be explained by the extra time required to complete the required assessment. For new-born babies the period was slightly longer, 30 weeks, whilst for older children (5-11 years of age) it was only 25 weeks. The older children are likely to know the special guardian(s) and may have been living with them during or even before the proceedings, whereas in the new-born baby cases there are more likely to be assessments which cannot start, or be concluded, until the child is born.

Another factor that affects the duration of proceedings is whether the case concerns a single child or a sibling group. In both years, about three-quarters of the cases involved more than one child. Proceedings involving a single child were the shortest (median 26 weeks) whilst cases with three or more children had a median of 32 weeks. The five cases in which different orders were made for one or more of the siblings took the longest time to proceed through the courts, a median of 40 weeks, which reflects the added complexity of the decision-making.

#### *4.3 Delay before and after proceedings*

An important consideration is whether the shorter duration of proceedings has merely shifted delay to the pre- or post-court stages – ‘squeezing the toothpaste tube’, as McKeigue and Beckett (2010)

put it – not making a difference to the overall length of time that children take to reach safe and secure placements. Given the focus and timescale of the evaluation we were not able to track what happened to the cases after the proceedings had ended – whether, for instance, plans agreed in court took longer or shorter to implement – and so cannot comment on post-court delay. We also cannot comment on longer-term outcomes, which would be important for a fuller evaluation of the pilot, to see whether decisions made in 26 weeks are more or less likely to be successful than those made in the days when proceedings took on average more than a year.

We were able, however, to gather some data about what happened prior to proceedings. We used three measures: the date of the most recent child protection plan, the date of the last legal planning meeting and (in relevant cases) the date of sending the formal ‘letter before proceedings’. On all three measures, there was less delay in the pilot year.

A child protection plan is an inter-agency plan to safeguard the welfare of a child who is considered to be suffering or likely to suffer significant harm, but where removal is not deemed necessary because the risk can be managed by relevant agencies working together with the parents/carers (DfE, 2013). Over two-thirds of the cases coming to court in the pilot year were on child protection plans.

The legal planning meeting is a formal meeting which decides whether or not to initiate proceedings, or to use a formal pre-proceedings process which involves sending a letter to the parents to advise them that the local authority is considering proceedings, and urging them to get legal representation and come to a meeting with a lawyer (the letter entitles the parent(s) to legal aid to pay for this).

The process is a last chance to avoid proceedings by engaging with the parents, starting pre-court assessments, or simply explaining that the local authority will be going to court (see Masson et al., 2013; Dickens et al., 2013).

In the pre-pilot year, the median duration from the conference that initiated the most recent child protection plan to the date of issuing proceedings was 17 weeks. In the pilot year, this had reduced

to 9 weeks. Breaking this down by age revealed that the duration had in fact *increased* for new-born baby cases (that is, where proceedings were started in the first week of the child's life). For this group, the median duration went up from 5 to 7 weeks (Beckett et al, 2014: 33). In other words, conferences were taking place earlier before these children were born, suggesting that better planning was taking place.

In the pre-pilot year, the median duration from the legal planning meeting to issue date was 8 weeks; this fell to 5 weeks in the pilot year. Further differences emerge when one links this to the use of the formal pre-proceedings process, and the age of the child. The pattern is that the period from sending the pre-proceedings letter to the issue of proceedings *lengthened* for new-born baby cases (8 weeks in the pilot year compared to 5 the year before), but did not change for older children (16 weeks in both years). This means that letters were being sent earlier in the pre-birth cases, suggesting (as with the child protection plans) that the pilot year saw more pro-active planning in those cases.

#### *4.4 Have thoroughness and justice been compromised?*

The evidence is clear that there was speeding up of care proceedings and of the assessment and decision-making processes immediately before proceedings. Had this been achieved without compromising thoroughness or fairness? Three main points came across from the interviews.

The first point is that 'thoroughness' is not the same as lengthiness or the number of extra assessments. On the contrary, interviewees linked it more to thinking carefully about the evidence that was already available, and being clear-eyed about whether anything else was really necessary.

As the main judge for the Tri-borough cases put it:

... proper scrutiny is actually the court, first of all, being very well prepared and, secondly, having the confidence to really question what the parties have actually put in front of you ...  
I certainly didn't scrutinise the directions in the old days to the extent I do now, because the

parties agreed and you got on with it ... I have definitely tightened up on scrutiny of directions.

