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Foreword

Her Majesty's Magistrates' Courts Service Inspectorate (MCSI) reports to the Lord Chancellor on the administration and management of magistrates' courts in order to improve performance and disseminate good practice. Since April 2001, MCSI is now also responsible for inspecting and reporting on the Children and Family Court Advisory and Support Service (CAFCASS), which brought together the responsibilities of the Family Court Welfare Service, the Guardian ad Litem and Reporting Officer Service and the children's work of the Official Solicitor's office. The Inspectorate also carries out thematic reviews which focus on particular aspects of the magistrates' courts service and CAFCASS, and endeavour to promote good practice and address identified concerns.

Family Proceedings Courts (FPCs) are a key element in the justice system, with jurisdiction under the Children Act 1989, the Adoption Act 1976 and statutes dealing with family disputes. Magistrates' Courts Committees (MCCs) are responsible for the FPCs in their area, and for the management of their performance.

Delay in Children Act cases has been a matter of Government concern for some time, particularly because such cases have a direct impact on vulnerable children. It is essential, therefore, that FPCs work closely with other agencies in identifying causes of delay. It is also important that court processes and procedures support, and are supported by, those of other agencies with whom they interact. For these reasons, this review focuses on case administration within FPCs. It aims to shed light on some problem areas, and provide some pointers for action that will contribute to the overall goal of improving the way in which all agencies meet the needs of children and their families.

In undertaking this review, MCSI was aware of other work that may have an impact on FPCs, such as Lord Justice Auld's review of the Criminal Courts. Our aim therefore was to contribute positively to that wider body of work and to the ensuing discussions. As part of that contribution, we have suggested actions for improvement that might be undertaken by MCCs or other agencies.

I am grateful to the MCCs that have supported us during our field work and to those who served as the reference group for the study. I am also grateful to the individuals and organisations which responded in the consultation process. They were all generous in the time they gave to this exercise.



Kit Chivers

HM Chief Inspector of the Magistrates' Courts Service

May 2001

Executive Summary

In undertaking this review of case administration in Family Proceedings Courts (FPCs), the Magistrates' Courts Service Inspectorate (MCSI) has sought to:

- highlight gaps in the statistical data currently available for private, public and adoption cases and identify key areas for measurement
- contribute to the process of setting qualitative and quantitative standards in relation to efficiency and effectiveness
- promote good and innovative practice
- highlight factors which help and hinder good case administration in FPCs
- develop its inspection framework, specifically the case administration key function, into an effective tool for the inspection of case administration in FPCs.

The review is also intended to complement and support the current work of other agencies and Government departments on developments in the family court system and the wider justice system. It has taken into account key pieces of previous work on family case administration, principally Dame Margaret Booth's *Report on Delay in Public Law Children Act Cases* (the Booth report) and *The Children Act Advisory Committee's Handbook of Best Practice in Children Act Cases* (the CAAC Handbook).

Because the review explores territory new to MCSI, it was decided to limit its scope. Its findings are based on a sample base of six Magistrates' Courts Committees (MCCs) that were selected to provide variations in geography and performance.

Inspectors found that MCCs were mindful of the principle of the Children Act that requires them to regard delay as generally prejudicial to the child. They also found evidence of innovative thinking and potential good practice on reducing delay and wasted court time in a number of the areas visited. Inspectors found that both public and private Children Act cases generally take much longer than the 12 weeks envisaged when the Act was implemented, with considerable variation among MCCs. However, there is a strong view that, in some cases, delay is productive.

Average adjournment lengths for public law cases are uniformly short, but adjournments in private law cases are much longer. Because the reasons for adjournment are many and complex it has not been possible to draw any conclusions about the causes of unnecessary delay.

Barriers to the effective scheduling of cases, reported by FPC staff and professional users, varied from area to area. However, late settlement of cases and inaccurate time estimates were cited as common problems. Some MCCs timetable cases as early in the proceedings as possible. However, there is some evidence from our case file analysis to suggest that postponing the setting of the final hearing date may improve adherence to the final timetable. In addition, the review team proposes that:

- FPCs should review the time that they allow for Schedule 2 Reports to be filed
- MCCs should ensure that FPC scheduling is arranged so that the time allocated to directions appointments is sufficient to allow the issues to be fully explored and full directions given
- MCCs should take steps to create a firm expectation that parties attending FPCs will be ready to proceed at the appointed time
- MCCs should explore ways of providing support for FPCs to improve the speed with which reasons are produced
- any Lord Chancellor's Department (LCD) review of the number of FPCs should be based on agreed standards pertaining to minimum sitting levels and the case mix necessary to maintain expertise.

There are considerable differences between MCCs in the way cases are allocated to courts. Whilst the rules on allocation and transfer of cases between courts are understood, Inspectors found a general recognition that cases are not always heard in the most appropriate court. It appears that very little use is made of lateral and downward transfer to avoid delay. Some FPCs regularly deal with adoption cases whilst others do none. In the light of this, the review team proposes that the criteria for transferring cases from the FPCs to the County Court should be reviewed, and that County Courts and FPCs should be more active in promoting arrangements for magistrates to observe County Court family proceedings.

Few MCCs monitor FPCs' performance against a full range of performance standards. This impairs their ability to manage performance in this area effectively, as the information they collect does not focus explicitly on family proceedings. As a result, they are unable to make meaningful comparisons with other MCCs. The review team has therefore proposed that:

- LCD performance standards and targets for the family justice system should reflect factors specific to family work
- LCD performance measures for FPCs should ensure that incentives for greater effectiveness in case completion are supported by steps to promote better service for court users
- LCD and Department of Health performance measures for administrative procedures in Children Act and Adoption cases should be designed to complement the national standards of other agencies, particularly the Children and Family Court Advisory and Support Service (CAFCASS)
- LCD should review case weightings for family cases to ensure appropriate resource allocation for family work, and to facilitate performance management.

Whilst Family Court User Groups (FCUGs) and Family Business Committees (FBCs) provide for inter-agency discussions, performance management does not appear to be addressed regularly by these groups. The review team has therefore suggested that when developing its planned national support structure for family matters, the LCD should ensure that there are appropriate links with FCUGs and FBCs.

Current information technology systems provide only very basic support for FPCs. The Libra¹ system for magistrates' courts will have the capacity to support production of all standard documents and also facilitate the collection and analysis of FPCs statistics. The review team has therefore suggested that the LCD should ensure that Libra will collect the statistical information that the LCD intends to require from all three tiers of family courts.

The review team did not find any area with electronic data exchange between FPCs and other family justice agencies. With the establishment of CAFCASS, FPCs will acquire a key partner in administration of the family justice system. Both parties will benefit from the establishment of effective electronic links. The review team has therefore suggested that the LCD should ensure that there are early discussions with CAFCASS on links to Libra.

¹ Libra – the new national computer system for the magistrates' courts service of England and Wales

Summary of suggested actions

Suggested action 1 (para 2.8)

Family Proceedings Courts should review the time that they allow for Schedule 2 Reports to be filed in step-parent adoption cases.

Suggested action 2 (para 2.13)

To ensure that cases are heard at the level of court most appropriate to their complexity and most likely to offer a prompt hearing, the criteria for transferring cases between courts and their application should be reviewed, in accordance with the emerging findings of the LCD's Children Act Scoping Study.

Suggested action 3 (para 2.16)

LCD performance standards and targets for the family justice system should reflect factors specific to family work.

Suggested action 4 (para 2.18)

LCD performance measures for FPCs should ensure that incentives for greater effectiveness in case completion are supported by steps to promote better service for court users. In particular they should include measures and standards for waiting times for users.

Suggested action 5 (para 2.27)

MCCs should ensure that FPC scheduling is arranged so that the time allocated to directions appointments is sufficient to allow the issues to be fully explored and full directions given.

Suggested action 6 (para 2.28)

To maximise the effectiveness of appointments systems and the use of resources, MCCs should take steps to create a firm expectation that parties attending FPCs will be ready to proceed at the appointed time.

Suggested action 7 (para 2.29)

MCCs should explore ways of providing support for FPCs to improve the speed with which reasons for their decisions are produced.

