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1. Introduction to Family Case Profiling

Background

The Case Profiling Study represents the first major research project undertaken by the Legal Aid Board Research Unit. Its goal was to inform the policy development of block contracting for civil legal aid services in England and Wales. It has formed a part of the information strategy at the heart of the Legal Aid Board's (LAB's) reform implementation programme.

It was decided at the outset of the study, in late 1995, to restrict attention to the fields of family and personal injury work. This was on the basis that together they account for three quarters of the total number of cases conducted under legal aid certificates. They also represent two very different fields of legal endeavour, in terms of legal frameworks, legal cultures, client aspirations and objectives.

The study has taken over 2 years to complete. It is believed to be the largest study of its kind yet undertaken. Details of other relevant studies have largely been set out within the literature review which formed part of the first report. This final report contains the main findings of the study along with some commentary on their implications. It is made up of two volumes, one dealing with family and one with personal injury work. This volume is concerned with the study's findings in relation to family litigation. For the purposes of this study, family work is taken to include all matrimonial, private children law and domestic violence cases. Public law children cases, such as care proceedings, are outside the scope of this study (though some summary information relating to such cases has been included in Chapter 3). The volume consists of four principal chapters, each dealing with the central findings from one of the four data sets constructed for the purposes of the study, and a summary. A discussion of the findings is presented in the final chapter.

1 In 1996-7, for example, 77.8% of all civil legal aid certificates were issued in the course of family or personal injury cases.
3 Some findings have also been presented elsewhere. See, for example, Legally Aided Family Work: Current Cases and Practitioners' Views of the Future, paper presented at the Socio-Legal Studies Association conference, Manchester Metropolitan University, (April 1998); Cost Prediction and Legal Services for the Poor: Lessons from the Case Profiling Study, paper presented at the Socio-Legal Studies Association conference, Manchester Metropolitan University, (April 1998):
Objectives

At the outset of the Case Profiling Study a number of key objectives were set out. It was appreciated that in order to implement informed policy, and to proceed with any change in modes of lawyer remuneration, a thorough understanding must be obtained in relation to:

(i) how different cases are structured, in terms of work elements, cost elements and timescale;
(ii) how the different structures are distributed, in terms of their frequency within any identifiable types of case (case categories).

Without such an understanding, it is not possible to determine:
(i) the descriptions of cases that should be contracted for; and,
(ii) the minimum number of cases contracts should relate to in order to distribute fairly the risks, associated with the uncertainty of legal processes, between the Legal Aid Board and individual solicitors' firms.

The Case Profiling Study centres on the exploration of case profiles (i.e. the pathways, costs, durations and distributions of legally aided certificated cases) and category profiles (i.e. the distribution of case profiles within case categories). The ultimate objective of the study has been to identify coherent forms of case profile and category profile, to map their characteristics and distribution. The principal research questions were as follows:-

(i) Are there any identifiable standard or common case profiles?
(ii) If so, what are their characteristics and how do they relate to possible case categories, based either on internal or external case characteristics?
(iii) What are the cost drivers affecting cases and how are they distributed between and within cases?
(iv) With what reliability can aggregate costs be predicted in relation to cases within particular case categories?

Despite inevitable shifts in policy during the course of the research, the objectives and questions set out above remain pertinent. Block contracts, fixed fees, conditional fees and legal expenses insurance all depend for their success on an understanding of the form and cost of the claims process. They all involve distribution of the risks inherent in the process between consumer, provider and funder. Their implementation may therefore be based

Le$\acute{g}$al Education: Mediation, Violence and Legal Aid, paper presented to the colloquium on Legal Education, Institute of Advanced Legal Studies, (January 1998). Copies available from the Legal Aid Board Research Unit.
on an appreciation of the steadily growing knowledge base which exists in relation to civil litigation, to which this report makes a further contribution.

Methodology

It was clear from the outset of the study that no individual set of available or obtainable data would be sufficient to answer the research questions set out above in a thorough manner. It was therefore decided that the study should adopt a triangulated methodology and use a number of limited, but complementary, data sets as the building blocks for a cohesive and sturdy analytical design. Four complementary data sets were compiled for the purposes of answering the research questions. These appear in figure 1.1 below.

<table>
<thead>
<tr>
<th>Data Source</th>
<th>Sample Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. LAB Electronic Data Systems (low detail)</td>
<td>180,000 cases</td>
</tr>
<tr>
<td>2. Solicitors' Files (medium detail)</td>
<td>650 cases</td>
</tr>
<tr>
<td>3. Solicitors' Files (high detail sub-sample of solicitor's files)</td>
<td>150 cases</td>
</tr>
<tr>
<td>4. Interviews with Solicitors</td>
<td>14 interviews</td>
</tr>
</tbody>
</table>

The first three are largely quantitative. The fourth is essentially qualitative. There are both quantitative and qualitative elements in both the third and fourth data sets. The largest data set was derived from the Legal Aid Board's own electronic data systems. The Board maintains two basic systems to facilitate issuing legal aid certificates and paying lawyers' bills. For any individual certificated case, these systems contain information including the date the legal aid certificate was issued, the date any bills were paid, the amounts of profit costs, disbursements and counsel fees, the basic nature of the case and the method of case disposal.

The largest data set provided opportunity to examine macro costs and disposal patterns, regional variations in case types and take up, and verify the integrity of data collected from other sources.

The medium detail data set was collected from solicitors' case files. This data set represents those ordinary cases which make up the bulk of cases funded by the Board. Most of the data for this level were collected by legal aid.

---

4 The Legal Aid Board has now introduced a new unified information system to serve all its activities. The data used in this study was, however, obtained exclusively from the old systems - insufficient data being available in time from the new system.
Franchising forms the centrepiece of the Legal Aid Board's quality assurance initiative. As a part of the franchising process, franchise auditors visit firms and collect data relating to, *inter alia*, a set of 'transaction criteria'. Firm's files must comply with these criteria if they are to be awarded a franchise. Franchised firms (or those applying for a franchise) were used in this study as they are most likely to be future contract holders. In the case of the family law firms, 82% already had a franchise in the family category, and the remaining 18% were in the process of applying for one. Prior to data collection, consent was secured from all firms from which additional *case profiling* data was obtained.

On exploring the causes of this bias with the auditors concerned, it became apparent that it was a product of a number of operational concerns. For example, auditors are principally interested in recent work, especially in the case of new or applicant franchisees. Further, they are most interested in examining routine work, and, also, they aim to look at a significant number of files within each firm.

The questionnaire benefited particularly from detailed discussions with auditors, who brought with them their expertise in reading and extracting information from solicitors files in a short space of time.

The 650 family cases come from over 200 solicitor accounts\(^9\) scattered throughout England and Wales. The distribution of cases across the 13 legal aid administrative areas is set out in figure 1.2.

**Figure 1.2 The Geographical Distribution of the Medium Detail Sample Cases**

<table>
<thead>
<tr>
<th>Legal Aid Area</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. London</td>
<td>65</td>
<td>10</td>
</tr>
<tr>
<td>2. Brighton</td>
<td>47</td>
<td>7</td>
</tr>
<tr>
<td>3. Reading</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>4. Bristol</td>
<td>25</td>
<td>4</td>
</tr>
<tr>
<td>5. Cardiff</td>
<td>31</td>
<td>5</td>
</tr>
<tr>
<td>6. Birmingham</td>
<td>28</td>
<td>4</td>
</tr>
<tr>
<td>7. Manchester</td>
<td>59</td>
<td>9</td>
</tr>
<tr>
<td>8. Newcastle</td>
<td>38</td>
<td>6</td>
</tr>
<tr>
<td>9. Leeds</td>
<td>88</td>
<td>14</td>
</tr>
<tr>
<td>10. Nottingham</td>
<td>66</td>
<td>10</td>
</tr>
<tr>
<td>11. Cambridge</td>
<td>62</td>
<td>10</td>
</tr>
<tr>
<td>12. Chester</td>
<td>54</td>
<td>8</td>
</tr>
<tr>
<td>15. Liverpool</td>
<td>55</td>
<td>8</td>
</tr>
<tr>
<td>Unknown</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>650</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

The high detail data set was collected as a sub-sample of the medium detail data set, although this time by researchers rather than auditors. Data collection was carried out throughout the second half of 1996.

The firms visited were selected to provide a range of sizes, specialism and geographical location. Files were selected either from audit lists or by taking those most recently closed (or waiting to be archived). There were no grounds to limit the sample on a cost basis.\(^{10}\)

The high detail data contains, in addition to the medium detail data elements, a complete breakdown of case expenditure. Every item of correspondence was recorded, along with every activity and disbursement noted on the file. Records were also kept of interesting and anomalous case details or practices.

The fourth data source is made up of 14 in-depth interviews with solicitors. These were used to explore issues arising from a preliminary analysis of the medium and high detail data sets. They covered matters ranging from lawyers' goals and strategies, through their perceptions of their clients and the legal process, to their views of the current legal aid reform programme.

---

\(^9\) Most solicitors' firms have one account number. However, if two firms have merged they will have two, or if a number of sole practitioners have merged they can have several.

\(^{10}\) As a consequence the high detail data set is not a true sub-set of the medium detail data set. It includes cases which have been excluded from the medium detail data set on cost grounds.
All the interviewees worked in firms which had co-operated in the high detail data collection exercise. The interviewees were selected primarily according to their geographical location. This was to ensure that the views of practitioners from all over England and Wales, from both rural and urban (from small market towns to large conurbations), wealthy and less wealthy areas were represented. The interviewees were also selected to include a range of sizes of firm from sole practitioner to large partnerships.

The interviews were semi-structured to allow scope for points of interest to be explored in greater depth whilst maintaining the basis for comparison between responses. Most interviews were tape-recorded and then transcribed. Those that were not recorded were noted in detail. All the interviews were carried out in the second half of 1997 and took an average time of around an hour and a quarter. Around half were conducted in person, with the remainder conducted over the telephone.

The precise form of the questions used in the interviews evolved during the course of the interview programme. This was an inevitable consequence of a developing understanding. A copy of the final version of the interview questionnaire is attached at Appendix 1.

Data Analysis

The Legal Aid Board data was analysed using standard statistical techniques to form a basic descriptive overview of legal aid certificated family work.

The medium detail data set was analysed at a number of levels. Some simple cross-tabulations, correlations and basic statistical descriptions were undertaken using the Excel and SAS software packages. However, the data was also subjected to more sophisticated statistical analysis. Multiple regression analysis was performed using the LIMDEP software package. The objective was to identify any cost, duration and outcome drivers which may be distinguishable ex ante and which could therefore be used to aid the construction of a credible case categorisation system.

This type of econometric modelling of cases produces an $R^2$ value, which is adjusted for the number of degrees of freedom in the model, and z- and t-ratios. The ratios indicate the likelihood of a particular relationship between an independent and dependant variable being the product of mere chance. The closer to zero the ratio, the greater the likelihood that it is the product of

---

11 The authors would like to acknowledge the work carried out by Roger Bowles, Director of Fiscal Studies, University of Bath, on this project.

12 The number of degrees of freedom being the number of observations in the model minus the number of explanatory variables. For example, if there are 500 records or observations in the model and 50 variables which are being tested, the number of degrees of freedom is 450.
chance. On the other hand, high ratios can indicate close links. If the ratio is over 2.58, for example, then the relationship can be said to be significant at the 1% level (i.e. there is just a 1% chance that the result is a product of pure chance).

For the high detail data set a GDP inflator was used to update all profit costs, disbursements and counsels' fees to 1997 levels. This was necessary to allow comparisons to be made between cases which ran through different years. As solicitors record the amount of time they spend on cases within case files, and as the dates of disbursement and counsels' fees also appear, it was felt it would be of more benefit to completely re-cost cases rather than simply inflate the aggregate costs charged. This had the dual benefit of allowing for a uniform charging method and ensuring all specific cost items became comparable. This mode of data analysis also allows for future comparative work.

Where different charging rates were appropriate for different types of work, the appropriate rates were used for each, irrespective of how they were actually charged. Allowable correspondence items (including telephone calls) were costed at 1/10 of the standard rates per item. It did not prove possible to vary rates in accordance with the standing of the fee earner. The reliability of the data was questionable in relation to this matter.

A temporal analysis of the build up of costs within cases was performed, allowing for the production of stage cost profiles.

Qualitative analysis of the high detail data files was also carried out in an attempt to gain more of an insight into the attitudes and intentions of the solicitors concerned and their clients. Particular note was made of irregularities and unusual practices.

The information from the semi-structured interviews was coded and collated. The analysis of the interviews therefore includes some quantitative elements, although this is very much secondary to the qualitative analysis.

Structure of this Volume

As has been noted above, this volume of the final report comprises five principal chapters and a summary. Four chapters deal with the findings from each of the data sets. They run in the order set out in figure 1.1 above. The final chapter provides an overview of the findings, drawing together strands from the different data sets. In this way, possible effects of legal aid reform on the family justice system are discussed in the light of the results of the Case Profiling Study.

2. Executive Summary

1.0 Introduction to Family Case Profiling

1.1 The Case Profiling Study was designed to describe family legal services currently supported by the Legal Aid Board, and how this is carried out by firms of solicitors. The main role of the research was to inform policy development with respect to changes in remuneration for lawyers such as block contracting.

1.2 Cases are analysed according to the elements of work carried out, the cost and timescale, and how different case structures are distributed within identifiable case categories.

1.3 This volume presents the findings of the case profiling study in relation to family litigation, which is defined as including all matrimonial, private law children and domestic violence cases. Public law children cases are excluded in the empirical stages of this study though they are included in chapter 3.

1.4 Four data sets were used:

- Low Detail: all the 180,000 family files recorded on the LAB Electronic Data System, a source of general information about a large number of cases.
- Medium Detail: a random sample of 650 solicitors files from which further detail was extracted by auditors and researchers
- High Detail: From these 650 files, 150 were selected randomly for detailed analysis
- Qualitative: 14 solicitors from the sample were interviewed in person.

2.0 Executive Summary

3.0 Family Cases: The Broad Picture
Findings from the Low Detail Data Set

3.1 Summary statistics from the LAB electronic data systems show an increase in Children Act applications, particularly contact and residence in 1996/7. Matrimonial applications fell by 9% over the same period, yet matrimonial cases still make up 60% of all proceedings, ancillary relief comprising over half of these. Private law free standing applications make up 31% of total family cases.
Cost

3.2 Matrimonial cases cost on average £1,765 and private law children cases £1,533. Standard deviations however indicate very wide cost distributions.

3.3 In general, three quarters of the total case cost is made up of solicitors' fees. Between 8-10% is spent on disbursements and 14-22% on counsels fees. Cases are concentrated in the lower costs bands, and there are regional variations with the South East having the highest gross cost and the North East the lowest. There is also regional variation in the distribution of case types. In particular, domestic violence makes up 36% of cases in London and only 23% in Newcastle. Manchester and Newcastle have twice as many contact and residence orders as London, Brighton or Leeds.

Duration

3.4 Matrimonial cases take two years, and this is twice as long on average as children cases.

3.5 Case throughput: less than 3% of firms doing family work undertook more than 100 cases in any of the three categories: matrimonial, private children or public children, in the twelve month period 1996-97.

Result

3.6 Matrimonial cases went to judgment in 40% of cases, 26% settled, and a third were not resolved. For Children Act cases 10% reached judgment, 48% settled and 42% were not resolved as far as the electronic systems can inform us. The limitations of this data are discussed in chapter 4.

Green Form / advice and assistance

3.7 As general trends suggest, we have also witnessed a decline in matrimonial green form work. As a corollary, children work is increasing. There has also been a decline in domestic violence applications.