The second point was that assessments were still available for those cases where the evidence was unclear or the parent(s) did seem to be making the required changes. The case manager said:

I think for those families where we are not sure, or the court is not sure ... there are still parenting assessments or psychiatric assessments going on. It is not a case of parents being denied anything, which I think people were quite concerned about when we first started the pilot and were talking about 26 weeks. So to me it doesn't feel like parents' rights have been stepped on ... But I think children are now being put first, and parents who are motivated, you know showing some type of change, or where there are uncertainties about parenting, they are still having those assessments – but we are hopefully doing them within shorter timescales, and we are being a bit smarter about them ...

The third point was that in some ways shorter, more focused proceedings are actually fairer for parents, in two ways; first, giving them a clear framework and clearer expectations; and second, long-drawn out proceedings are difficult for them as well as for children. The first aspect was captured by a social work team manager:

I think what the pilot has done is help the service users connect to the process a little bit more. Because sometimes they could feel that these are just all professionals, they are all lawyers ... and they don't feel a part of the process. But with this pilot, it is forcing them to be a part of the process, which is turning the responsibility back on to them ... I am currently in the process of a case that's in the pilot and the parents are feeling like, 'OK, I know what I have to do, I have to get on with it, I know it is four more weeks until you will come to a conclusion.' Rather than dealing with the endless void that is just going on and on and on ...

The second dimension is shown in the following comment from a lawyer who represents parents:

I think it was a very interesting project and I am really looking forward to it rolling out everywhere, because I do think it is in the interest of children and I don't think it is against parents actually. I think it is, properly managed, either for them to move in a positive direction or not, but not have something dragging out for ever ... every day if the case proceeds for eighteen months is a reminder to you, it is torturous, you know you can't move on until your babies have been placed.

In summary, although there had been concern that thoroughness and fairness might be compromised by the 26 week target, none of the interviewees thought this had in fact happened. As another private practice solicitor who acted for parents, said '... on the cases I have seen so far, that I have been involved with, I haven't seen any material prejudice to parents' rights such that I have been troubled by it'.

## **5 Discussion**

### *5.1 The findings in context*

There are well-known reasons for caution about drawing firm conclusions from pilot projects (e.g. they may have benefited from special treatment, and the findings need to be tested more widely and over time) but the Tri-borough initiative has achieved significant impact in England in demonstrating that care proceedings can be speeded up without undue impact on thoroughness and fairness. One of its aims was to share lessons across London and the country about the feasibility and implications of the 26 week target. The idea of having a case manager to advise social workers and liaise with the courts has been taken up in a number of other areas. Other changes have occurred alongside and after the pilot. Prompt appointment of children's guardians and proportionate working by them is now being achieved nationally. A change to the court rules in January 2013, meant that additional expert assessments could only be ordered by the court if considered 'necessary', rather than the previous test of 'reasonably required'. From summer 2013

there was a new version of the *Public Law Outline* which prescribes the framework of court hearings, and changes to the court structure so that cases could be allocated more swiftly to the appropriate level of court. The wider changes and the considerable top-down pressure to speed things up, from politicians, policy-makers and judges, have had a notable effect. The median duration of care proceedings concluding in the quarter January to March 2014 was 26.3 weeks (the mean was 32 weeks: MoJ, 2014: 15-16).

But other developments in the second half of 2013 complicate the picture. There was a series of high profile judgments from the senior courts that emphasised the importance of thoroughness and justice, especially (but not only) in cases where the likely outcome was the adoption of the child against the parent's wishes. The leading cases are *Re B (A Child)* [2013] UKSC 33; *Re G (A Child)* [2013] EWCA Civ 965, and *Re B-S (Children)* [2013] EWCA Civ 1146. In the last of those cases, the leading family judge in England, Sir James Munby, said (at para. 49)

If, despite all, the court does not have the kind of evidence we have identified [a full analysis of the pros and cons of each option], and is therefore not properly equipped to decide these issues, then an adjournment must be directed, even if this takes the case over 26 weeks.

Where the proposal before the court is for non-consensual adoption, the issues are too grave, the stakes for all are too high, for the outcome to be determined by rigorous adherence to an inflexible timetable and justice thereby potentially denied.

The judgments demonstrate the irresolvable tensions between speed, thoroughness and justice, but are also, in the current context in England, a clear statement of judicial independence. They are an indication that whatever the government's policy about increasing the number of children adopted from care, the courts will not make adoption orders unless satisfied they are truly necessary.

Echoing the language of the European Court of Human Rights, the judgments stressed that adoption is 'a very extreme thing, a last resort', only to be made where 'nothing else will do', 'only in exceptional circumstances' (*Re B* and *Re B-S*).