Suggested action 8 (para 2.31)

We would encourage both County Courts and FPCs to be more active in promoting arrangements for magistrates to observe County Court proceedings for training purposes.

Suggested action 9 (para 2.34)

Any LCD review of the number of FPCs should be based on agreed standards for a minimum level of sittings, and the case mix required to maintain expertise.

Suggested action 10 (para 2.39)

LCD and Department of Health performance measures for administrative procedures in Children Act and Adoption cases should be designed to complement the national standards of other agencies, particularly CAFCASS.

Suggested action 11 (para 2.40)

When developing the planned national support structure for family matters, the Department of Health and the LCD should ensure that there are appropriate links with FCUGs and FBCs.

Suggested action 12 (para 2.42)

To ensure appropriate resource allocation for family work, and facilitate performance management, the LCD should review case weightings for family cases.

Suggested action 13 (para 2.43)

The LCD should ensure that its new IT system for magistrates' courts (Libra) will collect the statistical information that the LCD intends to require from all three tiers of family courts.

Suggested action 14 (para 2.44)

The LCD should ensure that there are early discussions with CAFCASS on links to Libra.

Introduction

HM Magistrates' Courts Service Inspectorate

- 1.1** The Magistrates' Court Service Inspectorate (MCSI) is responsible for inspecting and reporting to the Lord Chancellor on the organisation of the courts in each Magistrates' Court Committee (MCC) area, including the Family Proceedings Courts (FPCs). From 1 April 2001, MCSI has the additional responsibility for inspecting and reporting on the performance of the Children and Family Court Advisory and Support Service (CAFCASS). This thematic review, the first that MCSI has undertaken specifically on the work of FPCs, is timed to coincide with, and help support, MCSI's development in this important new area.

Objectives of the review

- 1.2** The objectives set for the review were:
- to highlight gaps in the statistical data currently available for private, public and adoption cases, and identify key areas for measurement
 - to contribute to the process of setting qualitative and quantitative standards in relation to efficiency and effectiveness
 - to promote good and innovative practice
 - to highlight factors which help and hinder good case administration in FPCs.

In addition, MCSI aimed to develop its inspection framework, specifically the case administration key function, into an effective tool for the inspection of case administration in FPCs.

Family Proceedings Courts and their jurisdiction

- 1.3** FPCs exercise the jurisdiction given to magistrates by the Children Act 1989, the Adoption Act 1976 and other statutes that deal with the judicial determination of family disputes. The lay magistrates who sit in FPCs are drawn from panels (family panels) who are required to undertake specialist training in family law and procedure. In addition, some District Judges (Magistrates' Courts) are specifically authorised to sit in FPCs. MCCs are responsible for the administration of FPCs as well as of the summary criminal courts in their areas.

1.4 There are three tiers of courts with family jurisdiction: the FPC, the County Court and the Family Division of the High Court. The three principal categories of case handled are:

- applications by local authorities under Section 31 of the Children Act for care or supervision orders for the protection of children at risk of harm, including emergency protection orders and secure accommodation orders; orders for contact with children in care; or other orders under parts IV and V of the Children Act (public law cases)
- applications by parents and others under Section 8 of the Children Act for court orders to settle issues such as residence of, or contact with, children (private law cases)
- applications by step-parents, other prospective adopters and local authorities under the Adoption Act 1976 for adoption orders or orders freeing children for adoption (adoption cases).

1.5 FPCs play an important role in the family justice system, dealing with approximately two-thirds of all public law cases (17,000 in 1999), one third of private law cases (33,000 in 1999), and a third of adoption cases (1,500 in 1999). Public law cases must start at FPC level² but may be transferred to a higher tier of court on grounds of complexity, for consolidation with other cases or to avoid delay.³ For private law and adoption cases,⁴ the applicant chooses the initial tier of court.⁵ It is also possible for cases to be transferred laterally between FPCs and downwards from County Court to FPC.

1.6 The Children Act includes as one of its basic principles a general presumption that “*in any proceedings in which any question with respect to the upbringing of a child arises 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*”. The Family Proceedings Court (Children Act 1989) Rules 1991 set out a range of duties and powers to support this basic principle. They require FPCs⁶ to give directions on all aspects of case management, including:

- the timetable for the proceedings
- the submission of evidence
- the submission of experts’ reports

² Except when they would have the effect of varying or discharging an earlier order, when they must be made to the court which made the original order (Children (Allocation of Proceedings) Order 1991 article 4(1)(b))

³ See Children (Allocation of Proceedings) Order 1991 for the rules on transfer and Re H (a minor) (care proceedings) 1992 2FCR330 and Re L (care proceedings: transfer) 1993 1FCR689 for judicial guidance.

⁴ See Magistrates’ Courts (Adoption) Rules 1984

⁵ See note 1 above

⁶ The Rules provide for directions to be given by a bench of magistrates, a single magistrate, or a justices’ clerk or legal adviser with delegated powers

- preparation of welfare reports
- transfer to a higher court.

1.7 Effective case management relies heavily on inter-agency co-operation involving FPCs, and key agencies and individuals, including:

- Family Court Welfare Officers, who advise on conciliation and mediation in private law cases, and provide welfare reports when required
- local authority social workers and lawyers, who prepare and present the applications in public law cases
- Guardians ad Litem (GaLs) and Reporting Officers,⁷ who represent the interests of children in public law cases and adoptions, prepare independent reports for the courts, and appoint and instruct a solicitor on the child's behalf where the child is a party
- individual lawyers, who prepare and present cases both for applicants and respondents in all types of case.

All have key roles to play in ensuring that cases are completed without unnecessary delay.

1.8 Cases generally follow the same basic course:

- receipt of application
- service of application on respondents (different periods of notice are required for different types of case, and they may be abridged in emergency situations)
- first hearing (either for directions on the future conduct of the case, or for an interim hearing if an interim order is requested)
- timetabling hearing (agreeing dates and giving directions for completion of different aspects of case preparation)
- fixing final hearing date (which may be done at the timetabling hearing)
- pre-final hearing review
- final hearing.

In addition (for the most part in public law cases), interim hearings and orders may be needed. Most public law cases involve several interim hearings, as interim orders are of limited duration.⁸

⁷ Renamed 'Children's Reporters' and 'Children's Guardians' on the establishment of CAFCASS on 1 April 2001

⁸ Section 38 Children Act 1989

Context of the review

- 1.9** This review takes into account key pieces of previous work on family case administration, principally:
- Dame Margaret Booth's Report on *Delay in Public Law Children Act Cases* (the Booth report)⁹ which was commissioned by the Lord Chancellor in 1994 to evaluate the operation of the court process in care cases in order to establish the causes of delay and to suggest improvements to procedures to eradicate avoidable delay
 - the *Children Act Advisory Committee's Handbook of Best Practice in Children Act Cases* (the CAAC Handbook).¹⁰ The Committee, having been set up in 1991 to monitor and advise on the implementation of the Act, was wound up in 1997.
- 1.10** The review is also intended to complement and support the current work of other agencies and Government departments on developments in the family court system and the wider justice system. Key initiatives include:
- the Government's **White Paper on Adoption**,¹¹ which followed the fundamental review of adoption policy and practice initiated by the Prime Minister in 2000. The White Paper proposes a wide range of reforms, some of which are already being initiated (such as consultation on draft national adoption standards and a new adoption register) whilst others will need primary legislation
 - the LCD's **Children Act Scoping Study** commissioned in summer 2000. The terms of reference for this study included reviewing the causes of delay in public and private law cases; the way Dame Margaret Booth's report had been implemented; the jurisdiction of cases to ensure that work is dealt with at the appropriate level; investigating why cases go unnecessarily to County Court; and exploring whether standard case management protocols might improve effective handling and reduce delay. The study is near completion, but its date of publication is as yet unknown
 - the Government's **Safeguarding Children Agenda** which includes new legislative provisions such as the Protection of Children Act 1999 and Part 11 of the Criminal Justice and Court Services Act 2000
 - Lord Justice Auld's forthcoming proposals on the future organisation of criminal courts

⁹ Booth Dame M, DBE (1996) *Delay in Public Law Children Act Cases*: Lord Chancellor's Department

¹⁰ Children Act Advisory Committee (1997) *Handbook of Best Practice in Children Act Cases*: Lord Chancellor's Department

¹¹ Adoption: A New Approach: Department of Health December 2000

- the Court Service's **Modernising the Civil Courts Programme**
- the new **Framework for Assessment of Children in Need and their Families**.¹² Developed jointly by the Department of Health, Home Office and Department for Education and Employment, the framework aims to improve significantly the quality of assessment work undertaken and, where there are relevant court proceedings, to bring these benefits into the FPCs.