4.0 Types of Case: their Cost, Duration and End Points
Findings from the Medium Detail Data Set

4.1 The sample of 650 files is used to analyse the costs, duration and end points of family cases.

4.2 Family cases are classified into 3 basic elements: children, money/property and domestic violence. These may be present in isolation or combination. The three elements can be subdivided into 11 issues. Children issues include residence, contact, prohibited steps, specific issue, parental responsibility orders and "other". Money/property issues include ancillary relief as periodical payments or lump sums to spouse or children, property disposal and split, and
other matters including pensions and debts. Domestic violence issues include undertakings, ouster or an injunction.

4.3 60% of all applicants were women, but 94% in domestic violence cases and 22% in children cases.

4.4 Both sides were legally aided in 78% of children only cases. In domestic violence only cases, 22% involved both parties having legal aid. In 55% of money only cases both parties were legally aided.

4.5 The majority of cases in the sample were concerned with a single issue (32% children only, 28% domestic violence only and 18% money only).

Cost

4.6 Green form work makes up 8% of total costs in this sample, with the average payment being £85. Cases involving all three types of issue were the most expensive, £1,800 on average. Money cases and those involving children and money, on average cost £1,400, as did children with domestic violence. Children only cases cost on average £1,200 as did money plus domestic violence cases. Domestic violence only cases cost, on average, £1,000.

4.7 Econometric modelling was carried out to investigate case cost prediction. Potential cost drivers were identified as presenting factors independent of the legal process, such as claimant and case details. There were also input factors, related to the legal process. Output factors include the case cost, the duration and the result. Family cases, as expected, proved difficult to model, and some of the factors which had been expected to be associated with higher costs such as change of solicitor, and multiple legal issues in a case, had no discernible effect. Costs are slightly lower when both sides are legally aided. Payment of contributions deflated final costs. But in children cases the strongest association with higher costs was a court appearance.

Cost and duration

4.8 Domestic violence cases appear to be “quick and cheap”, children cases such as contact are more expensive and take longer, while a property and money case is more expensive and takes longer still (see figure 4.11). Standard deviations, however, remain high.

4.9 First hearings appear to take place early on in a case, suggesting that these are in the main directions hearings. The average settlement takes place, in all but domestic violence cases, soon after the first hearing, i.e. settlement appears from this sample to occur within the framework of an application to the court, after directions but before a contested hearing.

4.10 Counsel is employed more often where domestic violence arises (in 35% of domestic violence only cases) compared with 26% of children only cases.
4.11 Expert reports are used most often in children cases (40%) but in only 1.6% of domestic violence and 13.4% of money only cases.

4.12 Settlement is most common among money only cases (50%) and almost never in domestic violence cases, but 21% of children cases. 80% of children cases reach court, compared with 45% of money only cases and 68% of domestic violence cases (this number may appear lower than expected and may be due to undertakings being given rather than orders being made).

4.13 Residence orders rarely resulted in a child being moved, but contact orders were rarely refused (6%). 14.5% of contact orders were supervised. This reflects high levels of conflict.

5.0 Cost-per-Stage Analysis
Findings from the High Detail Data Set

5.1 From detailed information collected from the sub-sample of 150 files, it is possible to link costs to the various stages in the pathway of a case.

5.2 The largest group of cases, 37 of the 119 from which full information was available, went to court more than once. The majority of these were children cases including contact or contact and residence. The second largest group were the ex parte injunctions (mainly domestic violence cases), comprising 20% of this sample. 13 cases had only one hearing, and these were mainly domestic violence cases. The next largest group were those where a consent order had been made (15% of this sample). 17 cases simply ‘fizzled out’.

5.3 The stages identified for analysis were: from first instruction to legal aid certificate (this accounted for 10% of the total cost); certificate to initial hearing (21%); first hearing to last hearing/consent order/settlement (40%); and last hearing to last work (29%). This analysis provides accurate start and end points.

5.4 An inflation-linked index was used to update all disbursements and counsel fees, and to allow comparability between different cases each case was recorded according to the number of minutes spent on each activity so that this could be translated into 1997 remuneration rates. The costs are itemised by whether they were incurred for attendance, drafting, perusing, reports, travel or waiting time, a hearing, correspondence, disbursements or counseled fees for each of the four stages (see figure 5.3).

5.5 This analysis allows the identification of cost per stage for five collapsed categories of case.

5.6 The average cost-per-stage profiles show that different case types appear to have common elements with regard to their internal cost structure. The patterns follow the structure that, in general, solicitors’ costs make up three quarters of
5.7 Counsel fees and disbursements both make up about 12% of total costs.

5.8 Different types of case have different cost-per-stage profiles. For example, ‘fizzler’ cases’ costs are concentrated in the early stages and the largest proportion of costs is spent on correspondence. In consent order cases, correspondence is the most important cost element with little spent on going to court. Ex parte cases and pre-certificate hearing cases incur higher disbursement costs on average than the other case types.

5.9 Two individual case profiles are presented in detail, a domestic violence ‘fizzler’ and a children ‘long runner’. The former shows the bulk of the costs being incurred early on in the history of the case, while the second shows a more steady development with peaks around hearing dates. Both cases, however, show periods of time during which the lawyer is inactive.

5.10 Qualitative analysis: the data from this level also yielded anecdotal information on a number of cases which is presented at the end of this chapter. For example, it seems that the children cases are legally straightforward but involve diverse groups of people in addition to the parents, some of whom have a number of health and social problems.

5.11 Alcohol and substance abuse feature in a number of the domestic violence cases. A number of cases including 4 of those involving domestic violence were resolved informally.

5.12 Variation in billing practices was observed, for example, some solicitors routinely used green form time for filling in the Legal Aid application and others did not.

6.0 Practitioners’ Views about Legally Aided Family Work
Findings from the Interviews

6.1 14 practitioners chosen to represent a range of locations and types of experience were interviewed about their firms, and the type of work carried out.

Work load

6.2 12 of the 14 said that divorce work made up 50-80% of their workload, with breakdown of unmarried relationships making up the next largest segment, and this group was thought to be increasing. Domestic violence was thought to make up 5-15% of the workload, but was thought to be legally aided more often than other types of work. Children only cases were thought to make up 25 to 50%. The different firms seemed to have quite different client bases, some
specialising in lower income, often younger clients. Movement in and out of legal aid by a client did happen, but was rare.

**Ideas about practice**

6.3 The majority saw their cases as comprising different elements, and some firms divided the cases between solicitors accordingly, for example, into financial and children aspects of a case.

6.4 Solicitors were asked whether they thought new issues arose during the course of a case, and half the group agreed that this happened fairly frequently. The question was posed as current LAB data records the issue at the beginning of the case only.

6.5 5 of the 14 practitioners screened regularly for domestic violence, 6 did not, and 3 asked indirectly.

6.6 11 of the 14 thought family cases took too long, but gave various reason for delay taking place, from tactics to the need to explain matters carefully to a confused client, and having to wait for other institutions such as banks and building societies as well as courts to take action.

6.7 When asked whether the duration of a case can be predicted at the beginning, 5 said yes, 5 no and 5 were unsure. The cost of a case was thought to be slightly harder to predict.

6.8 In general, the solicitors were willing to think about new ways of structuring their remuneration under the reforms to the legal aid scheme.

7.0 **Discussion: Legal Aid and the Family Justice System**

7.1 The findings are discussed and the processes involved in legally aided family cases are described as "compromising in the shadow of the court" rather than "bargaining in the shadow of the law".

7.2 On average, over 60% of the firms' fee income from family work carried out by those practitioners interviewed was from the Legal Aid fund. This illustrates the importance of legal aid funding in family cases in general.

7.3 At present, family law practitioners who do legal aid work are experiencing a number of important changes: demographic change (such as the declining divorce rate); legislative change (such as the Family Law Act 1996); and reform pilots (such as state funded family mediation and block contracting in other areas of legal aid advice and assistance work). The effects of these changes are discussed.
3. Family Cases: The Broad Picture

Findings from the Low Detail Data Set

(Source: 180,000 cases from the Legal Aid Board’s electronic data systems)

Introduction

This chapter presents findings from data stored by the Legal Aid Board’s electronic data systems. The data relate to all legally aided family cases recorded in the systems as having closed during the 12 month period 1996-7; the data set comprises 180,000 closed cases.\textsuperscript{1} The scale of the information is therefore unrivalled by the other data sets in the study. However, the limitation of this data source is that it lacks detail. The data therefore provide a powerful yet relatively blunt analysis tool. Standard techniques have been used to present and analyse the data in order to gain a better understanding of the current macro picture relating to family cases.

Information about family cases is recorded by case category depending upon whether they involve matrimonial, private law children or public law children issues. Matrimonial cases include all those cases involving divorce, judicial separation or nullity and all the issues which arise as part of those cases such as children, financial matters or domestic violence. Free-standing children cases fall within the Children Act 1989 and are divided into those which involve private law issues (such as contact with an absent parent) and public law issues (such as care proceedings). Though public law children cases are outside the scope of the empirical stages of this study, they have been included in this chapter and others, where appropriate, for comparison and completeness. Free-standing domestic violence cases also exist, mainly within the Domestic Violence and Matrimonial Proceedings Act 1976 (DVMPA).\textsuperscript{2} This categorisation system differs from that used later in this report as it is more difficult to measure accurately those cases which commence in one category but change to incorporate others and become more complex. Combined categories do exist however, and the following figures give a broad picture of the sorts of proportions of different case types.

When an applicant is granted legal aid, a legal aid certificate (certificate) is issued by the LAB. When the case has concluded a bill or claim (bill) for the work carried out on the case will be submitted to the LAB by the solicitor for

\textsuperscript{1} "Closed cases" refers to the concluded episode under a legal aid certificate, where the bill has been paid. This may not be the same as a "case" in the legal sense.

\textsuperscript{2} Some domestic violence cases come under non-matrimonial proceedings as assault and trespass cases, however, the introduction of Part IV of the Family Law Act 1996 affords greater protection for people who are not married but live together. Thus there is now wider access to protection from domestic violence under family proceedings and we may see an increase in numbers of cases.
payment. The richest source of information from the LAB's data systems for research purposes relates to certificates and bills as these are also the most important in operational terms. In many legal episodes there will be a single relevant certificate and single bill. However, it should be noted that in some cases there may be more than one certificate and/or bill.

This chapter will set out macro data describing the current distributions of family cases and is divided into 4 sections. First, summary statistics and case categories are developed. Second, case costs are examined. The third section looks at case duration and case result; and the final section briefly examines green form (advice and assistance) work which, at present, is recorded separately from fully certificated work by the LAB.

**Summary statistics and case category distribution.**

In 1996-7 Matrimonial and Family Proceedings cost the Legal Aid Board £392.6 million (32.3% of total net legal aid expenditure - the same as the year before.) This figure represents a £19 million (or 5.1%) increase on the previous year. There has been a steady decline in the number of acts of assistance paid for in matrimonial proceedings since 1993-4. This may be partly explained by changes in eligibility which have resulted in fewer applications.

Some general trends relating to procedure and changes in family law proceedings are worth noting as they go some way to explaining some of the important changes in family legal aid distributions witnessed over the last few years. For example, proceedings under the Children Act 1989 have progressively replaced proceedings that were previously classified as matrimonial or, in some specialised fields such as adoption, as non-matrimonial. In 1996-7, matrimonial applications for legal aid fell by 9.1% and Children Act applications increased by 2.3%. The majority of proceedings for residence and contact (the new terms used in the Children Act for custody and access), previously often classified as matrimonial proceedings, are now covered by Children Act certificates.

The biggest reduction in matrimonial certificates was in certificates issued for a combination of injunction and/or ancillary relief and/or residence and contact (which fell by 51.2%). Certificates for injunctions also decreased significantly (DVMPA certificates fell by 17%). The numbers of matrimonial certificates for residence and contact and for ancillary relief fell by 2.5% and 3.6% respectively.

Under Children Act proceedings, the largest growth was seen in the contact and residence and related proceedings category which increased by 21.7%

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3 For further details see Legal Aid Board Annual Reports (1996-97) p5.
4 Legal Aid Board Annual Reports (1996-97) p61.
partly from the transfer of what would previously have been "combined" matrimonial certificates.\(^5\) In the period 1996-7 128,488 matrimonial applications were received. 75% were granted legal aid, the remaining 25% were refused: 11.5% of these were refused on legal grounds, 6.6% were refused on financial grounds and 7.1% were abandoned, withdrawn or 'otherwise disposed of'. 103,945 Children Act (both public and private) applications were received and 85% were granted legal aid. 8.6% were refused on legal grounds, 2.4% on financial grounds and 3.6% abandoned, or withdrawn.\(^6\)

Figures 3.1, 3.2 and 3.3 below show the proportions of different types of family cases. Clearly, matrimonial cases make up the largest proportion of the three types of proceedings. In fact, they made up 60% of all family proceedings. Within matrimonial proceedings, ancillary relief is the most important category (comprising over half of all matrimonial cases) followed by DVMPA 1976 cases, combined and residence and contact cases. Private law free standing children cases made up 31% of the total number of cases, over 70% of which were contact and residence cases. Public law children cases made up 9% of all family cases with care and supervision proceedings making up over 90% of public children cases.

**Figure 3.1 Number of Matrimonial Certificated Cases by LAB Case Category 1996-7**

<table>
<thead>
<tr>
<th>Proceedings</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorce - Ancillary Relief Only</td>
<td>55092</td>
<td>49</td>
</tr>
<tr>
<td>DVMPA Only</td>
<td>18438</td>
<td>16</td>
</tr>
<tr>
<td>Divorce Combined</td>
<td>12846</td>
<td>11</td>
</tr>
<tr>
<td>Divorce - Contact and Residence</td>
<td>11977</td>
<td>11</td>
</tr>
<tr>
<td>Divorce - Injunction</td>
<td>7267</td>
<td>6</td>
</tr>
<tr>
<td>Divorce Defended</td>
<td>1391</td>
<td>1</td>
</tr>
<tr>
<td>Divorce - Other Matters</td>
<td>1171</td>
<td>1</td>
</tr>
<tr>
<td>Judicial Separation - Ancillary Relief</td>
<td>1006</td>
<td>1</td>
</tr>
<tr>
<td>Child Support Act</td>
<td>453</td>
<td>*</td>
</tr>
<tr>
<td>Matrimonial Causes - Miscellaneous</td>
<td>405</td>
<td>*</td>
</tr>
<tr>
<td>Matrimonial - Nullity</td>
<td>382</td>
<td>*</td>
</tr>
<tr>
<td>Judicial Separation Combined</td>
<td>352</td>
<td>*</td>
</tr>
<tr>
<td>Married Woman's Property Act</td>
<td>326</td>
<td>*</td>
</tr>
<tr>
<td>Judicial Separation - Injunction</td>
<td>260</td>
<td>*</td>
</tr>
<tr>
<td>DPMCA or DPMCA and Related Matters</td>
<td>250</td>
<td>*</td>
</tr>
<tr>
<td>Judicial Separation - Contact and Reside</td>
<td>136</td>
<td>*</td>
</tr>
<tr>
<td>Divorce Undefended</td>
<td>101</td>
<td>*</td>
</tr>
<tr>
<td>Judicial Separation Defended</td>
<td>50</td>
<td>*</td>
</tr>
<tr>
<td>Judicial Separation Other Matters</td>
<td>48</td>
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<td>Judicial Separation Undefended</td>
<td>24</td>
<td>*</td>
</tr>
<tr>
<td>All matrimonial</td>
<td>111975</td>
<td>100</td>
</tr>
</tbody>
</table>

* denotes <1%

\(^5\) Ibid p62.