The importance of good assessment and analysis is incontrovertible, but there was no evidence from the Tri-borough study that the local authorities had become indiscriminate about their applications for care and placement orders, or that any wrong decision had been made. Yet the recent judgments make sweeping criticisms of local authority practice generally, and do seem to have raised the bar for non-consensual adoption. This highlights an important issue and challenge for the 26 week limit: if it is to be met, welfare agencies and the courts will need to engage with more understanding (good cooperation was one of the valued elements of the Tri-borough pilot), but there will always be differences between them. In particular, courts cannot be tied to the policies of central government or local welfare agencies. Judicial independence is a crucial component of the safeguards for individual rights in a liberal democratic society. So there will always be, and must always be, tension between the courts and welfare agencies. The challenge for both sides is to appreciate this as a positive feature of child protection policy and practice, but also to address their own roles and responsibilities for achieving timely outcomes for children. Both sides need to respect the contribution of others and not descend into recrimination when there are differences of opinion.

### *5.2 Cautious optimism*

Our evaluation of the Tri-borough pilot gives grounds for optimism about the longer-term feasibility of achieving greater speed in care proceedings, without undermining thoroughness or impairing justice for parents or children. The fact that the national duration of care proceedings has fallen so markedly since 2012 confirms that a focused drive to achieve the goal can bring substantial change. However, the notion of ‘focus’ is an important one, which is where the element of caution comes in. Words such as ‘focus’, ‘commitment’, ‘effort’ and ‘energy’ came up in many of the interviews with participants in the Tri-borough project. As a children’s guardian expressed it:

I have to be on the ball straight away ... I have got to pull my socks up, I have got to do a lot more a lot quicker ... you have got to engage your brain very, very quickly. You have got to

be in there, you have got to be thinking about all those things that need to be sorted at the beginning and what you have got to be doing, you have got to be taking people with you ...

The challenge is going to be sustaining this level of commitment and energy in the long term, and across the country as a whole (Beckett and Dickens, 2014). There are a number of possible scenarios that must be guarded against. One is that time limits prevail over thoroughness, with deadlines being met but in a bureaucratic, tick-box way, and some 'rough justice' to conclude cases within the time limit. Given the court's wariness about adoption, this could mean more orders for children to return home or be placed with kinship carers, perhaps under a supervision order to the local authority. How long do these endure? Will there be higher rates of breakdown and subsequently new proceedings? It will be important to monitor the outcomes of proceedings, looking at how the plans are implemented, how long it takes children to reach permanent homes, and how well they fare. An alternative scenario is that as time goes on, the current impetus for speed will drop, political and policy attention will move elsewhere and things will gradually slide back to the old ways where 'thoroughness' prevails, but in the sense of many assessments, rather than more careful thought and scrutiny. Again, monitoring and further research is essential.

## **6 Conclusion**

This paper has evaluated the key elements and outcomes of a pilot programme in England to reduce the duration of child care proceedings. It has set this in a wider cross-national context, showing how policies and programmes to achieve greater timeliness in court proceedings on children raise fundamental questions about core social and political principles in liberal democracies such as the USA and England.

It is important to bear in mind that child protection proceedings are only the middle stage of what can be a very much longer process of helping children to reach safe and secure homes – whether that is with their parent(s), kinship carers, foster carers or adopters. It is the overall duration of the

journey that matters, and unnecessary delay on either side of court proceedings is just as much a concern. Focusing attention and resources only on the court stage risks deeper injustice to children and their families (birth, kinship or adoptive), if it draws energy and funding away from family support programmes, or from projects to recruit and support suitable substitute families.

The benefits of taking a trans-Atlantic view are that it shows there are shared dilemmas and shared approaches to resolving them. This includes the practical steps of setting time limits, making them a high level priority, introducing new procedural frameworks and clear guidelines for staff, judicial case management, judicial continuity, staff training and support. It also includes recognising and valuing the underlying tensions, especially the importance of appropriate flexibility and the checks and balances of the court system, but at the same time keeping a clear focus on the child's need for permanence. As Courtney and Hook (2012b: 2271) observe, writing about the USA, courts and child welfare agencies need to be held – and hold themselves – *collectively responsible* for achieving timely outcomes for children. The Tri-borough pilot shows the benefits of a combined approach.

Recognising the shared challenges is useful because it warns against magical thinking and the blame culture – that is, thinking that 'just one more change' will sort things out, or that it would all work well if it wasn't for inadequate practice by the other professional groups. The Tri-borough pilot shows that it is possible to bear down on delay without losing rigour or being unfair to parents, but there will always be tensions between speed, thoroughness and justice. Seeing that other countries face the same challenges can help all involved (politicians, policy makers, child welfare managers, judges, advocates and social workers) to a more realistic and sophisticated understanding of the dilemmas and the implications for practice, and so help to bring about better decisions for children.

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