1.11 The combined effect of these initiatives will be to bring about far-reaching changes in the way in which the law relating to families and children is applied – primarily in relation to services for children themselves but also in the way in which the family justice system handles court proceedings. Family court proceedings are characterised by the interdependence of a wide range of agencies. These bring together varied professional backgrounds, training and cultures. Much effort may be expended on establishing the facts and whether any necessary statutory criteria for intervention are satisfied. But, in contrast to the criminal jurisdiction, there is considerable time devoted to establishing what available course of action might best promote and safeguard the lives of children throughout their childhood. By being the subject of family proceedings, these children may already be deemed vulnerable. Indeed, some will already have been severely damaged. The decisions that courts have to make come at a critical time in the child's life. Courts, with the help of specialist advisers, often have to determine a course of action which is irreversible. This makes exceptional demands on all involved. It means concentrating on the individual needs of each child. It also requires a critical evaluation of the adequacy of service provision and ensuring that resources are, so far as possible, used to best effect.

1.12 This review is intended to shed light on some problem areas in current case administration in FPCs, and provide some pointers for action that will contribute to the overall goal of improving the way in which all agencies meet the needs of children and their families.

¹² Department of Health 2000

Findings and Judgements – Outcomes

The speed of case completion

- 2.1** Both public and private Children Act cases in FPCs generally take much longer than the 12 weeks envisaged in 1991 at the time the Children Act was implemented. Our findings from the analysis of 518 case files carried out during this study are set out in paragraphs 2.2 to 2.9 below. The full analysis appears at Annex 2.
- 2.2** The time taken to complete public law cases varies greatly from MCC to MCC (see Table 1). The reasons for this are not clear: it seems likely that the policy in each area with regard to transfer of cases to the County Court is significant (see right-hand column). Areas that transfer all cases predicted to last more than three days inevitably deal with a less complex overall caseload than areas that retain cases predicted to last up to five or six days. MCC area F appears to transfer over 50% of its cases, and this is clearly reflected in its completion times.

Table 1: Public law case completion

MCC area	Average days application to first listing	Average days first listing to completion	Average days application to completion	Transfer policy
A	6	230	236	Takes cases predicted to last up to five days
B	14	217	231	Takes cases predicted to last up to six days
C	11	195	206	Transfers all 'twin track' ¹³ cases. Cases predicted to last over three days transferred or heard by District Judge
D	9	174	183	Transfers all 'twin track' cases
E	8	143	151	Transfers cases predicted to last over three days
F	10	70	80	No declared policy, but over 50% of cases in sample transferred

¹³ 'Twin track' cases are cases in which adoption and rehabilitation with parents are explored concurrently

- 2.3** Periods between application and first listing in public cases (Table 1) are much shorter than in private cases (Table 2). The notice required to be given to parties is shorter, and normal notice periods are regularly abridged for urgent applications. MCC area A lists both public and private cases significantly more promptly than the other areas.
- 2.4** Completion times for private law cases are significantly shorter than for public law cases, and there is less dramatic variation from area to area (see Table 2). As with public law cases, a high rate of transfer (50%) appears to account for the anomalous figures for MCC area F.

Table 2: Private law case completion

MCC area	Average days application to first listing	Average days first listing to completion	Average days application to completion
A	17	116	133
B	30	117	147
C	32	132	164
D	27	155	182
E	22	117	139
F	21	73	94

- 2.5** Average adjournment lengths for public law cases are uniformly short (see Table 3), and close to the maximum period of a second or subsequent interim care order (28 days).
- 2.6** In private law cases, adjournment lengths are much longer (see Table 3), no doubt linked to the length of standard adjournments for welfare reports (10 to 12 weeks in all sample areas).

Table 3: Adjournments

MCC area	Average length (in days) of adjournment – public cases	Average length (in days) of adjournment – private cases
A	21	50
B	24	55
C	25	49
D	24	41
E	25	41
F	20	60

2.7 Adoption cases (see Table 4) are completed without delay either at first or second listing. However, in the case of adoptions by step-parents there is a standard practice of allowing at least 12 weeks prior to first listing for filing of local authority Schedule 2 reports.¹⁴

Table 4: Adoptions (includes both adoption applications and applications for children to be freed for adoption)

	Average days application to first listing	Average days first listing to completion	Average days application to completion
Step-parent adoptions	99	2	101
All other adoptions	11	8	19

2.8 The Government White Paper, *Adoption: A New Approach*¹⁵ draws attention to the fact that court rules require Schedule 2 reports to be filed within six weeks, but that local authorities are not achieving this. The White Paper goes on to indicate that the Government will issue guidance to local authorities in 2001 on how they can improve performance, and also amend the Magistrates' Courts (Adoption) Rules 1984 to give FPCs the ability to fix and monitor timetables in adoption cases so that cases are dealt with at the appropriate speed. Inspectors recognise that courts must also allow time for the Reporting Officer to prepare a report, but suggest that, in the light of the Government's White Paper on adoption, FPCs should explore, with local authorities, the scope for improving current practice.

¹⁴ Schedule 2 reports provide the court with comprehensive information about the child, each natural parent, prospective adopters, the actions of the local authority/adoption agency and a range of conclusions including whether adoption or freeing for adoption would be best for the child

¹⁵ Paragraph 8.30

Suggested action 1

Family Proceedings Courts should review the time that they allow for Schedule 2 Reports to be filed in step-parent adoption cases.

- 2.9** Although we attempted to collect data on the main causes of delay by analysing the reasons for adjournments, we found that the grounds for adjournment in family cases are often complex, and that the information we collected was confused. It has not therefore been possible to draw any conclusions based on hard data about the causes of unnecessary delay. MCC staff, when asked about the reasons for unnecessary delay in case completion, most frequently quoted the following causes:
- failure by parties to comply with directions
 - problems involving the use of experts
 - parental assessments
 - local authority delays
 - congested court diaries.
- 2.10** Our review findings, in this respect, differ from the emerging findings of the LCD's Children Act Scoping Study, which found the three principal causes of delay to be lack of experts, inflexibility of jurisdiction leading to problems with judicial availability, and judicial case management. The difference is probably explained by the fact that the Scoping Study considered all three tiers of court whereas this review focuses exclusively on FPCs. Lack of experts was reported as a problem in only a minority of the sample of MCCs (no doubt because FPCs deal with less complex cases where the use of experts is less routine). Lack of judicial availability was not viewed as a major difficulty (though see paragraph 2.13 for another issue related to judicial resources).
- 2.11** All FPCs are mindful of the principle of the Children Act that requires them to regard delay as generally prejudicial to the welfare of the child. There is also a strong view that some delay is productive. The instances of productive delay quoted most frequently in interviews were adjournments in private cases for mediation or to monitor compliance with an agreement. Anecdotal evidence gathered during the course of the LCD's Children Act Scoping Study suggested that, in private law cases, mediation or conciliation results in a settlement in 60%-70% of cases where it is attempted. On the other hand, in MCC area D, a recent study by the GaL panel manager found that in 1999/2000 there was significant delay in 23% (36 out of 155) of public law cases, and that in only two of those cases could the delay be classified as purposeful.

2.12 Most areas have set some local standards for stages of proceedings, but they can vary widely. So, for example, the standard adjournment for mediation is three weeks in MCC area C, six weeks in area E and three months in area D. Conversely, there is impressive consistency in the period allowed for preparation of welfare reports (10 to 12 weeks in all areas). This consistency appears closely linked to the fact that the probation service has a national standard¹⁶ of ten weeks for welfare report preparation.