\(^6\) See Annual Reports (1996-97) p63. It should be noted that most Public Law Children Act proceedings are neither means nor merits tested (598 cases were means tested only).
Interesting patterns emerge when looking at gender and legal aid. There are, for example, differences in the proportions of female applicants for different types of applications. For example, in 1996-97, 70% of applicants in divorce and judicial separation cases were female, 84% of applicants for injunctions were female, compared to 53% of applicants in Children Act proceedings. These patterns are partly a result of the socio-economic status of women, who are, in general, more likely to be eligible for legal aid, and partly a reflection of the social trends in family law. These trends suggest women are more likely to petition for divorce or judicial separation proceedings, whereas men are more likely to bring Children Act applications in relation, for example, to the residence of and contact with their children.

Cost

The following figures show the average costs associated with family cases. It is clear from these figures that in 1996-97, public law children cases were the most expensive (average total cost £3,973.) Matrimonial cases cost £1,765 on average and private law children cases cost £1,533 on average.

Perhaps the most important point to note from these figures is the magnitude of the standard deviations across all cases and across all cost components. The standard deviation measures the distribution of costs around the average. If average costs are examined in isolation the true nature of the distribution is not seen. In matrimonial cases, for example, the standard

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7 For further details see Legal Aid Board Annual Reports (1996-97) p108.
deviation from mean total costs in matrimonial cases is £2,581 where the average is only £1,765. This suggests a very wide distribution of case costs. Comparisons across the categories within "matrimonial cases" suggests that there may be just as much costs variation within case categories as there is between them. In short, it can be difficult to distinguish case categories on the basis of cost. When the data has been trimmed (very high costs cases removed), for example in figure 3.5, the standard deviations are reduced. However, although lower, the standard deviations in figure 3.5 still suggest very wide costs distributions.

**Figure 3.4 Mean and Standard Deviation Matrimonial Case Costs 1996-7**

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs £</th>
<th>Disbursements £</th>
<th>Counsel Fees £</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Std Dev</td>
<td>Mean</td>
<td>Std Dev</td>
</tr>
<tr>
<td>CSA</td>
<td>499</td>
<td>591</td>
<td>215</td>
<td>259</td>
</tr>
<tr>
<td>DPMCA</td>
<td>894</td>
<td>1849</td>
<td>124</td>
<td>536</td>
</tr>
<tr>
<td>DVMPA</td>
<td>851</td>
<td>1068</td>
<td>163</td>
<td>195</td>
</tr>
<tr>
<td>Divorce - Anc Relief</td>
<td>1417</td>
<td>1613</td>
<td>139</td>
<td>379</td>
</tr>
<tr>
<td>Divorce Combined</td>
<td>2122</td>
<td>2560</td>
<td>225</td>
<td>385</td>
</tr>
<tr>
<td>Divorce - Cont &amp; Res</td>
<td>1241</td>
<td>1574</td>
<td>123</td>
<td>294</td>
</tr>
<tr>
<td>Divorce - Injunction</td>
<td>1051</td>
<td>1405</td>
<td>164</td>
<td>225</td>
</tr>
<tr>
<td>Divorce - Other</td>
<td>1149</td>
<td>1776</td>
<td>139</td>
<td>318</td>
</tr>
<tr>
<td>Divorce Defended</td>
<td>1848</td>
<td>2147</td>
<td>177</td>
<td>325</td>
</tr>
<tr>
<td>Divorce UndeFended</td>
<td>1181</td>
<td>1869</td>
<td>133</td>
<td>287</td>
</tr>
<tr>
<td>JS Anc Relief</td>
<td>1605</td>
<td>1474</td>
<td>166</td>
<td>246</td>
</tr>
<tr>
<td>JS - Cont &amp; Residence</td>
<td>1357</td>
<td>1346</td>
<td>148</td>
<td>228</td>
</tr>
<tr>
<td>JS Injunction</td>
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<td>1625</td>
<td>189</td>
<td>291</td>
</tr>
<tr>
<td>JS Combined</td>
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<td>2752</td>
<td>206</td>
<td>249</td>
</tr>
<tr>
<td>JS Defended</td>
<td>2638</td>
<td>2873</td>
<td>200</td>
<td>236</td>
</tr>
<tr>
<td>JS &amp; Other Matters</td>
<td>1402</td>
<td>2094</td>
<td>221</td>
<td>594</td>
</tr>
<tr>
<td>JS Undefended</td>
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<td>1479</td>
<td>153</td>
<td>214</td>
</tr>
<tr>
<td>MWPMA</td>
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<td>2097</td>
<td>185</td>
<td>308</td>
</tr>
<tr>
<td>Nullity</td>
<td>875</td>
<td>1618</td>
<td>103</td>
<td>251</td>
</tr>
<tr>
<td>Mat causes Misc</td>
<td>1239</td>
<td>1505</td>
<td>178</td>
<td>348</td>
</tr>
<tr>
<td>All Matrimonial</td>
<td>1361</td>
<td>1712</td>
<td>155</td>
<td>336</td>
</tr>
</tbody>
</table>
Figure 3.5 Mean and Standard Deviation Matrimonial Case Costs 1996-7. (Trimmed for cases with total case cost over £10,000)

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs £</th>
<th>Disbursements</th>
<th>Counsel Fees</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Std Dev</td>
<td>Mean</td>
<td>Std Dev</td>
</tr>
<tr>
<td>CSA</td>
<td>484</td>
<td>503</td>
<td>214</td>
<td>257</td>
</tr>
<tr>
<td>DPMCA</td>
<td>769</td>
<td>873</td>
<td>91</td>
<td>201</td>
</tr>
<tr>
<td>DVMPA</td>
<td>803</td>
<td>828</td>
<td>158</td>
<td>172</td>
</tr>
<tr>
<td>Divorce - Anc Relief</td>
<td>1320</td>
<td>1161</td>
<td>120</td>
<td>194</td>
</tr>
<tr>
<td>Divorce Combined</td>
<td>1787</td>
<td>1517</td>
<td>185</td>
<td>226</td>
</tr>
<tr>
<td>Divorce - Cont &amp; Res</td>
<td>1131</td>
<td>1171</td>
<td>106</td>
<td>190</td>
</tr>
<tr>
<td>Divorce - Injunction</td>
<td>968</td>
<td>1081</td>
<td>154</td>
<td>183</td>
</tr>
<tr>
<td>Divorce - Other</td>
<td>998</td>
<td>1065</td>
<td>114</td>
<td>189</td>
</tr>
<tr>
<td>Divorce Defended</td>
<td>1584</td>
<td>1527</td>
<td>146</td>
<td>225</td>
</tr>
<tr>
<td>Divorce Undefended</td>
<td>1021</td>
<td>1496</td>
<td>114</td>
<td>204</td>
</tr>
<tr>
<td>JS Anc Relief</td>
<td>1536</td>
<td>1320</td>
<td>153</td>
<td>196</td>
</tr>
<tr>
<td>JS - Cont &amp; Residence</td>
<td>1357</td>
<td>1346</td>
<td>148</td>
<td>228</td>
</tr>
<tr>
<td>JS Injunction</td>
<td>1029</td>
<td>1041</td>
<td>163</td>
<td>168</td>
</tr>
<tr>
<td>JS Combined</td>
<td>1619</td>
<td>1531</td>
<td>190</td>
<td>218</td>
</tr>
<tr>
<td>JS Defended</td>
<td>2076</td>
<td>2168</td>
<td>171</td>
<td>220</td>
</tr>
<tr>
<td>JS &amp; Other Matters</td>
<td>1062</td>
<td>1159</td>
<td>132</td>
<td>181</td>
</tr>
<tr>
<td>JS Undefended</td>
<td>1497</td>
<td>1479</td>
<td>153</td>
<td>214</td>
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<td>MWPA</td>
<td>1473</td>
<td>1377</td>
<td>163</td>
<td>254</td>
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<tr>
<td>Nullity</td>
<td>775</td>
<td>858</td>
<td>92</td>
<td>161</td>
</tr>
<tr>
<td>Mat causes</td>
<td>1136</td>
<td>1192</td>
<td>154</td>
<td>221</td>
</tr>
<tr>
<td>Misc</td>
<td>1239</td>
<td>1196</td>
<td>136</td>
<td>196</td>
</tr>
</tbody>
</table>

CSA=Child Support Act 1991; DPMCA=Divorce Proceedings Matrimonial Causes Act; DVMPA=Domestic Violence and Matrimonial Proceedings Act 1976; Anc Relief=Ancillary Relief; Cont&Res=Contact and Residence; JS=Judicial Separation; MWPA=Married Women’s Property Act; Mat Causes=Matrimonial Causes Act; Misc=Miscellaneous.

Figures 3.4, 3.6 and 3.7 illustrate average total costs per case type, and average constituent costs: profit (or solicitors’ costs); disbursements and counsel fees. Though public children cases are the least common, they tend to be the most expensive on average. The nature of different types of case
means that they have different patterns of constituent costs. For example, on average, matrimonial proceedings have the lowest proportion of total costs spent on counsel fees (14%), whereas in public law children cases which are more likely to reach court and require the services of a barrister, counsel fees make up 22% of the total cost. Private children cases which are the cheapest of the three, on average, have the smallest proportion of costs spent on solicitors fees (73%). Despite these differences, it is clear that there is a similar distribution of case costs across the three categories. In general, approaching three-quarters of the total case cost (excluding any green form costs) is made up of solicitors' fees. On average, between 8-10% is spent on disbursements and between 14-22% is spent on counsels' fees.

**Figure 3.6 Mean and Standard Deviation in Private Law Children Act case costs 1996-7.**

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs £</th>
<th>Disbursements £</th>
<th>Counsel Fees £</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Std Dev</td>
<td>Mean</td>
<td>Std Dev</td>
</tr>
<tr>
<td>Combined</td>
<td>1604</td>
<td>2106</td>
<td>111</td>
<td>545</td>
</tr>
<tr>
<td>Contact &amp; Residence</td>
<td>1098</td>
<td>1466</td>
<td>113</td>
<td>304</td>
</tr>
<tr>
<td>DPMCA</td>
<td>894</td>
<td>1849</td>
<td>124</td>
<td>536</td>
</tr>
<tr>
<td>Financial Provision</td>
<td>946</td>
<td>1226</td>
<td>116</td>
<td>240</td>
</tr>
<tr>
<td>Other</td>
<td>1092</td>
<td>1541</td>
<td>106</td>
<td>387</td>
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<tr>
<td>Prohibited Step Order</td>
<td>1331</td>
<td>2228</td>
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<td>Specific Issue Order</td>
<td>1037</td>
<td>1420</td>
<td>123</td>
<td>280</td>
</tr>
<tr>
<td>All Private Law</td>
<td>1125</td>
<td>1544</td>
<td>119</td>
<td>340</td>
</tr>
</tbody>
</table>

**Figure 3.7 Mean and Standard Deviation Public Law Children Act case costs 1996-7.**

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs £</th>
<th>Disbursements £</th>
<th>Counsel Fees £</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Std Dev</td>
<td>Mean</td>
<td>Std Dev</td>
</tr>
<tr>
<td>Care and/or Supervision</td>
<td>2779</td>
<td>3518</td>
<td>409</td>
<td>940</td>
</tr>
<tr>
<td>Child Assess't Order</td>
<td>1602</td>
<td>2806</td>
<td>206</td>
<td>643</td>
</tr>
<tr>
<td>Emergency Protection Order</td>
<td>2245</td>
<td>3030</td>
<td>326</td>
<td>1009</td>
</tr>
<tr>
<td>Secure Accom</td>
<td>1393</td>
<td>1678</td>
<td>157</td>
<td>522</td>
</tr>
<tr>
<td>All Public Law</td>
<td>2702</td>
<td>3459</td>
<td>396</td>
<td>935</td>
</tr>
</tbody>
</table>
The distributions of total costs are interesting. For example, cases at the higher ends of the costs scale are relatively rare. The costs distribution of matrimonial proceedings shown in figure 3.8, is representative of all categories of matrimonial cases. The graph shows that the cases are concentrated towards the lower cost bands. A significant proportion of cases (over 25,000) fell within the £0-499 cost band and a further 27,500 fell between £500-999. Similar patterns are seen in the Children Act cost distributions below.

**Figure 3.8**

![Distribution of Total Case Costs in Matrimonial Cases 1996-7](image)

The distribution of total case costs for private law children cases shown in figure 3.9 is also very much skewed towards the low cost end of the graph suggesting that the majority of cases cost less than £1,500. There are a significant number of cases which are more expensive than £1,500. However, the distribution in private law children cases is more obviously skewed than, for example, the public law children cases. The public law children cases, though skewed, are more evenly distributed across the range of costs, for example over 1,000 cases cost more than £10,000 in 1996-7.

**Figure 3.9**

![Distribution of Total Case Costs in all Private Law Children Cases (n=58,200)](image)
Regional variations in case costs have previously been described by Sherr et al. For example, divorce case costs were examined and the following points were noted: London, Brighton and Reading (i.e. the South East) appear to have the highest gross costs, whereas cases in the North East appear to have consistently low costs across the categories.

Figure 3.11 below shows variations between selected regions. For example, just 16% of the London regions' cases fall within the £0-499 total case cost band, whereas the Newcastle area has 36% of cases in this low cost band. Brighton's costs distribution are remarkably similar to London's with the remaining areas resembling the Newcastle pattern. This cost distribution reinforces the assertion that a significant cost differential between Northern and Southern regions exists.

Not only does the North-South divide exist in terms of case cost, but also in the proportions of case types found in different areas. For example, figure 3.12 shows that there is marked regional variation in the types of cases
arising in each region. Domestic violence appears to make up a much lower proportion of the total cases in Newcastle in comparison with London (23% compared to 36%). There are also interesting regional differences in the numbers of contact and residence cases in different regions. Manchester and Newcastle appear to have almost twice as many of these types of cases as do London, Brighton or Leeds. These sorts of patterns will be of concern to Regional Legal Services Committees when considering funding priorities and local need.

**Figure 3.12 Regional variation in Family Case Categories (1996-7)**

<table>
<thead>
<tr>
<th>Legal Aid Area</th>
<th>n</th>
<th>All other family (%)</th>
<th>Domestic Violence (%)</th>
<th>Contact and Residence (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>London</td>
<td>12768</td>
<td>55</td>
<td>36</td>
<td>9</td>
</tr>
<tr>
<td>Brighton</td>
<td>7736</td>
<td>71</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>B’ham</td>
<td>7983</td>
<td>66</td>
<td>23</td>
<td>11</td>
</tr>
<tr>
<td>M’chester</td>
<td>8686</td>
<td>62</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>Leeds</td>
<td>10623</td>
<td>65</td>
<td>26</td>
<td>9</td>
</tr>
<tr>
<td>N’castle</td>
<td>6363</td>
<td>49</td>
<td>23</td>
<td>17</td>
</tr>
</tbody>
</table>

**Duration**

It is clear from the figures below that matrimonial cases take on average twice as long as Children Act cases. Of the more common case types, ancillary relief and combined divorce or judicial separation cases (involving residence and contact and/or domestic violence injunction/ and or ancillary relief) tend to be the lengthier cases, pushing the average up to over 2 years per case. In Children Act cases, however, the average case duration is 1 year. Injunctions and children cases within matrimonial proceedings, shown in figure 3.13 are much shorter than other case types, for example, with DVMPA cases taking less than one year on average to conclude.