2.13 The rules on allocation and transfer of cases have been outlined at paragraph 1.5. Inspectors found general recognition that cases are not always heard at the level of court most appropriate to their complexity and most likely to offer a prompt hearing. Practice with regard to initial venue and transfer of adoption cases and public law cases differs widely from area to area. The differences of practice are illustrated in Table 5. In addition, there appears to be very little actual use of either downward or lateral transfer to avoid delay, in spite of general recognition of the potential usefulness of both these options. The emerging findings of the LCD's Children Act Scoping Study tend to support the view that current procedures fail to ensure that cases are heard at the right tier of court. With regard to timeliness of transfer, our file analysis sample was not large enough to enable us to draw any conclusions. However, LCD data strongly suggests that this is another area where there is wide variation of practice. Figures for 1998 indicate an average period between application and transfer of ten weeks, but a range in different areas from virtually nil to 22 weeks.

¹⁶ Family Court Welfare National Standards 4.28 say that time for preparation of a welfare report should not normally exceed ten weeks from the receipt of the papers by the service.

Table 5: Transfers

MCC area	Transfers up	Transfers down	Adoptions
A	Cases over five days Transfer when need is clear – may not be early	Only cases under the Family Law Act 1996	Deals with contested freeing applications, but not contested adoptions
B	Cases over six days	Local judge has agreed to look for opportunities	Very few non step-parent adoptions in FPC
C	One FPC transfers all twin track cases at earliest possible stage – clear directions from County Court Judge. It also transfers all cases over three days if they cannot be listed before a District Judge. Other FPC reluctant to transfer	None	No adoptions at all
D	All twin track cases – clear directions from County Court Judge. District Judge available at one FPC – enables longer cases to be listed there	Has invited County Court to use this option, but received no reply. Local authority has concerns that some cases are transferred unnecessarily	Not felt appropriate for FPC
E	All cases over three days. Transfer too early believed to be counter-productive	None	Different approaches in different FPCs – some do a significant number, others none
F	On a case by case basis, but over 50% of cases in MCSI sample transferred	None	Adoption workload increasing

Suggested action 2

To ensure that cases are heard at the level of court most appropriate to their complexity and most likely to offer a prompt hearing, the criteria for transferring cases between courts and their application should be reviewed, in accordance with the emerging findings of the LCD’s Children Act Scoping Study.

2.14 We found evidence of innovative thinking and potential good practice on reducing delay in a number of the areas we visited. These are detailed in Annex 4 and include:

- an inter-agency case management protocol and model timescale for care proceedings
- a proactive approach to directions hearings designed to encourage early settlement
- initiatives to improve the effectiveness of directions hearings
- a duty GaL scheme designed to ensure that a guardian would be present at all first hearings in public law cases (including emergency applications).

It would be helpful for the effectiveness of these local schemes to be systematically monitored and the results disseminated nationally. The establishment of a national forum to identify problems, share best practice and encourage consistency, as proposed by the Adoption White Paper,¹⁷ should greatly facilitate this.

2.15 An issue raised in one area was the lack of a simple penalty for causing delay through non-compliance with directions. FPCs have power to initiate enquiries with a view to making wasted costs orders, but these are very rarely used. They can involve a lengthy enquiry into the amount of costs wasted and responsibility for the waste, and are generally felt to be inappropriate in family proceedings. A set penalty or scale of penalties specifically for non-compliance with court directions might significantly strengthen the case management capability of FPCs. Emerging findings of the LCD's Children Act Scoping Study suggest that a review of the case management powers of justices' clerks and magistrates may be an appropriate way of addressing this issue.

2.16 The central objectives of the review were to contribute to LCD work on performance standards and targets across the family justice system, in particular by identifying key areas for measurement. The case file analysis has produced useful information in respect of:

- what can be readily measured (key stages in proceedings, number and length of adjournments)
- aspects of case management that can be measured and are likely to shed light on effectiveness (adherence to directions and final hearing date)
- aspects of case management that are difficult to measure (reasons for adjournments).

¹⁷ Paragraph 8.13

It has also highlighted a number of factors, specific to family cases, which should be taken into account when performance standards and targets are set.

Suggested action 3

LCD performance standards and targets for the family justice system should reflect factors specific to family work:

- some delay (e.g. for mediation) may be productive
- the effectiveness of court directions is key to successful case management
- reasons for adjournments are often complex and therefore difficult to measure
- the length of time that it is reasonable for a case to take is likely to be related to its complexity.

The service provided to court users

2.17 Questionnaires returned by professional court users indicate significant levels of dissatisfaction with some aspects of the service provided to users (see analysis in Annex 3). Dissatisfaction is focused particularly on waiting times for professional users, non-adherence to appointment times and the inadequacy of waiting and interview facilities. On the other hand, there were some very positive comments, for example:

- *“the clerks work hard to achieve a relaxed, open atmosphere in court to dissipate the charged atmosphere present at first directions”*
- *“administrative systems are first rate”*
- *“administration is much better than at the County Court”.*

2.18 It was not possible to compare data on waiting time for users at FPCs, as only one area currently collects information on waiting time specific to the family court. Questionnaire responses (see Annex 3) indicate that although 50% of professional users are satisfied with waiting times at court, 27% are dissatisfied. In addition, 41% are dissatisfied with the waiting and interview facilities. In view of the level of dissatisfaction expressed with regard to both waiting times and the adequacy of waiting and interview facilities, we suggest that this gap in performance data should be filled.

Suggested action 4

LCD performance measures for FPCs should ensure that incentives for greater effectiveness in case completion are supported by steps to promote better service for court users. In particular they should include measures and standards for waiting times for users.

Findings and Judgements – Processes

In court

- 2.19** When considering court processes, we looked for evidence of the effectiveness of scheduling, list building and appointments systems. We focused on the extent to which these arrangements achieve an appropriate balance between meeting the needs of users and securing full use of resources, and also the extent to which they contribute to effective case management. We identified a number of significant barriers to good performance and also some examples of imaginative solutions.
- 2.20** Barriers to effective scheduling that were reported by FPC staff and professional users varied somewhat from area to area, but included:
- settlement of cases ‘at the door of the court’
 - inaccurate estimates of the time that cases will take
 - ineffective appointments systems
 - late starts and gaps in proceedings
 - delays while the court’s reasons are prepared
 - low volume of work.
- 2.21** Late settlement of cases and the closely related issue of inaccurate time estimates were reported as problems in all areas, though of varying severity. Estimates of the time required for cases are given at the point at which the final hearing date is fixed (which may be at a relatively early stage in proceedings – though see paragraphs 2.23 and 2.26) and confirmed or adjusted at the pre-final hearing review. Many estimates are based on the prediction that cases will be fully contested. But, in practice, few cases proceed as full contests, and settlements are reached between the pre-final hearing review and the final hearing itself, often ‘at the door of the court’. As a result, the time required for the case turns out to be substantially less than the period allocated by the FPC (in MCC area A only about 20% of cases can be expected to meet their time estimate).

2.22 This situation gives rise to a number of practical problems, observed or reported to Inspectors during the review:

- it is difficult for MCCs to determine in advance how many family courts to schedule
- court lists become congested with cases predicted (but unlikely) to last two or three days, and the availability of early slots for other cases is reduced. Adjournment periods are therefore extended unnecessarily
- court time may be wasted when cases fail to take their full time allocation. This is wasteful of resources and can be a source of frustration for magistrates
- court starts are delayed, and the appointment system can be disrupted, as the parties negotiate a settlement.

2.23 Various approaches have been tried to improve the effectiveness of scheduling (see Annex 4 for details):

- a rigorous approach to pre-final hearing reviews, with all lawyers who will be involved in the final hearing required to attend and complete a 'certificate of time estimate'
- extending the period between pre-final hearing review and final hearing so that any time saved as a result of revised time estimates can be more readily reallocated to accommodate other cases
- postponing fixing the final hearing date until late in the proceedings, 'when the issues have become clear', or in one area, until the pre-final hearing review
- overlisting, in the expectation that only 20%-25% of cases will take their allocated time. However, overlisting can lead to long waiting times for users and should be subject to careful control and monitoring of the effects on all court users
- a court listing policy that seeks to promote a partnership approach to listing.