**Figure 3.13 Average Duration of All Legally Aided Matrimonial Cases (96-7)**

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Average Case Duration (Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defended divorce or judicial separation</td>
<td>46.5</td>
</tr>
<tr>
<td>Undefended to be heard in open court</td>
<td>30.6</td>
</tr>
<tr>
<td>Injunction</td>
<td>18.5</td>
</tr>
<tr>
<td>Ancillary relief</td>
<td>30.8</td>
</tr>
<tr>
<td>Residence and contact</td>
<td>18.1</td>
</tr>
<tr>
<td>Combined-injunction, anc rel, res and contact</td>
<td>37.7</td>
</tr>
<tr>
<td>Nullity</td>
<td>23.2</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>25.4</td>
</tr>
<tr>
<td>DVMPA Married</td>
<td>11.4</td>
</tr>
<tr>
<td>DVMPA Unmarried</td>
<td>10.6</td>
</tr>
<tr>
<td>Married Women’s Property Act:</td>
<td>44.0</td>
</tr>
<tr>
<td>Child Support Act 1991</td>
<td>10.2</td>
</tr>
<tr>
<td>All Matrimonial</td>
<td>25.9</td>
</tr>
</tbody>
</table>
Table 3.14 Average Duration of All Children Act Cases (1996-7)

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Average Case Duration (Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Private</strong></td>
<td></td>
</tr>
<tr>
<td>Contact and residence</td>
<td>11.8</td>
</tr>
<tr>
<td>Prohibited steps order</td>
<td>12.3</td>
</tr>
<tr>
<td>Specific issue order</td>
<td>11.0</td>
</tr>
<tr>
<td>Combined private law proceedings</td>
<td>13.1</td>
</tr>
<tr>
<td>Financial provision</td>
<td>17.3</td>
</tr>
<tr>
<td>Other Children Act proceedings</td>
<td>12.0</td>
</tr>
<tr>
<td>D.P.M.C.A. and related proceedings</td>
<td>14.2</td>
</tr>
<tr>
<td><strong>Public</strong></td>
<td></td>
</tr>
<tr>
<td>Use of secure accommodation</td>
<td>6.9</td>
</tr>
<tr>
<td>Care and/or supervision order</td>
<td>12.2</td>
</tr>
<tr>
<td>Emergency protection order</td>
<td>11.1</td>
</tr>
<tr>
<td>Child assessment order</td>
<td>8.7</td>
</tr>
<tr>
<td><strong>All Children Act</strong></td>
<td>12.0</td>
</tr>
</tbody>
</table>

It should be borne in mind, however, when looking at these figures that the case duration is measured from the date a certificate is issued to the date the bill is paid, as these are the key dates stored by the LAB’s electronic data systems. These two dates may be misleading, as the date the certificate is issued may be some time after initial advice has been given by the solicitor, and the date a bill is paid may not be an accurate reflection of the end point of a case if, for example, any delay occurs in submitting the bill. Thus the duration figures below may not be accurate reflections of the true case length, but rather a measure between the key dates that the LAB is interested in for administrative purposes. The Case Profiling Study attempts to improve on the accuracy of these figures by measuring the elapsed time between the date of first instruction and the date of last work.

**Distribution of work between firms**

From figure 3.15, which shows the distribution of cases between firms in the areas of matrimonial and children (both public and private) law, it is clear that in the period 1996-7, there was a very large number of firms that conducted a relatively small number of family cases.

For example, less than 3% of the firms undertaking matrimonial, private law children or public law children work completed more than 100 cases in any of the three categories in the 12 month period. 40% of firms were conducting 5 or less matrimonial cases, 50% were conducting 5 or less private law children cases and 72% were conducting 5 or fewer public law children cases. Though the figures are not exclusive (firms may do some of each of the three categories), these represent low case through-put figures. As the private
children law example illustrates, over 1000 firms carried out just one private law case.

Figure 3.15 Distribution of Work by Type of Case

<table>
<thead>
<tr>
<th>No. of Cases Undertaken by Firm</th>
<th>Matrimonial Cases</th>
<th>Private Children Cases</th>
<th>Public Children Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Firms</td>
<td>% of Firms</td>
<td>No. of Firms</td>
</tr>
<tr>
<td>1</td>
<td>933</td>
<td>13</td>
<td>1064</td>
</tr>
<tr>
<td>2</td>
<td>635</td>
<td>9</td>
<td>787</td>
</tr>
<tr>
<td>3</td>
<td>532</td>
<td>7</td>
<td>611</td>
</tr>
<tr>
<td>4</td>
<td>470</td>
<td>6</td>
<td>447</td>
</tr>
<tr>
<td>5</td>
<td>379</td>
<td>5</td>
<td>406</td>
</tr>
<tr>
<td>6-10</td>
<td>1555</td>
<td>21</td>
<td>1252</td>
</tr>
<tr>
<td>11-20</td>
<td>1608</td>
<td>22</td>
<td>1109</td>
</tr>
<tr>
<td>21-25</td>
<td>429</td>
<td>6</td>
<td>306</td>
</tr>
<tr>
<td>26-50</td>
<td>706</td>
<td>9</td>
<td>507</td>
</tr>
<tr>
<td>50-100</td>
<td>197</td>
<td>3</td>
<td>117</td>
</tr>
<tr>
<td>101-150</td>
<td>9</td>
<td>*</td>
<td>11</td>
</tr>
<tr>
<td>151-200</td>
<td>1</td>
<td>*</td>
<td>3</td>
</tr>
<tr>
<td>200+</td>
<td>1</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>ALL</td>
<td>7455</td>
<td>100</td>
<td>6621</td>
</tr>
</tbody>
</table>

Note: * denotes <1%.

Result

Figure 3.16 below represents the results of two sets of cases which concluded during 1996-7. The descriptions are those which appeared on the forms which accompany the bill and were completed by the solicitor. Unfortunately, the result codes as they stand at present are limited (though improved ones have been developed with the LAB’s new information system) and therefore do not give a very good indication of the true nature of many case end points.

A large percentage of each of the two types of case in the figure below (which provide examples and not an exhaustive list of family cases) are recorded as: “otherwise disposed of”. For example, over 40% of Children Act cases (Magistrate court cases) are reported as having been “otherwise disposed of”. This means that the solicitor did not “win” the case (though the notion of “winning” family cases may misrepresent the reality of the situation) as she would have recorded “judgment in favour”, nor had it settled, nor did the solicitor “lose” the case. A certain proportion of cases are likely to end with no formal conclusion, for example if the client gives no further instructions to

8 It should also be noted that “firm” in the above figure actually relates to LAB account number, and therefore may overestimate the number of firms. A firm and a branch office of a firm may have different account numbers. If firms have merged the new firm may retain more than one account number.
the lawyer, if the client dies, or any number of other factors. However, it may be the case that the results as reported are not a particularly accurate reflection of the true nature of the end points of cases. The Case Profiling Study aims to address the issue of how cases end in a more detailed and accurate way (see Chapter 4).

Legal aid is often described as a “loan” and not a “gift”. This is because if applicants’ financial means are over a certain limit, they are required to pay monthly contributions towards the cost of their case, or a charge may be placed over assets or property recovered during a case. This may be payable at some date in the future (for example when the matrimonial home is sold). In matrimonial cases, the LAB Annual Report states that there has been an increase in the statutory charge being applied: from three-fifths of cases in 1985-86 to four-fifths in 1995-6. In closed matrimonial cases, the total amount retained from statutory charges in 1996-97 was £46,154,375. This amounts to £2,157 per case on average.\(^\text{10}\)

\[\text{Table 3.16 Reported Results in Family Cases}\]

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Judgment in favour plus costs</th>
<th>Judgment in favour no costs</th>
<th>Settled</th>
<th>Judgment against</th>
<th>Otherwise disposed of</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matrimonial</td>
<td>23.3</td>
<td>14.3</td>
<td>26.4</td>
<td>2.4</td>
<td>33.7</td>
<td>122,859</td>
</tr>
<tr>
<td>Children Act</td>
<td>0.1</td>
<td>7.5</td>
<td>47.8</td>
<td>2.7</td>
<td>41.9</td>
<td>45,637</td>
</tr>
</tbody>
</table>

*The Advice and Assistance / Green Form Scheme*

Green form or advice and assistance represents the first tier of legal advice supported by the LAB. Subject to a limit on costs, under the green form scheme a solicitor can advise on the application of the legal framework to her client’s problem and as to any step that the client might appropriately take, such as bringing or defending proceedings, making an agreement, seeking full legal aid etc. The solicitor can advise on next steps for the client to take, enter into correspondence on the client’s behalf, negotiate for the client, or draft documents for the client.\(^\text{11}\)

The green form scheme has assumed particular importance in relation to undefended divorce and judicial separation. Since 1977, full legal aid is no longer available for divorce and judicial separation decree proceedings, save for exceptional circumstances.

\(^{10}\) Legal Aid Board Annual Reports (1996-97) p65.

The solicitor can, at present, normally incur up to £86.50 costs (2 hour's work) and disbursements exclusive of VAT. However, this is extended to £129.75 (3 hours work) where the solicitor is instructed by a petitioner in a divorce or judicial separation case.

In general, one application form will relate to the whole proceedings i.e. decree proceedings and all ancillary proceedings including Child Support issues will be treated as one matter.\textsuperscript{12}

Extensions to these limits may be granted by the Area Office or by the solicitor under their devolved powers (part of the franchising scheme). An extension simply enables the solicitor to incur greater than normal costs whilst remaining within the scope of the ordinary green form scheme. If representation is required, or much further work is required, the solicitor applies for a full certificate.\textsuperscript{13}

In 1996-7 the total number of acts of advice and assistance (green form) for matrimonial and family proceedings was 582,000 (17% of all green form work). There has, however, been a steady decline in the number of acts of advice and assistance paid for in matrimonial and family proceedings since 1993-4 (when the figure was 719,000). This may reflect the general pattern of decline in the divorce rate over the last few years. Judicial Statistics show that the number of divorce petitions filed has dropped from 192,000 in 1990 to 178,000 in 1996.

\textit{Figure 3.17 Number of Divorce Petitions 1990-6}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Petitions Filed (000s)</td>
<td>192</td>
<td>179</td>
<td>189</td>
<td>184</td>
<td>176</td>
<td>174</td>
<td>178</td>
</tr>
</tbody>
</table>

(Figures from Judicial Statistics 1996 p55 (figures rounded)).

Though 1996 saw a 2% increase in the number of petitions, figure 3.17 shows that there has been an overall gradual decline. There was also a drop in the number of petitions filed for separation. In 1996, applications for domestic violence injunctions fell by 9%. Children Act applications in public law fell by 6% but the number of contact and residence orders in private law proceedings rose by 12% and 8% respectively.\textsuperscript{14}

Though Judicial Statistics refer to legally aided and publicly funded cases, it is clear that by their very nature, domestic violence and Children Act public law cases are more likely to be legally aided than others. These have both seen

\textsuperscript{12} Legal Aid Handbook 1997/98 p24 para 2-19.
\textsuperscript{13} The assistance by way of representation (ABWOR) scheme may also be invoked, though the use of this scheme is of secondary importance to fully certificated work.
\textsuperscript{14} Judicial Statistics 1996 p47.
a fall in total numbers. We might expect, however, an increase in the applications for legal aid in domestic violence issues following the implementation of Part IV of the Family Law Act 1996 in October 1997, which allows a wider group of people access to the protection offered by the legislation.

If green form work for family matters is divided into two categories: (i) matrimonial and (ii) family (child support assessment and other), the work carried out under green form over the past few years would appear to support the trends outlined above: that there has been a general decline in the number of divorce petitions but an increase in the number of children related and other family matters. The reasons for this mirror those mentioned in the certificated case section above: previously children issues would be included within the matrimonial category, but since the implementation of the Children Act 1989 there has been an increase in the number of free-standing children applications which appear in the “other” category.

Figure 3.18 Green Form Bills Paid 1990-7

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Matrimonial</td>
<td>215,895</td>
<td>231,065</td>
<td>236,402</td>
<td>235,642</td>
<td>165,906</td>
<td>152,054</td>
</tr>
<tr>
<td>Family - Other</td>
<td>183,655</td>
<td>204,584</td>
<td>236,837</td>
<td>260,394</td>
<td>234,564</td>
<td>238,842</td>
</tr>
</tbody>
</table>

Figures are from Legal Aid Board Annual Reports 1990-91 to 1996-97. The figures are not available in this form from the Annual Report for 1994-95.

The trend can be seen even more clearly graphically:

Figure 3.19
It should be noted there is a lag time associated with the introduction of any new legislation. For example, we can now expect to see the effects of the Children Act 1989 and the Child Support Act 1991 which may account for the increasing number of green forms in the "family other" category.

Although there is considerable overlap between the cases that receive full legal aid and those involving green form, the authors of a criminal green form study estimate that well over half of all criminal legal aid orders granted to the firms in the sample did not involve prior advice under green form.\(^\text{15}\) This suggests that there may also be differences in the way in which different firms or different individuals work: some preferring to include green form in a routine way, and others preferring to move straight to full legal aid. There may also be patterns in green form use which relate to case category, though this is difficult to ascertain due to the nature of the Board’s present data systems.

\*
\*
\*
\*

In summary, there has been a general decline in the number of matrimonial full civil legal aid certificates as divorce rates begin to level off. This decline has been balanced by an increase in Children Act applications. Though matrimonial certificates make up 50\% of cases, it is clear that children applications under the Children Act 1989 are becoming increasingly important.

We have also witnessed a decline in domestic violence applications, however, this trend may change once we see the full implications of part IV of the Family Law Act 1996.

Matrimonial cases are the longest type of family case, taking two years on average to complete. Both Public and Private Children Act take half as long as matrimonial cases to conclude though Public children cases appear to be the most expensive on average, followed by matrimonial and, lastly, private children applications.

These figures and general trends inform the empirical stages of the Case Profiling Study.

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4. Types of Case: their Cost, Duration and End Points

Findings from the Medium Detail Data Set

(Source: 650 Cases from Solicitors' Files)

Introduction

Matrimonial and family proceedings made up almost a third of all Legal Aid expenditure for the financial year 1996-7 (£392.6 million).\(^1\) Legally aided family cases therefore make up a large part of the Legal Aid Board's (LAB's) business. Sir Peter Middleton's review of proposed reforms for the Legal Aid Scheme carried out for the Lord Chancellor, and the Family Law Act 1996, both suggest that the area of publicly funded legal services for family cases merits greater attention.

Proposals for Legal Aid reform set out in the White Paper "Striking the Balance - the Future of Legal Aid in England and Wales" (Cm 3305) by the last government included a shift in the mode of remuneration for solicitor's legal aid work. The new system of contracting would mean that lawyers would no longer all be paid on an individual case (fee-for-service) basis, but for blocks of cases or blocks of time. Contracting has already been introduced in a pilot scheme for advice agencies, which are partly funded by the LAB.

This chapter aims to initiate the examination of state funded family cases against a backdrop of possible reform. As the LAB noted in its response to the government's consultation paper "a considerable amount of preliminary work must be done." Part of this preliminary work has been undertaken by the LAB Research Unit and concerns legally aided family cases: their nature, process, duration, cost and outcome.

In the area of family law in general, there is a rich and varied research literature from many jurisdictions. For example, Sarat and Felstiner\(^2\) have examined the relationship between the lawyer and the client. Mather et al.\(^3\) examined lawyers perceptions of their cases and clients. Ingleby\(^4\) has looked at divorce files over time, and Davis et al.\(^5\) and Griffiths\(^6\) have interviewed couples, lawyers and other

\(^1\) Legal Aid Board Annual Reports (1996-97) p2.
parties. This study is the first to examine publicly funded family cases in detail, attempting a comprehensive classification of the cases, and also introducing the notion of measuring and analysing lawyer activity in those cases.

Classifying family cases

Many studies of family cases have included divorce cases only. In this analysis, whether the case involved a divorce or separation of cohabitees or not, is secondary to the combination of issues that arose in that case. The complex nature of many family cases makes them intrinsically difficult to classify as they can involve a number of different elements and follow various paths. Matrimonial cases may be divided into 3 basic elements:

- children
- money / property
- domestic violence

These elements may be present in family cases in isolation or in combination. The elements can be subdivided into the following 11 issues which may arise:

Children Issues
- Children - residence
- Children - contact
- Children Act s8 prohibited steps order
- Children Act s8 specific issue order
- Parental responsibility order
- Children other

Money/Property Issues
- Ancillary relief - periodical payments/lump sum to child(ren)
- Ancillary relief - periodical payments/lump sum to spouse
- Property disposal/split
- Other finance (pensions/debts etc.)

Domestic Violence Issues
- Domestic violence ouster or injunction

These case categories allow family cases to be defined more accurately than current LAB case codes. Previous empirical work in this area has tended to concentrate on a relatively small number of cases of a similar type. For example, Sarat and Felstiner\(^6\) looked at divorce cases involving disputes over money and


\(^7\) The Children Act 1989 replaced the terms 'custody' and 'access' with 'residence' and 'contact.'

\(^8\) Ancillary relief equates with maintenance. Periodical payments for children may now be calculated by the Child Support Agency using a formula. It should also be noted that there is no notion of community property in the U.K. and no rules to govern division of property though the LCD have recently proposed a 50:50 split.

\(^9\) Supra n 2.
property but not where there were issues relating to children. Some research has examined a wider range of issues but this has tended to restrict the sample size.\textsuperscript{10}

The LAB's databases only allow issues arising at the start of the case to be recorded. The method used in this study allows all issues relevant to the case to be recorded. Party details, case duration, result and case cost details were all recorded for each file.

\textit{The Sample}

Completion of questionnaires from solicitors' files by franchise auditors\textsuperscript{11} and researchers has resulted in the largest sample of legally aided family cases ever collected at such a high level of detail. The sample comprises 650 cases. 150 cases were collected by the researchers and 574 by franchise auditors.\textsuperscript{12} Those collected by auditors were selected using randomly generated lists for auditing processes. Those collected by the researchers were randomly chosen from a selection of files presented by solicitors. These files, requested to be made available prior to the research visit, were those most recently completed cases by the firm (often those waiting to be archived). Of those collected by auditors, 69 booklets could not be included in the full analysis because they related to green form (advice and assistance) cases only and an additional 5 booklets could not be included in the sample because they were incomplete.

The 650 solicitors' files were selected from over 200 firms from all over England and Wales. A subset (150 cases) of this sample which includes details of individual work elements such as correspondence and disbursements is described in chapter 5. The sample includes family cases relating to divorce, separation, children issues, the financial aspects of divorce and separation and domestic violence.

The cases examined at this level of the Case Profiling Study may be described as "ordinary" or "run-of-the-mill" as they are characterised by being cheap (under £5000 in legal aid costs) and short (concluding in under 5 years). All the cases in the sample were concluded between 1990 and 1996 and involved a full legal aid certificate (i.e. no case was included where the lawyer's input has been limited to advice and assistance only).

\textsuperscript{10}See for example the 60 cases studied by Ingleby in "Solicitors and Divorce" (1992) OUP.
\textsuperscript{11}The LAB's franchising scheme was set up in 1994. To obtain a franchise in a particular area of law, auditors check a certain number of files from a firm against creation transaction criteria. 82\% of the firms in this sample had a franchise in family law, and the remaining 18\% had applied for one.
\textsuperscript{12}The return rate of questionnaires by the franchise auditors was good. Each of the 13 legal aid area offices was asked to collect information relating to 65 matrimonial/family files. Some areas expected to be able to reach this target, 2 even managed to complete more than 65. Other areas, however, had difficulties in collecting the required number due to a number of factors: time constraints; personnel constraints; some areas with large rural populations simply did not have enough audits arranged to collect the information and others had the problem that firms were not applying/did not have a franchise in the family category.
Much of the following analysis of the sample is based on a breakdown of the dataset into 7 categories: children only; money/property only; domestic violence only; children plus money/property; children plus domestic violence; money/property plus domestic violence and children plus money/property plus domestic violence. This allows for single issue cases to be looked at separately from cases where more than one type of issue arises. Where known, over half the cases (55%) involved divorce (including matters other than just the decree); very few involved judicial separation (3%) and 42% involved breakdown of a relationship.

Figure 4.1a below shows that over 60% of the sample population are female applicants. If domestic violence cases are looked at separately (Figure 4.1b), over 94% of the sample are female applicants. There are no male applicants and no female respondents. This is due to the general gender-specific nature of the domestic violence cases which reach solicitors. Male victims of domestic violence are underrepresented in surveys in general. However, it is interesting to note that there is not a single case of a male applicant in this sample. By contrast, figure 4.1c illustrates that in 'children only' cases, the distribution between the sexes is very different as men are often the ones making applications (35% of the sample).

*Figure 4.1a. The Gender of Legally Aided Parties by Applicant (in legal proceedings) or Respondent: In All Cases*

<table>
<thead>
<tr>
<th>Frequency %</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>380</td>
<td>88</td>
<td>468</td>
</tr>
<tr>
<td></td>
<td>61</td>
<td>14</td>
<td>75</td>
</tr>
<tr>
<td>Respondent</td>
<td>96</td>
<td>62</td>
<td>158</td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td>476</td>
<td>150</td>
<td>626</td>
</tr>
<tr>
<td></td>
<td>76</td>
<td>24</td>
<td>100</td>
</tr>
</tbody>
</table>

n=626

*Figure 4.1b. The Gender of Legally Aided Parties by Applicant (in legal proceedings) or Respondent: In Domestic Violence Only Cases*

<table>
<thead>
<tr>
<th>Frequency %</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>169</td>
<td>0</td>
<td>169</td>
</tr>
<tr>
<td></td>
<td>94</td>
<td>0</td>
<td>94</td>
</tr>
<tr>
<td>Respondent</td>
<td>0</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>169</td>
<td>10</td>
<td>179</td>
</tr>
<tr>
<td></td>
<td>94</td>
<td>6</td>
<td>100</td>
</tr>
</tbody>
</table>

n=179
Figure 4.1c. The Gender of Legally Aided Parties by Applicant (in legal proceedings) or Respondent: In Children Only Cases

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>44</td>
<td>70</td>
<td>114</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>35</td>
<td>100</td>
</tr>
<tr>
<td>Respondent</td>
<td>67</td>
<td>18</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td>34</td>
<td>9</td>
<td>43</td>
</tr>
<tr>
<td>Total</td>
<td>111</td>
<td>88</td>
<td>199</td>
</tr>
<tr>
<td></td>
<td>56</td>
<td>44</td>
<td>100</td>
</tr>
</tbody>
</table>

n=178

Figure 4.2 below illustrates how in some kinds of cases it was more usual than in others for both sides to be legally aided. For example, in almost 80% of 'children only' cases both parties had been granted legal aid. Domestic violence cases show a much smaller proportion as the other side is often not represented and may not even be aware that the legally aided party has been to court until an order has been served on them. Though these two examples can be located at the endpoints on a continuum, just over half of the sample cases involved both parties having legal aid.

How far outside the eligibility criteria the other party fell cannot be determined from this study, nor whether they then decided to seek legal assistance or representation, nor how many decided to represent themselves. It would also be interesting to know how many of those who were legally aided moved in and out of legal aid eligibility as their circumstances changed over the (sometimes very lengthy) duration of a case. These questions were outside the scope of this study. 13

Figure 4.2 Percentage of Cases Where Both Sides Legally Aided

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Other Side Legally Aided (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>79.9</td>
</tr>
<tr>
<td>Domestic violence only</td>
<td>21.1</td>
</tr>
<tr>
<td>Money only</td>
<td>54.9</td>
</tr>
<tr>
<td>Children and money</td>
<td>61.9</td>
</tr>
<tr>
<td>Children and domestic violence</td>
<td>38.0</td>
</tr>
<tr>
<td>Money and domestic violence</td>
<td>31.8</td>
</tr>
<tr>
<td>Children and money and domestic</td>
<td>54.5</td>
</tr>
<tr>
<td>All cases</td>
<td>53.0</td>
</tr>
</tbody>
</table>

The following figure shows the distribution of case types within the sample. In this sample of "run-of-the-mill" cases, the majority appear to be single issue cases.

13 Forthcoming work by the Legal Aid Board Research Unit investigates eligibility profiles of the legally aided litigants themselves, "Assessing Means Assessment", ongoing.
It is possible to check that the sample is representative of the total population of legally aided family cases. As the profiling data is categorised in a different way from the LAB’s annual statistics, the categories have been collapsed to allow for comparison. As figure 4.4 illustrates all 3 case types fall within plus or minus 10% of the published national figures. It appears, however, that there has been a slight undersampling of children cases and an over-sampling of domestic violence cases.14

The marginal oversampling of domestic violence cases was also found in a study carried out for the Lord Chancellor’s Department on civil standard fees. Lord Chancellor’s Department, (1996) “Survey of Civil Legal Bills.” The reason for this may be bias in the sampling frame. The files chosen to be audited by franchise auditors are picked at random from a centrally produced list of closed files. Extra files are requested from the solicitor to be produced when they visit to ensure there are enough auditable files. The nature of domestic violence cases means that they are conducive to the auditing process; they are short concluded episodes, the law is straightforward, and so solicitors are also more likely to be happy for them to be seen and they take less time to audit. Undersampling of longer, more difficult children files may also be due to similar time constraints.

---

14 The marginal oversampling of domestic violence cases was also found in a study carried out for the Lord Chancellor’s Department on civil standard fees. Lord Chancellor’s Department, (1996) “Survey of Civil Legal Bills.” The reason for this may be bias in the sampling frame. The files chosen to be audited by franchise auditors are picked at random from a centrally produced list of closed files. Extra files are requested from the solicitor to be produced when they visit to ensure there are enough auditable files. The nature of domestic violence cases means that they are conducive to the auditing process; they are short concluded episodes, the law is straightforward, and so solicitors are also more likely to be happy for them to be seen and they take less time to audit. Undersampling of longer, more difficult children files may also be due to similar time constraints.

15 See Legal Aid Board Annual Reports (1995-6) p61-63.
Cost

The figures below give a picture of cost distribution between and within cases. Figure 4.5 below illustrates the cost differentials between cases which we might expect to be cheaper than others, such as domestic violence only cases, (average total cost £908.36) and those which are more expensive, such as those cases which involve all issues: domestic violence, children and money and property (average cost £1650.91). It is interesting to note that where children issues are in isolation they appear to be at the cheaper end of the scale, but where other issues arise in conjunction with children issues the case costs rise quite dramatically. Although the total range of costs appears to be quite narrow, the expensive outliers have been trimmed, and standard deviations are high. This suggests that the range of cost profiles might be as different within a case type as between different case types.

Figure 4.5

![Average Total Costs for Case Types](chart)

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Average Cost £</th>
</tr>
</thead>
<tbody>
<tr>
<td>c-m-dv</td>
<td>2000</td>
</tr>
<tr>
<td>E</td>
<td>1800</td>
</tr>
<tr>
<td>c</td>
<td>1600</td>
</tr>
<tr>
<td>c-dv</td>
<td>1400</td>
</tr>
<tr>
<td>O</td>
<td>1200</td>
</tr>
<tr>
<td>m-dv</td>
<td>1000</td>
</tr>
<tr>
<td>dv</td>
<td>800</td>
</tr>
</tbody>
</table>

Note: c = children, m = money/property, dv = domestic violence

Figure 4.6 below suggests that the proportion of the constituent work types making up the total case cost are fairly uniform across different categories. However, there are some interesting differences. The use of green form (advice and assistance work carried out separately) in ‘money and children’ and in ‘money and domestic violence’ cases is higher than in other types of case. This could be because these tend to include the divorce itself, which can take 3 hours of green form work, followed by ancillary matters which will be carried out under the full certificate. This could also be the reason for the low levels of green form work in ‘children plus domestic violence’ cases where the divorce proceedings may have already occurred resulting in less green form work.

For the purposes of analysis the top 1% by cost have been trimmed.
Short cases which 'fizzle out' may mask some of the results presented in figure 4.6. This may have the effect of increasing the proportions of solicitor's own costs and minimising the other constituent costs of a case. This is more fully explored in Chapter 5.

Figure 4.6 Proportions (%) of Cost Components By Case Type.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitor</td>
<td>75</td>
<td>81</td>
<td>66</td>
<td>84</td>
<td>75</td>
<td>74</td>
<td>80</td>
<td>75</td>
</tr>
<tr>
<td>Disbursements</td>
<td>6</td>
<td>6</td>
<td>16</td>
<td>3</td>
<td>11</td>
<td>7</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>Counsel Fees</td>
<td>11</td>
<td>5</td>
<td>11</td>
<td>3</td>
<td>9</td>
<td>9</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Initial Advice *</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Total Cost</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>n</td>
<td>207</td>
<td>119</td>
<td>182</td>
<td>55</td>
<td>52</td>
<td>18</td>
<td>12</td>
<td>645</td>
</tr>
</tbody>
</table>

* Initial Advice under the Green Form Scheme.

The highest level of disbursements as a proportion of the total cost is found in domestic violence cases. This may be due to the nature of domestic violence injunctions where often the first hearing is ex parte, an order is made and then served on the other side. Service is usually issued by enquiry agents, and it can take several attempts before service is effected. The costs of the enquiry agents push up disbursements costs. As solicitor costs are lower in these cases, disbursements make up a more significant proportion of total costs.

In the sample as a whole, green form costs make up 8% of total case costs. Prior to this study it has not been possible to produce this figure. This is the first time green form costs have been linked to the total case costs. 8% represents a significant proportion which may be useful to policy makers in informing the area of overlap between contracts for advice and assistance work and possible contracts for civil work in general. green form costs are, by the very nature of the green form scheme, usually low. A solicitor can normally incur up to two hours worth of costs (£86.50 plus disbursements at current remuneration levels). However, where the solicitor is instructed by a petitioner in a divorce or judicial separation case this limit is increased to three hours advice and assistance (or £129.75 plus disbursements at current levels). It is likely therefore that family cases have higher proportions of advice and assistance work than other civil categories.

The proportions of payment under the separate headings in an average case from this sample are as follows: 75% for profit costs and the remaining 25% split evenly between disbursements, counsel fees and green form costs. Dividing the costs up in this way emphasises how important profit costs are in determining overall case costs. Profit costs are paid to the solicitor for work carried out under a legal aid certificate. This can include interviewing the client, drafting documents, writing letters, making telephone calls, attending hearings, and travelling and waiting.
Figure 4.7 shows the average costs for matrimonial bills for County court work in matrimonial cases submitted to the LAB compared with the average costs from the Profiling study. The Profiling sample cases are significantly cheaper than the whole population in terms of costs as they are limited to less than £5,000 and less than 5 years duration. Thus, though the sample is skewed towards the cheaper, shorter end of the distribution, the sample nevertheless fits within the broader population.