2.24 As mentioned at paragraph 2.14, it would be helpful for the effectiveness of these local schemes to be systematically monitored and the results disseminated nationally. The establishment of a national forum, and the plans to pilot options for improved case management, as set out the Adoption White Paper,¹⁸ should greatly facilitate the evaluation of local schemes and the sharing of results.

¹⁸ Adoption: A New Approach paragraphs 8.11 and 8.13

- 2.25** In respect of the third of these initiatives – postponing fixing final hearing date – some evidence of benefit can be found in our case file analysis. It appears from the data that fixing the final hearing date at a later stage in proceedings may improve adherence to the final hearing timetable (see Table 6).

Table 6: Public cases – effect of postponing fixing final hearing date

MCC area	Number of cases	Average proportion of total time elapsed before final hearing date fixed	Average proportion of cases in which final hearing date changed
A	35	32%	51%
B	35	30%	54%
C	45	40%	42%
D	38	36%	29%
E	36	60%	17%
F	26	51%	15%

- 2.26** With the exception of MCC area D, it appears that the earlier the final hearing date is fixed, the more unlikely it is that the timetable for final hearing will be adhered to. The explanation for the apparent anomaly in MCC area D – relatively early fixing of final hearing combined with relatively low proportion of final dates changed – may be that this is the area (see paragraph 2.23 and Annex 2) that has made particular efforts to improve the effectiveness of pre-final hearing directions.
- 2.27** Where possible, Inspectors observed directions hearings in the sample areas, to compare different approaches and to look for systems that contributed to good management of cases on the day. These observations suggest that directions hearings are most effective when a specific slot is allocated to each case, rather than cases being listed in blocks, and when adequate time is allowed to explore the issues fully. This closely reflects the findings of the Booth Report.¹⁹ In one area where directions were listed in blocks, court staff complained that parties did not attend on time and parties complained that the court did not stick to its timings. We observed that the hearing did not start until 30 minutes after the appointed time, and that the waiting area became quite crowded with parties for a number of different cases. In another area, where each case had a 15 or 30 minute slot, appointment times were more closely adhered to, and there was time for structured consideration of the issues in each case, with exploration of potential problems, open discussion by all parties, and agreement of clear and specific directions for the future progress of the case.

¹⁹ Paragraph 3.8.6

Suggested action 5

MCCs should ensure that FPC scheduling is arranged so that the time allocated to directions appointments is sufficient to allow the issues to be fully explored and full directions given.

- 2.28** Paragraph 2.21 refers to the fact that settlements ‘at the door of the court’ frequently lead to delayed starts of proceedings at FPCs while the parties conclude negotiations. Staff in all areas told us that the courts were prepared to tolerate this in the interests of securing an agreement. However, such delays have the potential to cause inconvenience to parties involved in later cases, as well as inhibiting MCCs’ ability to use their resources effectively. They also risk creating a feeling that court appointments need not be taken seriously. The Booth Report²⁰ also mentions the risk that negotiations on the day of the court hearing may produce undue pressure on parties to reach a settlement.

Suggested action 6

To maximise the effectiveness of appointments systems and the use of resources, MCCs should take steps to create a firm expectation that parties attending FPCs will be ready to proceed at the appointed time.

- 2.29** Another feature of FPC proceedings that can cause inconvenience to parties is the time taken by courts to prepare reasons for their decisions.²¹ The questionnaire analysis (see Annex 3) indicates a significant level of dissatisfaction with FPC practice. This evidence is also strongly supported by responses to the LCD’s Children Act Scoping Study. All FPCs visited use pro formas for producing reasons, and give parties estimates of the time that they will need, but acknowledge that the task often takes considerable time. Some, but not all, of the sample areas follow the County Court practice of requiring parties to prepare chronologies, lists of agreed facts and issues in dispute. This saves the court significant drafting time, but reasons can still take two or more hours to produce. Only one MCC provides a laptop PC for court clerks to use when preparing reasons.

²⁰ Paragraph 3.8.34

²¹ Rules 21(5) and (6) of the Family Proceedings Courts (Children Act 1989) Rules 1991 require the clerk to record in writing, in consultation with the magistrates, the reasons for the court’s decision and any findings of fact

Suggested action 7

MCCs should explore ways of providing support for FPCs to improve the speed with which reasons are produced.

2.30 In three of the six areas reviewed, nominated District Judges (Magistrates' Courts) sit regularly in FPCs. Their professional knowledge and skills make them well suited for dealing with a range of case types, including those requiring careful case management and long final hearings. They serve as an excellent complement to the lay bench, providing judicial leadership and training. There is scope for FPCs to share best practice on deployment of District Judges (Magistrates' Courts) and disseminate agreed guidelines.

2.31 Another way of developing expertise amongst family panel magistrates and their legal advisers is to ensure that they have opportunities to observe proceedings (especially directions hearings) at the County Court for training purposes. The Booth Report²² commented on the fact that, although opportunities for magistrates to observe judges are very helpful, the practice is not widespread. Our review suggests that this is still the position. Arrangements for training at the County Court were in place in only three of the six MCC areas visited.

Suggested action 8

We would encourage both County Courts and FPCs to be more active in promoting arrangements for magistrates to observe County Court proceedings for training purposes.

Administration

2.32 The effective use of the resources of FPCs is inhibited by two main factors:

- the inaccurate time estimates and settlements 'at the door of the court', as discussed at paragraph 2.21
- the low volume and range of caseload for some panels, leading to short sittings, and a lack of opportunity for members to develop and retain expertise.

²² Paragraph 3.2.7

- 2.33** We have already described some of the attempted solutions to the first problem. The second problem was reported in two of the areas visited, and also identified by the amalgamating MCCs in the sample as an issue for future consideration. One of the MCCs has set a standard of 12-15 sittings per year as the minimum needed for magistrates to retain expertise. It uses FPC sitting data to identify panels either falling short of the target and/or regularly sitting for significantly less than half a day. This data is shared with family panels and used to help promote appropriate panel amalgamations.
- 2.34** The Adoption White Paper²³ draws attention to the importance of ‘increasing flexibility in the family justice system, while maintaining and improving upon the specialist expertise necessary to handle children and adoption cases effectively’. It also cites with approval the concentration of family cases at specialist centres such as the Inner London Family Proceedings Court. Maintaining a balance between local access to justice and sufficient expertise among magistrates, justices’ clerks and staff is also a major focus of the LCD’s Children Act Scoping Study.

Suggested action 9

Any LCD review of the number of FPCs should be based on agreed standards for a minimum level of sittings, and the case mix required to maintain expertise.

- 2.35** In two of the MCCs in the sample, a secondary concern is that current efforts to speed up youth justice are putting pressure on the resources available for FPCs. Extra youth courts are being arranged, sometimes at the expense of FPCs. In the other four areas, however, the problem was not apparent. Indeed there was evidence of listing priority being given to family cases.
- 2.36** The sample revealed that a variety of local standards has been set in different areas for the production of information for other agencies. Some of these are set out in Table 7.

²³ Paragraph 8.8

Table 7: Administrative performance standards

Local standard	Number of MCCs using the standard
Process 80% of applications within seven days	1
Process public applications in one day, private in two days	1
Process public applications same day, private in five days	1
FPC register completed within three days	4
FPC register completed within one day	1
Production of directions at court	2
Orders produced within one day	1
Orders produced within five days	1
Transferred files to County Court within 48 hours	1

2.37 Although systematic monitoring of performance against the standards is patchy, our observation indicated that information is generally produced accurately and promptly. Users (see questionnaire analysis in Annex 3) indicated overall satisfaction with performance in five of the six MCCs. However, the variety and range of standards found indicate that levels of service are not consistent across the country. It will be particularly important, following the establishment of CAFCASS, for FPCs to ensure that they are producing information within timescales that will enable CAFCASS to achieve its national standards (see suggested action 10).