![Figure 4.7 Average Costs for Matrimonial Bills in the County Court](image)

The findings from the Case Profiling Study suggest that average green form costs for the profiling sample are £84.84, making the average total cost for matrimonial cases (including Advice By Way Of Representation (ABWOR) average costs of £10 ) £1,131.50. This figure is lower than the LAB's average figures. There are several reasons for this. First, although the majority of cases (85%) from the Profiling sample included in the figure above are from the County court, 14% actually took place in the magistrates or family proceedings court (which on average are cheaper). Second, as time is limited for auditors, it is likely that there is a bias towards shorter, simpler cases in the sample. Third, a high incidence of cases which 'fizzle out' push the average cost down.

**Econometric Modelling : Predicting Costs**

Part of the Case Profiling Study included a modelling exercise to investigate case cost prediction. Figure 8 sets out the sort of factors which it was hypothesised might be potential cost drivers. It also sets out their principal paths of influence.

Towards the left appear the solicitor, client and factual case details. These, along with corresponding details relating to the other party, we might collectively term *presenting* factors. Presenting factors are independent of the legal process. They are (at least individually) relatively immune from manipulation.

---

17 It should be noted that the LAB figures are based on the "one bill per case" convention, although in a minority of cases more than one main bill may have existed. See LAB Annual Report (1995-6) p54 para 1.14.

18 See, for example, difference in Children Act proceedings average cost for a County court case = £2,172 and for a Magistrates Court = £1,891 - LAB Annual Report (1995-6) p68.
They could, theoretically, all be determined at the time of first instruction of a solicitor.

**Figure 4.8**

![Diagram](image)

In the centre are found those groups of case specific factors which are dictated by the stakeholders to the legal process themselves. We might term these *input* factors. For example, a client's solicitor will impress a legal analysis upon a set of presenting factors and conduct the case accordingly in a particular way. Experts such as accountants or court welfare officers may be called upon to participate, *formal* legal processes such as making an application to the court may come into play and, of course, once an application is made the other side and their solicitor will react and also have an input into the process.

To the right of the diagram appear case results, which can be broken down into *output* factors. These include such matters as the nature of settlements and orders.

Multiple regressions were performed on specific data elements using the econometrics software package LIMDEP\(^\text{19}\). This type of economic modelling produces an R\(^2\) value, which is adjusted for the number of degrees of freedom in the model.\(^\text{20}\) LIMDEP also produces t-ratios, which if over 1.96 indicate

\(^{19}\) The researchers would like to acknowledge the work carried out by Roger Bowles, Director of Fiscal Studies, University of Bath, on this project.

\(^{20}\) The number of degrees of freedom is the same as the number of observations in the model minus the number of explanatory variables. For example, if there are 180 records or observations in the model and 20 variables which are being tested, the number of degrees of freedom is 160.
significance at the 5% level (i.e. we can be 95% sure of the relationship), and if over 2.58 at the 1% level (i.e. we can be 99% sure).\textsuperscript{21}

The object of the modelling exercise was to identify significant cost drivers. We were particularly interested in identifying those presenting factors such as client characteristics: age, gender and whether legal aid contributions were payable affected costs.

*Figure 4.9 Variables used in Model*

<table>
<thead>
<tr>
<th>Variables Used in Econometric Modelling Exercise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal case category</td>
</tr>
<tr>
<td>Venue (court)</td>
</tr>
<tr>
<td>Number of changes of solicitor</td>
</tr>
<tr>
<td>Client age</td>
</tr>
<tr>
<td>Client gender</td>
</tr>
<tr>
<td>Whether LA contributions were paid</td>
</tr>
<tr>
<td>Whether other party legally aided</td>
</tr>
<tr>
<td>Geographical region</td>
</tr>
<tr>
<td>Whether client applicant or respondent</td>
</tr>
<tr>
<td>Number of green form extensions</td>
</tr>
<tr>
<td>Whether emergency LA certificate applied for</td>
</tr>
<tr>
<td>Whether client suffered health problems</td>
</tr>
<tr>
<td>Whether client had communication problems</td>
</tr>
<tr>
<td>Number of children involved</td>
</tr>
<tr>
<td>Age of children involved</td>
</tr>
<tr>
<td>Whether mediation was used</td>
</tr>
<tr>
<td>Whether the case concluded at a court hearing</td>
</tr>
<tr>
<td>Level of contact agreed/ordered</td>
</tr>
</tbody>
</table>

The variables listed above were included in the modelling exercise. The total number of variables for which data was available was higher, but for a number of reasons it was felt they should not all be included. For example, some of the variables were measures of *outputs*, and thus of little predictive utility. Some variables were incomplete or of limited applicability and some were too similar in character and were not used in order to avoid introducing multiple collinearity. Only those data elements which were regarded as potential cost drivers were included.

As expected, family cases proved to be very difficult to model. The cost drivers which did emerge tended to be located towards the *output* end of the model illustrated in Figure 4.8 above. For example, the most significant cost driver was a conclusion in court.\textsuperscript{22} Such a case factor is, of course, perilously close to being an *outcome* and is of limited predictive utility.

Surprisingly, some of the elements thought most likely to produce significant results did not. For example, the number of legal issues identified at the outset of a family case did not seem to have an effect on costs. That it did not make

\textsuperscript{21} These levels of significance may only be applied where the sample of cases in question is larger than 50.

\textsuperscript{22} t=2.31, coefficient=292.95.
any difference whether one or three issues arose suggests that the conduct of family cases is perhaps influenced to a greater extent by the personalities of the parties and their solicitors than by neat legal descriptions of their cases. Of course, it should be noted that legal issues can often change, multiply or reduce during the passage of a family case. A legal characterisation at the outset of a case will not necessarily be accurate at its conclusion.

Further examples included our finding that no cost driving effect, up or down, stemmed from the number of changes of solicitor, whether or not the solicitor advised the client to settle, or whether mediation was used. The following figure provides an example of how few cost drivers (shown in bold type) were found in ‘children only’ cases.

*Figure 4.10 LIMDEP Multiple Regression Analysis Results - Children Only Cases*

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
<th>t-ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>741.56</td>
<td>169.05</td>
<td>4.39</td>
</tr>
<tr>
<td>Category</td>
<td>-113.96</td>
<td>139.31</td>
<td>-0.82</td>
</tr>
<tr>
<td>Gender</td>
<td>-2.14</td>
<td>0.95</td>
<td>-2.26</td>
</tr>
<tr>
<td>Health</td>
<td>0.12</td>
<td>0.51</td>
<td>0.22</td>
</tr>
<tr>
<td>Communication</td>
<td>0.52</td>
<td>0.53</td>
<td>0.99</td>
</tr>
<tr>
<td>Contributions</td>
<td>-102.7</td>
<td>189.58</td>
<td>-0.54</td>
</tr>
<tr>
<td>Stat. Charge</td>
<td>101.39</td>
<td>189.58</td>
<td>0.535</td>
</tr>
<tr>
<td>Awarded Costs</td>
<td>-0.97</td>
<td>0.46</td>
<td>-2.11</td>
</tr>
<tr>
<td>Pay Costs</td>
<td>0.60</td>
<td>0.58</td>
<td>1.05</td>
</tr>
<tr>
<td>Years married</td>
<td>0.18</td>
<td>0.13</td>
<td>0.07</td>
</tr>
<tr>
<td>Children &lt;3</td>
<td>-0.13</td>
<td>1.00</td>
<td>-0.13</td>
</tr>
<tr>
<td>Children 4-10</td>
<td>-10.65</td>
<td>54.08</td>
<td>-0.19</td>
</tr>
<tr>
<td>Children 10-17</td>
<td>11.14</td>
<td>54.09</td>
<td>0.20</td>
</tr>
<tr>
<td>Mediation</td>
<td>-0.25</td>
<td>0.20</td>
<td>-1.28</td>
</tr>
<tr>
<td>Advised to Settle</td>
<td>-0.16</td>
<td>0.13</td>
<td>-0.01</td>
</tr>
<tr>
<td>Court</td>
<td>-0.67</td>
<td>0.19</td>
<td>-3.66</td>
</tr>
<tr>
<td>Legal Aid withdrawn</td>
<td>0.12</td>
<td>0.23</td>
<td>0.50</td>
</tr>
<tr>
<td>Returns to Court</td>
<td>0.11</td>
<td>0.14</td>
<td>0.80</td>
</tr>
<tr>
<td>Solicitor Change</td>
<td>-0.15</td>
<td>0.29</td>
<td>-0.56</td>
</tr>
<tr>
<td><strong>Ended in court</strong></td>
<td><strong>314.52</strong></td>
<td><strong>140.73</strong></td>
<td><strong>2.24</strong></td>
</tr>
<tr>
<td>Other side legally aided</td>
<td>-0.15</td>
<td>0.16</td>
<td>-0.90</td>
</tr>
<tr>
<td>No contact</td>
<td>-231.53</td>
<td>291.18</td>
<td>-0.79</td>
</tr>
<tr>
<td>Supervised contact</td>
<td>822.62</td>
<td>249.04</td>
<td>3.30</td>
</tr>
</tbody>
</table>

In this model the dependent variable is total cost (profit costs + disbursements + counsel fees), n= 204, parameters = 25, degrees of freedom=179, Adjusted R-squared = 0.10899:

Figure 4.10 illustrates that very few significant results were found in the analysis. A result is found to be significant if the t-ratio is greater than 1.96. However, the two statistically significant results which are highlighted produce very strong cost driving effects. These are: whether or not the case ended in court, and whether the case involved supervised contact (where contact was at issue). As mentioned above, concluding in court provides a poor ex ante predictor of cost.

41
The variable "supervised contact" had a significant affect on case cost, increasing it, on average, by £822.62. Figure 4.19 below shows that supervised contact was the result in 14.6% of the sampled cases. Thus if it is obvious from the start that the contact issues are difficult, and that the most likely outcome is supervised (rather than staying or visiting) contact, it is possible to say that the probability of the case being more expensive is high.\textsuperscript{23}

In fact, only a few presenting variables displayed any predictive power in family cases. Of those that did, the most significant was the fact of marriage in cases involving domestic violence.\textsuperscript{24} These results suggest that cost drivers for cases which start with domestic violence are likely to be significantly cheaper if the couple is not getting divorced at the same time. However, in a number of these cases the fact of marriage may have brought with it other legal issues, and so this result is not as illuminating as it might at first seem.

Whether the legally aided party was applicant or respondent seemed to affect costs. If the legally aided party was the applicant, the average cost went down, although the decrease was only around £1.\textsuperscript{25}

Also significant was whether or not legal aid contributions were payable by clients.\textsuperscript{25} If they were, total costs were deflated. However, again the deflation amounted to only around £1. The contributions effect is one that was anticipated, however, the magnitude was surprising. One might expect those with a direct financial stake in the conduct of their case (as well as possibly its outcome) to exert greater pressure on solicitors to conduct their case as efficiently as possible. Of course, the fact that legally aided parties pay fixed monthly amounts rather than a proportion of the real legal costs as they arise means that their principal incentive is to speed the process along, rather than reduce its overall cost. A quick expensive case being preferable to a slow inexpensive one. Thus, the small magnitude of the effect may be partially explained.

Lastly, whether the other side was legally aided also affected costs, though the effect is so small is is barely noteworthy.\textsuperscript{27} Again costs were very slightly lower where the other party was also legally aided. Though the evidence is very weak in this example it is possible that this is a result of publicly funded clients trying to disadvantage the other party through intentional costs escalation. This finding may not be significant enough to counter the traditional arguments that

\textsuperscript{23} When total costs were substituted with profit costs only as the dependent variable, similar results were found with an even stronger correlation between courts and cost (t=3.45) suggesting an increase in average case cost of £316.48, and similarly for supervised contact (a t-ratio of 2.76) suggesting an increase in case cost of £449.08.

\textsuperscript{24} t=2.68, coefficient=181.79.

\textsuperscript{25} In children only cases, t=2.48, coefficient = 0.79.

\textsuperscript{26} In children only cases, t=2.05, coefficient = 1.22.

\textsuperscript{27} For all cases, t=2.01, coefficient = 0.18.
when the other side is privately funded there is more incentive from the other side to run the case as cheaply as possible.

The rarity of statistically significant results from the LIMDEP analysis suggests that it is very difficult to predict the costs of a family case from ex ante presenting facts. That is, there are few variables which can be identified at the start of the case, which will help to predict how expensive a family case is going to be. Case types appear to carry different price tags, however, the standard deviations associated with these costs are large; possibly making artificial any distinguishing of case types by cost. Furthermore, there appear to be very few factors significantly driving costs up or down. Those which do have a significant effect, have very slight effects on cost. It seems, therefore, that predicting costs in family cases is a difficult thing as often the picture may be complicated by the addition of new presenting and other confounding variables part way through the case.

Case Duration

Relatively few empirical studies have looked accurately at case length or duration. The duration of different case types is given below. These measures are more accurate than current LAB figures as they give the length of the case in number of days from the first instructions to the last work on a case (at present the LAB holds only the issue date for the legal aid certificate to the date the bill is paid).

<table>
<thead>
<tr>
<th>Case Type</th>
<th>n</th>
<th>Ave.Total Cost (£)</th>
<th>Standard Deviation</th>
<th>Average Case Duration:days</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>185</td>
<td>1119.72</td>
<td>1399.13</td>
<td>310</td>
<td>240</td>
</tr>
<tr>
<td>Money/property only</td>
<td>108</td>
<td>1319.37</td>
<td>847.21</td>
<td>657</td>
<td>409</td>
</tr>
<tr>
<td>Domestic violence only</td>
<td>168</td>
<td>910.61</td>
<td>535.82</td>
<td>118</td>
<td>130</td>
</tr>
<tr>
<td>Children and money</td>
<td>47</td>
<td>1429.99</td>
<td>1167.63</td>
<td>577</td>
<td>437</td>
</tr>
<tr>
<td>Children and violence</td>
<td>50</td>
<td>1631.14</td>
<td>2388.37</td>
<td>257</td>
<td>244</td>
</tr>
<tr>
<td>Money and violence</td>
<td>17</td>
<td>1050.69</td>
<td>1110.67</td>
<td>340</td>
<td>390</td>
</tr>
<tr>
<td>Children, money+violence</td>
<td>12</td>
<td>3857.91</td>
<td>7799.43</td>
<td>445</td>
<td>308</td>
</tr>
<tr>
<td>All</td>
<td>586</td>
<td>1218.29</td>
<td>1666.00</td>
<td>347</td>
<td>345</td>
</tr>
</tbody>
</table>

(These cases have been trimmed for high cost cases and those where duration / costs information incomplete).

The findings in figure 4.11 suggest that whereas a domestic violence case, on average, appears to be quick and cheap, a contact case is relatively expensive and takes longer. A property and money case is the most expensive and the lengthiest of all. Where domestic violence and contact are both at issue, average cost is higher than the single issue cases, presumably because the

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28 This figure is higher than the total previously quoted because it does not include all cases - those without case codes could not be included in these calculations.
case becomes more complex and consequently there is more work to be done. However, the average 'children plus domestic violence' case does not take longer than the other two. In fact, the duration in days lies mid-way between the other single issue cases, suggesting that domestic violence has a shortening influence on case length. This may be because more emergency applications will be made where violence is at issue. 92% of domestic violence only legal aid certificates were first issued as emergency certificates compared to 52% in the sample as a whole. This is where legal aid is granted on an emergency basis to allow the solicitor to start work on the case immediately.

As it has been noted above, although each type of case seems to have a different cost associated with it, examination of the standard deviations for these figures suggests that there is much variation in total costs for different case types. This also holds true when case duration is examined. Domestic violence cases appear to be shorter than, say, children only cases. Again, the standard deviations are large suggesting much variation within these groups of cases.