Findings and Judgements – Management

Performance

2.38 Only one of the MCCs visited monitors FPC performance against a full range of performance standards. In addition to the general Core Performance Measures (CPMs)²⁴ it has developed three FPC-specific Key Performance Indicators (KPIs) and has set local targets for each KPI (see Table 8). However, the MCC finds its performance management impaired by its inability to make comparisons with other FPCs. In the other MCCs in the sample, performance monitoring is limited to reviewing workload for purposes of resource allocation.

²⁴ Information for Management: the Core Performance Measures. MCSI, April 1999

Table 8: FPC-specific KPIs

KPI 1	Percentage of private law cases completed within 21 weeks
KPI 2	Percentage of public law cases completed within 31 weeks
KPI 3	Percentage of cases that meet their time estimate

2.39 The Government White Paper on Adoption²⁵ identifies the need, in adoption and public law cases, for improved court systems to:

- encourage the consistent recording of information such as the time taken in children’s proceedings
- support effective case management.

It goes on to say that the Government will identify the key stages of the court process, with a view to collecting information from 2001, and setting timescales for cases from 2002. The Government’s new priorities in this area, together with national standards for CAFCASS which are due to be finalised during 2001, mean that it will be vital for MCCs to be in a position to monitor and manage their performance in this area. At present there is an acute shortage of both the tools and expertise to enable this to be done effectively.

Suggested action 10

LCD and Department of Health performance measures for administrative procedures in Children Act and Adoption cases should be designed to complement the national standards of other agencies, particularly CAFCASS.

2.40 Most, but not all, of the MCC areas reviewed have Family Court User Groups (FCUGs) linked to each FPC which are used as forums for inter-agency discussion and consultation on the operation of FPCs. There is also a network of Family Business Committees (FBCs) led by the County Courts but involving FPC representatives. Although there are some examples of these bodies being used for performance management purposes (see Annex 4) this does not appear to be the norm. In addition, there is no clearly-defined relationship, and no structured links between FCUGs and FBCs, nor is there any national co-ordination of their work.

²⁵ Paragraph 8.15

Suggested action 11

When developing the planned national support structure for family matters, as proposed in the Adoption White Paper,²⁶ the Department of Health and the LCD should ensure that there are appropriate links with FCUGs and FBCs.

2.41 Inspectors encountered different views on the effectiveness of individual FCUGs. We noted that some meet rarely, for example, once a year; some have full agendas, while others are very short; some are very large, with up to 25 members. We would suggest that, as CAF/CASS becomes established as the key agency with which FPCs need to co-operate on performance issues, there may well be scope for more regular bilateral meetings between CAF/CASS area managers and the local courts to develop a shared and collaborative approach to performance management.

2.42 In the one MCC that has developed performance standards, a specific difficulty has come to light with regard to the weightings²⁷ attached to family cases for determining weighted caseload and for calculating National Performance Indicators (NPIs). Case completion data suggested that the FPC had a significantly higher cost per weighted case and significantly lower throughput per sitting hour (NPI 1)²⁸ than criminal courts in the same MCC area. An internal review of the cost effectiveness of the FPC was carried out, which concluded that the costs of the FPC were not excessive when compared with the criminal courts in the same MCC area. As a corollary, the review cast doubts on the appropriateness of the case weightings for family cases, observing that family cases are complex and labour intensive, and that the weightings had not been produced by the scientific method adopted by Sheffield Hallam University to draw up the weightings for criminal cases.

Suggested action 12

To ensure appropriate resource allocation for family work, and facilitate performance management, the LCD should review case weightings for family cases.

²⁶ Paragraph 8.13

²⁷ Cases of different types (e.g. care proceedings, Children Act section 8 applications, indictable criminal cases, summary motoring cases) are weighted according to the notional average court time they should take

²⁸ NPI 1 is calculated by dividing total weighted caseload by total sitting hours

Information Technology

- 2.43** Current IT systems provide only very basic support for FPCs. Some areas told us that standard software does not meet their needs at all, and that they have had to develop their own templates on PCs for production of registers, orders and other documents. The Libra²⁹ system for magistrates' courts promises to bring great benefits; it should support production of all standard documents and also facilitate the collection and analysis of FPC statistics. It will be important to ensure that work to develop standard performance measures for Children Act and Adoption cases (see paragraph 2.38) is co-ordinated with the further development and roll-out of the Libra system.

Suggested action 13

The LCD should ensure that Libra will collect the statistical information that the LCD intends to require from all three tiers of family courts.

- 2.44** We did not find any area with electronic data exchange between FPCs and other family justice agencies. The usual method for exchanging urgent information and documents is by fax. With the establishment of CAFCASS, FPCs will acquire a key partner in administration of the family justice system, and both parties will benefit from the establishment of effective electronic links at the earliest opportunity.

Suggested action 14

The LCD should ensure that there are early discussions with CAFCASS on links to Libra.

- 2.45** Libra will also support in-court computing in family courts. This should enable FPCs not only to speed up the production of reasons (see paragraph 2.29) but also to produce directions and orders at court.

²⁹ Libra – the new national computer system for the magistrates' courts service of England and Wales

Annex 1

Methodology

MCSI set a timetable, in September 2000, to complete the work and produce a report by late April 2001. It recognised that, in view of this tight timescale, the scope of the project would have to be limited. It was decided that this was appropriate in view of the fact that the review was to explore territory new to MCSI, and the nature of the findings was difficult to predict. It was also felt to be important to ensure that the review produced results that were timely in the context of other current projects on family justice issues.

A sample of six MCCs was used for the purpose of the review, selected to provide a wide geographical spread, a balance of urban and rural areas, and to include areas where available statistics indicated good, poor and average performance.

The following work was carried out in each of the selected areas:

- a request for briefing documents and the completion of a self assessment on current performance in FPC case administration
- an analysis of up to 100 case files in each area (a total of 518 files)
- questionnaires issued to the key professional users of the FPCs in each area
- telephone interviews with a sample of key professional users
- visits to each area to interview staff with responsibility for family case administration
- interviews (where possible) with family panel magistrates and District Judges (Magistrates' Courts)
- direct observation (where possible) of family directions courts.

At key stages in the project there was consultation with a reference group of individuals with special expertise and interest in the work and performance of FPCs, drawn from the magistrates' courts service and the LCD.

Annex 2

Case file analysis

Public cases

	MCC area						Total	Averages
	A	B	C	D	E	F		
Number of cases	35	35	45	38	36	26	215	
Average number of days application to first listing	6	14	11	9	8	10		10
Average number of days first listing to first timetable (of cases showing a timetable)	74	66	78	63	86	36		71
Average number of days first listing to completion	231	217	195	174	143	70		177
Average number of days application to completion	236	231	206	183	151	80		187
Percentage of cases withdrawn	6%	3%	4%	5%	8%	8%		5%
Percentage of cases where final hearing date was changed	51%	54%	42%	29%	17%	15%		36%

Private cases

	MCC area						Total	Averages
	A	B	C	D	E	F		
Number of cases	35	50	34	38	45	29	231	
Average number of days application to first listing	17	30	32	27	22	21		25
Average number of days first listing to first timetable (of cases showing a timetable)	60	82	59	68	63	54		67
Average number of days first listing to completion	115	117	133	156	118	73		120
Average number of days application to completion	133	147	164	182	139	94		145
Percentage of cases withdrawn	17%	10%	18%	21%	2%	24%		14%
Percentage of cases where final hearing date was changed	29%	12%	15%	50%	22%	7%		23%

Adoptions

	Private	Public	Total	Averages
Number of cases	49	23	72	
Average number of days application to first listing	99	11		71
Average number of days first listing to completion	2	8		4
Average number of days application to completion	101	19		75

Public case adjournments

	MCC area						Total	Averages
	A	B	C	D	E	F		
Number of cases	35	35	26	36	38	45	215	
Average number of adjournments	10.9	9.0	13.3	7.6	5.4	2.0		7.5
Average length of adjournment	21	24	25	24	25	20		24