Figure 4.12 Duration - A Closer Look at Stages

<table>
<thead>
<tr>
<th>Mean Duration in Months - Date of first instruction to:</th>
<th>Children Only cases</th>
<th>Money/Property Only cases</th>
<th>Domestic Violence cases</th>
<th>Children and Domestic Violence</th>
<th>Children and Money/property</th>
<th>All Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>green form</td>
<td>0.82</td>
<td>0.86</td>
<td>0.01</td>
<td>0.00</td>
<td>0.83</td>
<td>0.53</td>
</tr>
<tr>
<td>contact other side</td>
<td>1.74</td>
<td>2.30</td>
<td>0.54</td>
<td>0.87</td>
<td>1.74</td>
<td>1.52</td>
</tr>
<tr>
<td>certificate</td>
<td>2.40</td>
<td>5.04</td>
<td>0.50</td>
<td>1.51</td>
<td>4.12</td>
<td>2.39</td>
</tr>
<tr>
<td>counsel</td>
<td>5.50</td>
<td>18.28</td>
<td>0.42</td>
<td>2.94</td>
<td>15.90</td>
<td>5.75</td>
</tr>
<tr>
<td>settlement</td>
<td>7.36</td>
<td>16.80</td>
<td>0.49</td>
<td>6.87</td>
<td>12.90</td>
<td>11.92</td>
</tr>
<tr>
<td>first hearing</td>
<td>4.66</td>
<td>12.53</td>
<td>0.64</td>
<td>2.37</td>
<td>10.78</td>
<td>4.59</td>
</tr>
<tr>
<td>final hearing</td>
<td>9.20</td>
<td>20.58</td>
<td>1.03</td>
<td>5.32</td>
<td>15.99</td>
<td>8.07</td>
</tr>
<tr>
<td>last work</td>
<td>10.13</td>
<td>21.62</td>
<td>3.88</td>
<td>8.46</td>
<td>18.97</td>
<td>11.74</td>
</tr>
</tbody>
</table>

When stages within a case are examined in greater detail, several patterns seem to emerge. For example, there is very little time between the date of first instruction (day the client first visits the solicitor and gives substantial instructions) and green form signing in all case types (less than a month on average). For the purposes of figure 4.12, hearings are defined as appearances at court. Hearings range from simple administrative directions hearings to fully contested hearings. Where a barrister was involved in a case the first instruction date is indicated. Settlement represents the date where all issues involved in a case were settled by the parties. This may be with or without court hearings. In cases involving only one hearing, first and final hearing may describe the same event.

First hearings (where they are present) appear to be fairly early on in a case, suggesting that in the main they are directions hearings. Final hearings occur, on average, up to 8 months later. The average settlement points in all cases (except domestic violence only) occur after the first hearing. At first glance this
may suggest that on average it takes longer to settle a case than to get it to a
courtroom. In practice, however, it is more likely that settlement is occurring
within the framework of an application to the court i.e. after directions but
before a contested hearing. It is also the case (see chapter 6 for further
description) that some solicitors prefer to apply to the court early on a case
whereas others prefer to try to settle matters without recourse to the court.
Thus individual practitioner strategy or preference may affect case duration and
pathways through stages.

Figures 4.11 and 4.12 both suggest that the sample consists of varied case
categories with few clear cut stage lengths. Comparing two very different types
of case shows that where, for example, the key stages in a domestic violence
only case are bunched together, those in a money case are spread out over a
much longer total case duration.

Use of Counsel, Reports and Court Mediation Services

**Figure 4.13 Use of Counsel**

<table>
<thead>
<tr>
<th>Case Type</th>
<th>number of cases</th>
<th>% of cases where counsel employed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>207</td>
<td>26.1</td>
</tr>
<tr>
<td>Money only</td>
<td>119</td>
<td>22.7</td>
</tr>
<tr>
<td>Domestic violence only</td>
<td>182</td>
<td>35.7</td>
</tr>
<tr>
<td>Children and money</td>
<td>55</td>
<td>23.6</td>
</tr>
<tr>
<td>Children and domestic violence</td>
<td>52</td>
<td>46.1</td>
</tr>
<tr>
<td>Money and domestic violence</td>
<td>18</td>
<td>27.8</td>
</tr>
<tr>
<td>Children and money and domestic violence</td>
<td>12</td>
<td>33.3</td>
</tr>
<tr>
<td>All cases</td>
<td>645</td>
<td>29.8</td>
</tr>
</tbody>
</table>

In the Case Profiling Study, counsel were found to have been instructed (and
paid) in almost a third of all family cases. There is a marked similarity in the
percentages between the different case types. Only children and domestic
violence cases seem to have a much higher likelihood of having employed
counsel, presumably because these are more complex issues for court (and
usually issues which do reach court) whereas 'money only' cases are more
likely to settle and therefore have a lower rate of counsel use.

**Figure 4.14. Use of Reports**

<table>
<thead>
<tr>
<th>Case Type</th>
<th>number of cases</th>
<th>% of cases involving one or more reports (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>207</td>
<td>39.6</td>
</tr>
<tr>
<td>Money only</td>
<td>119</td>
<td>13.4</td>
</tr>
<tr>
<td>Domestic violence only</td>
<td>182</td>
<td>1.6</td>
</tr>
<tr>
<td>Children and money</td>
<td>55</td>
<td>12.7</td>
</tr>
<tr>
<td>Children and domestic violence</td>
<td>52</td>
<td>23.1</td>
</tr>
<tr>
<td>Money and domestic violence</td>
<td>18</td>
<td>22.2</td>
</tr>
<tr>
<td>Children and money and domestic violence</td>
<td>12</td>
<td>16.7</td>
</tr>
<tr>
<td>All cases</td>
<td>645</td>
<td>19.5</td>
</tr>
</tbody>
</table>
Reports are not used in family cases to the same extent as, for example, personal injury cases. However, in ‘children only’ cases where reports appear to be commissioned more commonly (e.g. court welfare officers’ reports), the average number of reports per case was 1.2. This contrasts with domestic violence only cases where reports appear to be rarely used. The average number of reports in cases where they are used is 3. Reports used in relation to money or property issues include accountants’ reports and property valuations. Other examples of the types of reports found include psychiatric and other medical reports.

Figure 4.15 Use of Legal Aid by the Other Side and Use of Court Based Mediation by Case Type

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Court Mediation/ Welfare Service (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>22.8</td>
</tr>
<tr>
<td>Domestic violence only</td>
<td>1.3</td>
</tr>
<tr>
<td>Money only</td>
<td>0.9</td>
</tr>
<tr>
<td>Children and money</td>
<td>8.5</td>
</tr>
<tr>
<td>Children and domestic violence</td>
<td>10.6</td>
</tr>
<tr>
<td>Money and domestic violence</td>
<td>*</td>
</tr>
<tr>
<td>Children and money and domestic violence</td>
<td>*</td>
</tr>
<tr>
<td>All cases</td>
<td>8.9</td>
</tr>
</tbody>
</table>

* Insufficient data.

Figure 4.15 shows the distribution of use of court based mediation services by the individuals in the sample. As legal aid was not available for non-court based (voluntary sector and private) mediation services at the time of this study, the only mediation services available to the legally aided were those carried out by court based mediators or welfare officers. Some courts call these conciliation appointments, others use the term mediation services. However, anything that could be included was recorded in this section. The figures are low, especially in cases not involving any children issues. As could be predicted from current mediation practices, those cases which used mediation services the most were ‘children only’ cases (23%). All issues mediation (AIM) did not seem to be well represented.

Outcome

The figures in figure 4.16 show how common settlement is in legally aided family cases. What is interesting though, are the relatively low levels of settlement without recourse to the court in the form of directions or other hearings. Previous research has found similar results. For example, Davis et al found, in a study of 80 divorce cases, that 22% of the legally aided cases settled prior to the day of trial (compared to 60% of privately funded cases). This finding may be compared with the 136 settled cases in the Case Profiling Study which makes up 21% of the sample. Though there are differences in the

29 Supra n. 5., p137.
structures of the two samples, it is interesting that the findings concur that most legally aided matrimonial cases will at some point reach the courtroom. Figure 4.16 also shows how few of the cases (58 of the total sample) included no element of settlement. Galanter argues that litigating in court and negotiating/settling out of court do not have to be two separate processes. Instead, he argues that "invoking a court is not an abandonment of negotiation but a shift in bargaining formats." "Litigotiation" is what Galanter calls the strategic pursuit of settlement through mobilising the court process. It appears from the findings presented in figure 4.16 that litigotiation may be the best description of the process in the sample. For example in 'children only' cases, 44 of the 207 in the sample settled, but 32 of those involved a formal litigation process at some point.

**Figure 4.16 Patterns of settlement**

<table>
<thead>
<tr>
<th>Case Type</th>
<th>no. of cases</th>
<th>no. cases settled (%B)</th>
<th>no. cases settled with consent order(%B)</th>
<th>no. cases settled without court hearing(%B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children only</td>
<td>207</td>
<td>44 (21)</td>
<td>24 (55)</td>
<td>8 (18)</td>
</tr>
<tr>
<td>Money only</td>
<td>119</td>
<td>59 (50)</td>
<td>6 (10)</td>
<td>32 (54)</td>
</tr>
<tr>
<td>Domestic Violence only</td>
<td>182</td>
<td>1 (0)</td>
<td>0 (0)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Children and money</td>
<td>55</td>
<td>21 (38)</td>
<td>9 (43)</td>
<td>13 (62)</td>
</tr>
<tr>
<td>Children and domestic violence</td>
<td>52</td>
<td>4 (8)</td>
<td>1 (25)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Money and domestic violence</td>
<td>18</td>
<td>7 (39)</td>
<td>0 (0)</td>
<td>4 (57)</td>
</tr>
<tr>
<td>Children, money and violence</td>
<td>12</td>
<td>1 (8)</td>
<td>0 (0)</td>
<td>1 (100)</td>
</tr>
<tr>
<td>All cases</td>
<td>645</td>
<td>136 (21)</td>
<td>40 (29)</td>
<td>58 (43)</td>
</tr>
</tbody>
</table>

Though 136 cases settled, in 20 (15%) of these the solicitor is recorded as having advised the client not to settle. The highest proportion of these was in money/property cases only (10 instances), where the client was advised not to settle the case but the case settled nonetheless. This is an interesting result and echoes the findings of Mather et al who found that women in particular were likely to be unrealistically low in their expectations of the outcome of the case and are therefore perhaps more ready to settle despite their lawyer's advice to the contrary.

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32 Supra n 3.
This study suggests that where children and domestic violence issues are present, the case is more likely to enter the court system at some point than if the case involves financial and property issues. Thus where financial and/or property issues are at stake, the case is (i) more likely to settle and (ii) more likely to have a consent order and therefore be least likely to go to a full contested hearing. The proportion of domestic violence cases which go to court (67.7%) appears lower than might be expected. This could be due to two reasons. First, that if undertakings were given as opposed to an order being agreed or made, they do not constitute a hearing. Second, domestic violence cases are prone to fizzling out, where the client does not turn up at court for the ex parte hearing, or fails to continue instructing solicitors, and so the case is abandoned without a formal conclusion.

The most reliable data concerning the results of cases relate to children issues. Figure 4.18 shows that despite these applications and legal intervention, the residence of children tends to be the same at the end of the case as at the start (see diagonal) i.e. children tend to stay where they are. There is, however, a slight shift towards the mother at the end of cases, for example in 15 of the 53 cases where the children lived with the father at the start, they ended up living with the mother. Though the situation may be different now with more positive societal views about fathers’ rights, previous studies have found similar results, for example, Eekelaar and Clive found that the status quo tended to be preserved.33

---

Figure 4.18 Comparison of Residence of Children at Start (first column) and End (first row) of Case (in all cases).

<table>
<thead>
<tr>
<th>End:</th>
<th>Mother</th>
<th>Father</th>
<th>Mother and Father</th>
<th>Split (M + F)</th>
<th>Other Mother and Other</th>
<th>Other Father and Other</th>
<th>In Care</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>369</td>
<td>8</td>
<td>1</td>
<td>9</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>390</td>
</tr>
<tr>
<td>Father</td>
<td>15</td>
<td>34</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>53</td>
</tr>
<tr>
<td>Mother and Father</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Split (M+F)</td>
<td>11</td>
<td>3</td>
<td>0</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>1</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>Mother and Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Father and Other</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>In Care</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>402</td>
<td>48</td>
<td>13</td>
<td>26</td>
<td>27</td>
<td>8</td>
<td>9</td>
<td>506</td>
</tr>
</tbody>
</table>

Figure 4.19 shows the distribution of different types of contact where contact was agreed or ordered.

**Figure 4.19. Distribution of Contact Arrangements at the end of Children Cases.**

<table>
<thead>
<tr>
<th>Type of Contact</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visiting</td>
<td>62</td>
<td>34.8</td>
</tr>
<tr>
<td>Staying/Holiday</td>
<td>79</td>
<td>44.4</td>
</tr>
<tr>
<td>Supervised</td>
<td>26</td>
<td>14.6</td>
</tr>
<tr>
<td>Indirect/none</td>
<td>11</td>
<td>6.2</td>
</tr>
</tbody>
</table>

n=178

As might be expected, the levels of visiting and staying contact at the end of cases are high. Non-resident parents' contact rights are upheld by the legal system and so even if cases did not reach court, these cases which settled tended to reflect this legal norm. The levels of supervised and indirect contact may appear to be high, but when considered as part of cases which may also include violence, the levels of such contact may be partly explained. Supervised contact involves children having contact with a parent at a designated place, for example a contact centre. Indirect contact, includes telephone calls, letters and cards, but no face to face contact with the non-resident parent.
Discussion

The findings suggest some identifiable patterns, for example, the client characteristics of domestic violence cases show a much higher percentage of legally aided female applicants than in the sample as a whole. Also, communication problems feature slightly more prominently in domestic violence cases than in the sample as a whole (4.9% compared to 3.2%). The common cost-duration profiles identified in this paper are that domestic violence only cases tend to be short and cheap. Money and property only cases tend to be expensive and long, with children only cases somewhere in between. When combinations of issues occur, for example, children and domestic violence, the cost of the case goes up, but the length of the case is shortened. Where money or property are involved in combination with other factors, case costs and length increase. In general, domestic violence seems to have a shortening effect on cases, and money or property issues appear to have a dual effect: making cases longer and more expensive.

The standard deviations from the mean relating to these figures suggest that the single issue cases are more uniform than those where combinations of issues occur. However, this may be due to the increased proportions of single issue cases in the sample.

The findings suggest that there may be more differences (in terms of cost and duration) within case categories than between categories in family cases. These findings, together with the difficulty in identifying useful cost prediction tools, reinforce the idea that family cases are often complicated. Especially since they are dealing with people who may be at a crisis point in their lives and with families or relationships which are undergoing periods of immense change. Such emotive issues as where children are going to live, and who remains in the family home, may mean that family cases are more susceptible to emotional rather than purely rational steering by the parties.34

34 Supra n 2., p152.
5. Cost-per-Stage Analysis

Findings from the High Detail Data Set

(Source: 150 cases from solicitors’ files)

Introduction

A high level detail subset of the 650 sample cases is analysed in this chapter. This data set will be referred to as the high level sample. The information was collected from 150 closed fully certificated files by the researchers over the summer of 1996. The first part of this chapter examines the quantitative analysis of the costs and stages involved in these cases. The second focuses on the qualitative data collected by the researchers in relation to these files. This was additional information including individual case facts, unusual practices and other points of interest. These findings are described as anecdotal and enrich the quantitative analysis in section one.