Private case adjournments

	MCC area						Total	Averages
	A	B	C	D	E	F		
Number of cases	35	38	45	50	34	29	231	
Average number of adjournments	2.3	2.8	2.0	2.9	3.8	1.2		2.5
Average length of adjournment	50	55	49	41	41	60		47

Reasons for adjournment analysis – public cases

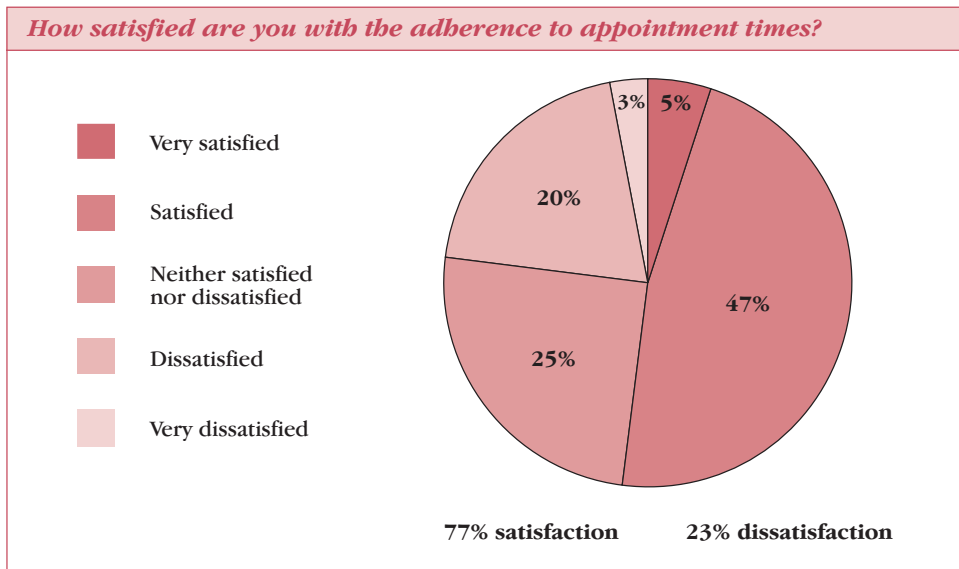
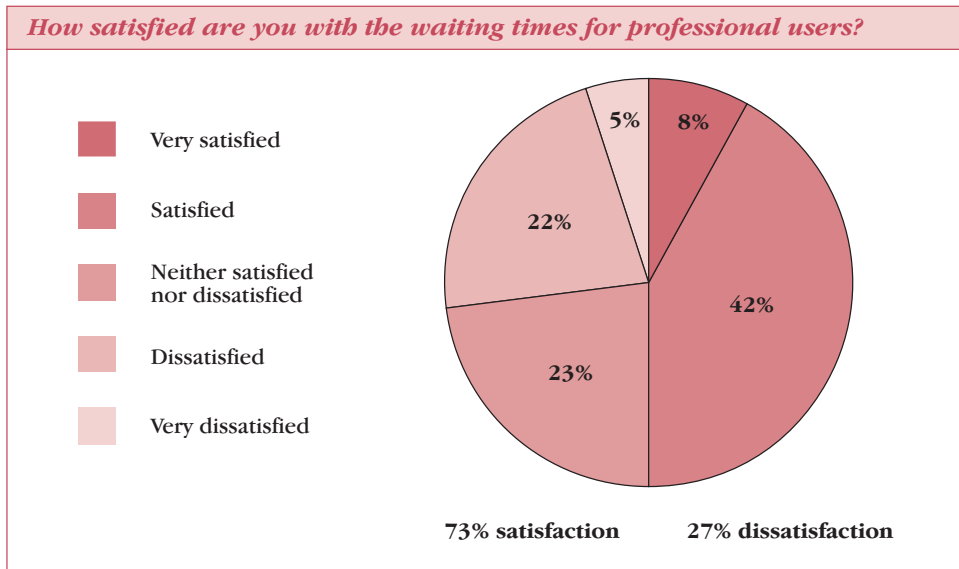
	MCC area						Totals
	A	B	C	D	E	F	
Reasons for adjournment							
Assessment of children		3		3			6
Assessment of parents		2		4			6
Emergency protection order	3	6	9	2	5	2	27
Expert opinion to be obtained	6		4	4			14
Further directions	10	70	10	17	9	22	138
Final hearing						1	1
Final hearing part heard	3	1			1		5
GaL to be appointed	8	1					9
GaL report	4			1		3	8
Interim care order extended	247	173	268	173	168	54	1,083
Interim refusal of contact		2	1		1		4
Interim secure accommodation order	1				4	4	9
Interim supervision order		17	17	20	4		58
No reason recorded	3	3	5	1	1	1	14
Other	20	2	4	5	3	2	36
Pre final hearing review	2	32	3	15	8		60
Solicitor to be appointed or instructed	2	1					3
Timetabling		3					3
Adoption case which goes to court with a care case			2				2
Witness statements	72		22	30		2	126
Welfare report only						1	1
Totals	381	316	345	275	204	92	1,613

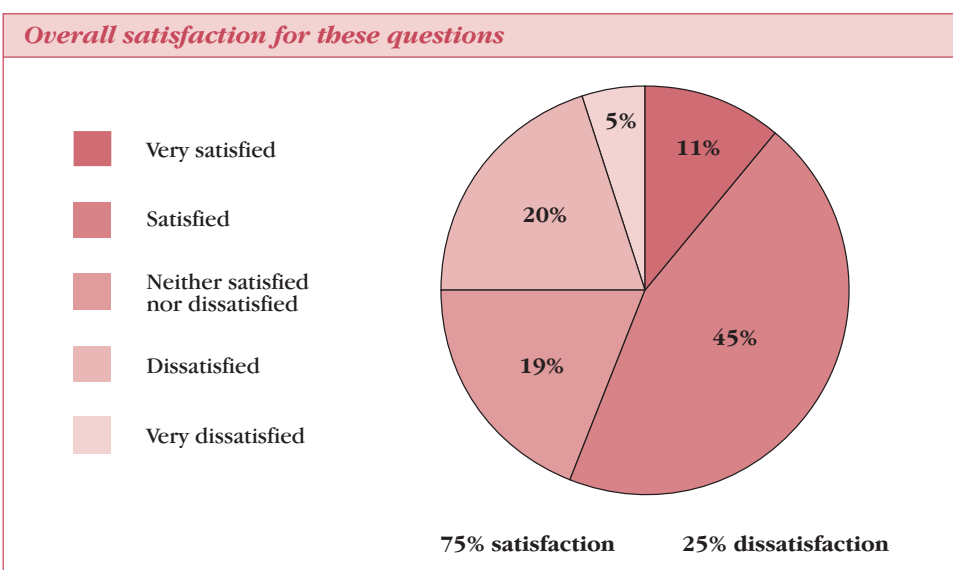
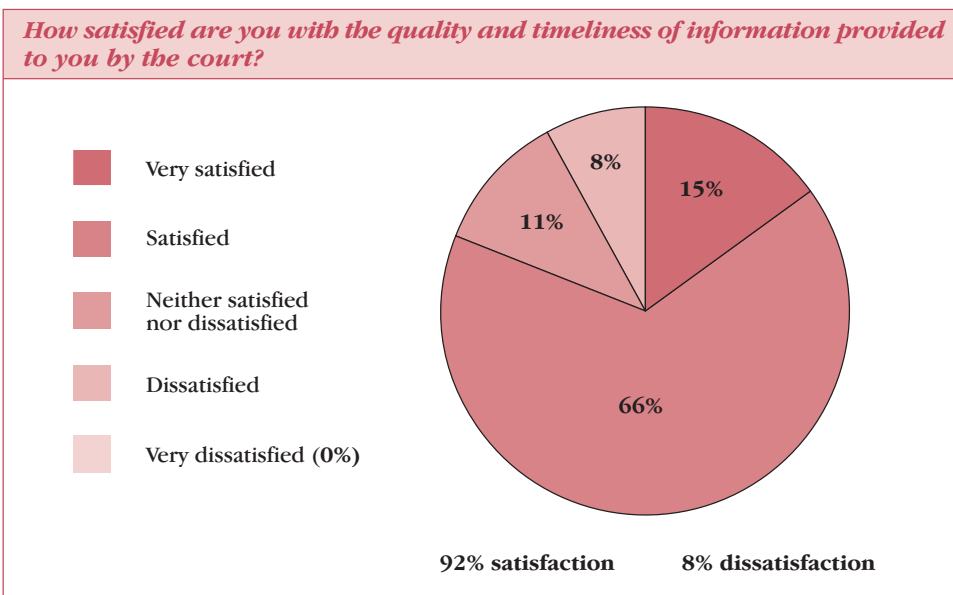
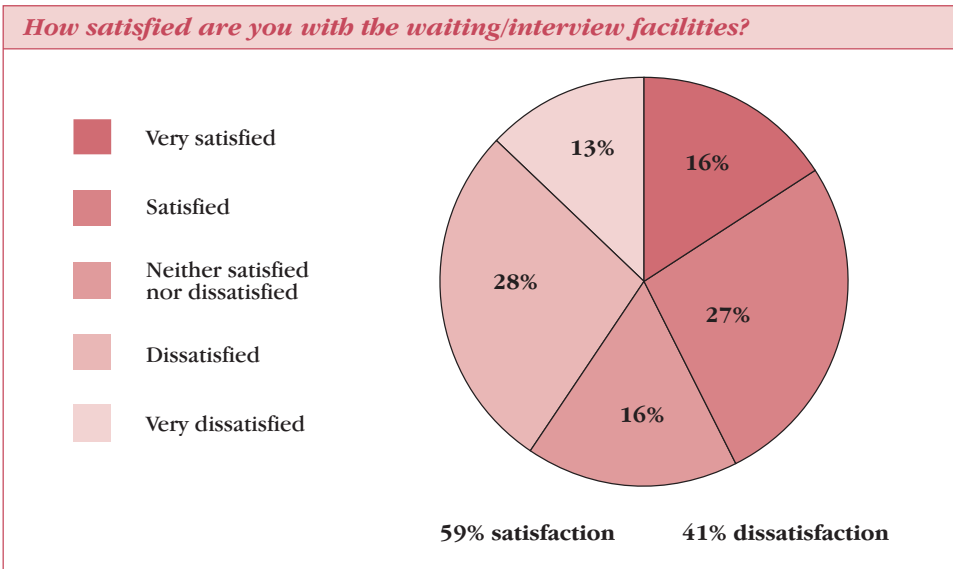
Reasons for adjournment analysis – private cases

	MCC area						Totals
	A	B	C	D	E	F	
Reasons for adjournment							
Assessment of parents				1			1
Expert opinion to be obtained		2	2	2		6	
Further directions	2	39	24	23	40	10	138
Final hearing		20	4	14	29	7	74
Final hearing part heard		1	1				2
GaL to be appointed					1		1
Interim care order extended						1	1
Interim contact order	3	5			4	4	16
Interim residency order	1		14	1	6		22
Joinder of parties			1				1
Mediation	2		8	6	4		20
Non-molestation order	3						3
No reason recorded				7	1		8
Other	21	21	7	37	21	10	117
Pre final hearing review	1	1		2	1		5
Power of arrest	1						1
Solicitor to be appointed or instructed		1	1	3	1		6
Timetabling	2			1			3
Adoption case which goes to court with a care case					1		1
Witness statements	33		14	29		1	77
Attendance of Welfare Officer			14			14	
Welfare report only	12	18	16	4	18	2	70
Totals	81	106	92	144	129	35	587

Annex 3

Professional user questionnaire analysis





Annex 4

Examples of innovative practice

Example 1: Inter-agency co-operation

In one area all agencies involved in Children Act public law and adoption cases are working together, under the chairmanship of the local Care Centre judge, to agree an inter-agency protocol setting out the performance expected of each agency in minimising delay.

To support this project, the GaL panel manager has analysed case completion times for public law cases for the last four years and produced a model timescale based on the results. Cases have been split into groups according to their lengths: 0-10 weeks, 11-20 weeks, 21-30 weeks and so on. This work has revealed that, contrary to prior expectations, both average completion times in FPCs and County Courts, and the percentage of very long cases, declined significantly over the period 1996 - 1999. In addition, for FPCs, the number of weeks has decreased from 31-40 weeks to 21-30 weeks. This may be related to the transfer of complex cases from FPCs to County Courts, but it also suggests increasing consistency in the conduct of cases in FPCs.

Based on this analysis, the GaL panel manager has produced a proposed model timescale:



Example 2: Waiting to fix final hearing date

We found evidence, especially in public law cases, of a move to separate the main timetabling exercise from the fixing of a final hearing date. It was recognised in the 1996 Booth Report (2.6.7-8) that, while fixing a final hearing date at the outset was accepted good practice, there might also be merit in waiting until the court could be sure that the timetable for final hearing would be adhered to. As discussed in paragraph 2.24, there are some signs from our case file analysis that too early setting of the final hearing date can be counter-productive in terms of securing adherence. We were therefore interested to find that, in some MCC areas, FPCs are waiting until as late as the pre-final hearing directions hearing to set the final hearing date. For this approach to work, it is vital that the court diary should be flexible enough to accommodate the final hearing within an appropriately short period after the pre-final hearing review.

Example 3: Improving the effectiveness of the pre-final hearing review

Guidance was given in *Re G, S and H (care proceedings: wasted costs)* 1999 3FLR303 on the collective responsibility of advocates at the pre-final hearing review to ensure that the case has been fully prepared, and the responsibility of the court to adopt a “*proactive and rigorous approach to the issues in the case with a view to ensuring that all the issues have been appropriately defined and addressed*”. The guidance goes on to make clear that advocates who fail to fulfil their responsibility risk being penalised with a wasted costs order.

Three areas we visited were making special efforts to improve the effectiveness of the pre-final hearing review.

In one area, following the spirit of this guidance, it is made clear to advocates that, for the pre-final hearing review:

- the advocates who will conduct the final hearing must attend
- formal certificates of time estimate must be completed
- failure to comply may result in a wasted costs order.

In two other areas there are advanced plans to combine:

- greater rigour in the approach to pre-final hearing reviews
- a longer gap between review and final hearing so as to improve the potential for any time savings identified to be reallocated.

Example 4: Increasing the effectiveness of directions

In one area, FPCs have adopted a robust approach to first directions hearings in private law cases designed to divert cases to mediation. Key features are that the court clerk, at the directions hearing:

- speaks directly to the parties
- explains the disadvantages of an order imposed by the court
- explains the benefits of a mediated settlement
- refers the case immediately to a Court Welfare Officer if the parties express a willingness to try mediation.

Although no data was available, we were told that this approach had led to a significant reduction in the number of contested private law cases. A similar method is currently being piloted in the Narey courts to draw to the attention of defendants the advantages of an early guilty plea.

In another area, staff are reviewing all files a week ahead of the final hearing, and chasing outstanding directions by telephone.

In a third area, compliance with directions was monitored in 19 cases completed in September to November 2000. Full compliance was found in only four cases. The results of this survey are to be discussed at the Family Court User Group, with a view to promoting better levels of agency co-operation.

Example 5: Listing

One FPC publishes a very useful listing policy setting out the aim of listing:

“To provide efficient and effective listing of all family cases consistent with the no delay principle enshrined in the Children Act 1989 whilst taking into account the needs and requirements of court users”

It includes useful information on FPC procedure and facilities, and also seeks to promote partnership working by:

- reminding agencies that

“in order to make the best use of court time and thus serve the needs of court users and the best interests of children, the court needs to have up to date information”

- asking the parties

“to advise the court at the earliest opportunity of any factor that will affect the listing arrangements (as) released time can assist parties in other cases”

- advising agencies that

“magistrates are given the case papers in advance to expedite court process. It is therefore important that statements are filed on time to avoid delay on the day of the hearing”.