The sample

The high level detail sample comprised 150 files and consists of detailed costs information relating to the specific activities of the practitioner from the amount of time spent interviewing the client to the amount of time spent writing letters and making telephone calls. Also included in this analysis were the costs of disbursements and of counsel, where used. All 150 cases are included in section two (the qualitative analysis), 119 are used for the analysis in section one. 6 files could not be included because they involved green form divorce only, 1 was not included because it was a nullity case; the remaining 24 could not be included because they were incomplete (some files appeared to have some sections missing or had incomplete records for the whole duration of the case) or were unusual in some way. It was considered vital only to include those cases which had complete, and as far as we could tell, accurate, records of lawyer activity and those which conformed to the project’s aim of examining “ordinary cases”.

Figure 5.1 sets out the distribution of case categories in this high level detail set in terms of issues arising.
Figure 5.1. Sample distribution of case types by issues arising

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>children only files</td>
<td>53</td>
<td>35</td>
</tr>
<tr>
<td>domestic violence</td>
<td>38</td>
<td>25</td>
</tr>
<tr>
<td>money/property only</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>children plus domestic violence</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>other compound case files</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>nullity files</td>
<td>1</td>
<td>&lt;1</td>
</tr>
<tr>
<td>GF divorce only</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>total</td>
<td>150</td>
<td>100</td>
</tr>
</tbody>
</table>

This high level data was also analysed not by case type (issues arising) but by profile in terms of the pathway of the case through certain stages. Though it would be possible to identify those cases which only proceeded through certain key stages, the following analysis allows cases to be grouped more intuitively along the line of groups of cases which appear to follow similar pathways. Using this method of categorisation the 119 cases were divided into the following:

Figure 5.2. Sample distribution by stage profiles

<table>
<thead>
<tr>
<th>Case Type</th>
<th>No.</th>
<th>%</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involved 2 or more hearings</td>
<td>37</td>
<td>31</td>
<td>32 children only (residence and contact) 4 property, 2 mix</td>
</tr>
<tr>
<td>Ex parte applications/hearings</td>
<td>24</td>
<td>20</td>
<td>21 domestic violence, 3 children</td>
</tr>
<tr>
<td>Consent orders</td>
<td>18</td>
<td>15</td>
<td>7 property+lump sum to spouse, rest residence or mix</td>
</tr>
<tr>
<td>Fizzled out</td>
<td>17</td>
<td>14</td>
<td>spread: 4 dv, 4 children, 3 children+money, 5 money/property</td>
</tr>
<tr>
<td>One hearing only</td>
<td>13</td>
<td>11</td>
<td>9 domestic violence, 3 children, 1 dv + children</td>
</tr>
<tr>
<td>Hearing prior to certificate</td>
<td>8</td>
<td>7</td>
<td>7 children cases, 1 domestic violence</td>
</tr>
<tr>
<td>Settled</td>
<td>2</td>
<td>2</td>
<td>both were 'children only' cases</td>
</tr>
<tr>
<td>All</td>
<td>119</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.2 above shows that the sample contains a spread of different stage profiles. Comparison of figures 5.1 and 5.2 above suggests that subject matter and stage profiles of the sample may be linked (at least in certain case types) i.e. dividing cases up by issues arising or by stage profile results in similar distributions. From this we can say that cases with certain issues arising are likely to have common stage profiles. In general, the three largest categories in each figure are in fact largely the same. For example, the single largest group of cases are those which go to court on more than one occasion, even if this is for directions hearings. Of this group of cases, the vast majority (32 of 37) were children only cases where the issues arising included the residence of the children and levels of contact (11 of these involved contact issues only and 19 involved contact and/or residence in conjunction with other issues such as parental responsibility orders, 2 involved financial issues and 2 were children and money issues). This group makes up the largest and most homogeneous group.

The second largest group is the ex parte applications (20% of the sample) which in the main were made in cases involving domestic violence (21 of 24 were domestic violence cases and 3 were children cases). The next largest group were those cases where a consent order had been made (15%). The cases
where consent orders were made represent more of the financial cases including 7 where consent orders were made concerning property and a lump sum to the spouse. 5 cases involved "other financial issues" and the remaining cases were a mixture of the above (2 also including residence in the consent order).

The 'fizzler' cases provide an interesting group of cases as they do not appear to be as issue-specific as the other categories i.e. the issues arising cannot predict the case-stage profile in all cases. This group of cases, without formal end points, consisted of 4 domestic violence cases, 4 children only cases, 5 money/property cases, 3 children and money cases and 1 domestic violence and children case. This broad spread implies that it is just as likely for one case type to fizzle out as another. In these cases, the case went far enough for a legal aid certificate to be granted, but did not go to court, or end in formal or informal settlement.

It appears that there were very few cases in this sample which settled. This is due to the way in which the cases are categorised. If the case went to a court hearing, the case is counted in the hearing category even if it went on to settle. This method of categorisation was chosen as court activity is important in determining case cost. Court hearings can range from advisory directions hearings to contested adjudication. Thus very few cases were found to settle without any recourse to the court. In chapter 4 it was found that 21% of all the cases in the sample settled. Of these, 71% were with consent orders and 56% with court hearings (there is of course overlap between the two). However, it is clear from the results in chapter 4 that cases involving financial disputes are the most likely to settle (over half of which did so without recourse to the court). Financial cases have not been underrepresented in this high level sample, but many seem to be found in the fizzler category.

13 cases are described as having only one hearing. These cases have been given a separate category as although the first part of the case may look very similar to cases which go on to subsequent hearings, these cases appear to be cheaper and shorter. They are also substantively different in the issues which they address. 9 of the 13 cases were domestic violence cases which in the main represent full hearings or committal hearings as opposed to the undertakings and ex parte injunctions described above.

Cases involving hearings before the issue of certificates were also represented. These are different from domestic violence injunctions where court hearings also occur near or before the grant of the legal aid certificate as 7 of the 8 cases in this category were children cases (the remaining case was a domestic violence case). In these cases, the legally aided person is often the respondent to the proceedings which may have already commenced and therefore the client may attend the first hearing unrepresented and seek legal advice subsequently. In the majority of these cases, one party has applied for residence of the children and
the other side needs immediate legal aid to go to court. In this scenario it is more than likely that the client will be granted emergency legal aid.

Cost - Stage profiles

In order to understand how and when costs are incurred in legally aided family cases, analysis has been undertaken which separates out the different stages of the cases and measures the amount of work done in these different stages. Though data at more sophisticated levels was collected, problems were encountered where some key dates were unavailable from some files. For the most meaningful analysis possible on the data, the following stages were used:

(i) first instruction to legal aid certificate;
(ii) certificate to initial hearing;
(iii) first hearing to last hearing/consent order/settlement;
(iv) last hearing to last work.

In this way, accurate start and end points are used, an idea of the costs making up the pre-certificate stage may also be gauged. The inclusion of this work into the stage-cost profiles allows an accurate picture of the part that advice and assistance plays in different cases and what proportion of the costs it makes up.

The second stage is also important as it is the work carried out under the grant of full legal aid up to the first hearing (whether it is an ex parte, directions or other form of hearing). In many cases, this stage provides an important preparation phase, if the case is going to court. The third stage includes all the work carried out in between the first and the final hearing and includes any travel to the court, waiting time, and of course further preparation of court documents as well as court appearances. The fourth and final stage includes all the work done after the final hearing up until the bill is prepared. The distribution of disbursements and counsel fees can also be seen across the different stages of the case.

In order to ensure compatibility of data, an inflation-linked index was used to uprate all disbursements and counsel fee costs to 1997 levels. To allow comparability between work element costs between different cases from different years, the amount of work done in each case was recorded in the number of minutes spent on each activity. In this way 1997 Legal Aid rates could then be applied accurately to all the cases. It was not possible to ascertain different rates for different levels of fee earner (such as partner or trainee) as this information was not always clear from the file.

Franchised rates were used throughout (which are slightly higher than non-franchised rates) as all the firms in the sample had or were applying for a franchise in the family category. There are also higher rates for firms within the London area, though for this analysis the lower rates was uniformly applied.
An average uplift allowance (of 50%) was also added across the categories for the work for which this is permitted such as attending the client. The data has been presented as percentages of the total cost per stage to allow for easier comparison between figures. The total cost figures for each table are presented to allow calculation of actual cost for each cell.

The data collected relating to these 119 cases has been cross-checked against, and found to be representative of that presented in chapters 3 and 4. In particular, the proportions of costs made up from solicitors' costs, disbursements and counsel fees appear to be very similar to those found in the earlier parts of the study. These cases do not include high cost cases.

Figure 5.3 Standard Cost-Stage Profile for All family cases.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Solicitors' Costs</th>
<th>D</th>
<th>C</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attend</td>
<td>Draft</td>
<td>Peruse</td>
<td>Reports</td>
<td>Travel/Wait</td>
</tr>
<tr>
<td>First Instruction to certificate</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Certificate to first hearing</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>First to final hearing</td>
<td>8</td>
<td>4</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Final hearing to last work</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>22</td>
<td>10</td>
<td>6</td>
<td>1</td>
</tr>
</tbody>
</table>

n= 119
Average cost as calculated (including green form costs) = £1300.39
Attend = attending the client, or other person e.g. solicitor. This can be in the solicitor's office, outside court, or elsewhere. Draft = drafting documents such as affidavit, statements, long letters. Peruse = reading documents or generally looking through the file. Reports = reading reports such as the court welfare officer, psychiatrist, counsel’s opinion. Travel/wait = travelling or waiting usually to or at court. hearing = time spent attending all levels of court hearing. Corresp = all communications; there is a set rate for writing standard length letters (one tenth the hourly rate) and reading letters (one twentieth of the hourly rate) and a set rate for making and receiving telephone calls. If a telephone call lasted longer than 12 minutes it was recorded as an attendance on the client. Disb = disbursements such as travel expenses, enquiry agents' fees. Counsel = the fees for any barrister employed in the case (added together if there was more than one).

Solicitors' costs are linked to the amount of time spent on the activity, as they are paid on an hourly rate for their work (though the rates are different for different types of work). The disbursements and counsels' fees columns are averages of the actual amounts paid after they have been inflated to 1997 prices.

The findings in figure 5.3 provide a breakdown of costs per stage by work element for all family cases in this high detail sample. The final column suggests that first instruction to certificate (advice and assistance or green form) makes up 10% of the total case cost. The next stage makes up about a fifth of the total, the period involving any hearings is the most expensive (and from chapter 4 we
can see that it is also usually the longest) and the final stage makes up the last part (approximately a third) of the total case cost.

If the figure is examined in terms of work elements, the largest proportion of costs are those incurred by the solicitor which total 76%. Counsel fees and disbursements costs are equally divided between the final quarter. A comparison with the LAB figures presented in chapter 3 shows that in matrimonial cases, the proportions of costs spent on solicitors in all matrimonial cases is 77%; on disbursements it is 9% and on counsel fees it is 14%. The relative proportions for private children cases are: 73%; 8% and 18%. It appears that in this sample of 119 cases, counsels' fees are marginally lower than average, otherwise the distributions are remarkably similar.

If the individual work elements are examined, the most important over all cases appears to be correspondence costs. This reflects the desk based work practice of most solicitors and how important communication by both letter and telephone is in their day to day business. Attending the client (and other people) is the next most costly activity followed by drafting documents and travelling and waiting. It is interesting to note how little, on average, is spent on hearings. Though the court appears to be an important factor in the case as a whole and most cases seem to proceed within the court framework only 2% on average of total costs is solicitors at court.

The following table shows how similar to the distribution for all cases the cost-per-stage profile is for cases that go to court on at least one occasion. This is the next largest group of cases and collapses two very similar groups shown in figure 5.2 (those which involved 2 or more hearings and those with one hearing only).

*Figure 5.4 Cost-Stage Profiles for cases involving One Hearing or More Average proportion of total cost per stage(%)*

<table>
<thead>
<tr>
<th>Stage</th>
<th>Attend</th>
<th>Draft</th>
<th>Peruse</th>
<th>Reports</th>
<th>Travel/Wait</th>
<th>Hearing</th>
<th>Corresp</th>
<th>Disb</th>
<th>Counsel</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Instruction to certificate</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Certificate to first hearing</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>First hearing to final hearing</td>
<td>10</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>2</td>
<td>11</td>
<td>4</td>
<td>4</td>
<td>44</td>
</tr>
<tr>
<td>Final hearing to last work</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>7</td>
<td>30</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>9</td>
<td>6</td>
<td>11</td>
<td>3</td>
<td>27</td>
<td>8</td>
<td>11</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

n=50

Average cost as calculated (including green form costs) = £959.43

Figure 5.4 shows a standard cost-per-stage profile for cases involving one or more hearings. These cases generally involved children issues (though some
were compound issue cases). The profile shows again how important counsel, and attending the client are in terms of cost. The figure also shows how important correspondence costs can be to a case (this includes letters and telephone calls).

Figure 5.5 Cost-Stage Profiles for Cases Involving Ex Parte Hearings or other Pre-Certificate Hearings. Average proportion of total cost per stage(%)  

<table>
<thead>
<tr>
<th>Stage</th>
<th>Solicitors' Costs</th>
<th>D</th>
<th>C</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Attend</td>
<td>Draft</td>
<td>Peruse</td>
<td>Reports</td>
</tr>
<tr>
<td>First Instruction to certificate</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Certificate to first hearing</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>First hearing to final hearing</td>
<td>8</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Final hearing to last work</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>8</td>
<td>5</td>
<td>0</td>
</tr>
</tbody>
</table>

n= 32
Average cost as calculated (including green form costs) = £1098.45

Figure 5.5 shows the cost-stage profile for ex parte or pre-certificate hearings. In ex parte cases (in the main domestic violence applications), counsel are a significant cost factor. Disbursement levels are higher than the previous two profiles reflecting the nature of domestic violence cases and their need for enquiry agents to serve documents on the other side. The next most important aspect of work is attending the client, though this is less time than is spent in the previous two profiles. Many of these applications will be emergency applications with shorter instructions from the client, fewer communications with the client and the other side (shown by only 17% of the case spent on correspondence) slightly less time spent on drafting and slightly less green form work.

In terms of stages, the work done post last hearing is significant in comparison to that carried out in the first two stages. However, when considering the timescale for these cases, the stages are much more bunched together in a short period of time in domestic violence cases, and this can distort the picture shown in table 5.5. The individual case studies at the end of this section illustrate this point graphically.

In Figure 5.6, the profile for cases involving consent orders or settlement again look fairly similar to the average profile. However, very little time is spent going to or waiting at court (3% of total costs). Only 2% relates to the solicitor attending court. By far the most important work element is the correspondence. There is also a more even spread of work across the stages as the hearing stage is less focal in these types of case.
Figure 5.6 Standard Cost-Stage Profile for Cases Involving Consent Orders / Settlement. Average proportion of total cost per stage(%)

<table>
<thead>
<tr>
<th>Stage</th>
<th>Attend</th>
<th>Draft</th>
<th>Peruse</th>
<th>Reports</th>
<th>Travel/Wait</th>
<th>Hearing</th>
<th>Corresp</th>
<th>Disb</th>
<th>Counsel</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Instruction to certificate</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Certificate to first hearing</td>
<td>8</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>13</td>
<td>2</td>
<td>1</td>
<td>30</td>
</tr>
<tr>
<td>First hearing to consent order*</td>
<td>6</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>12</td>
<td>7</td>
<td>3</td>
<td>38</td>
</tr>
<tr>
<td>Consent order to last work</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>2</td>
<td>7</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>11</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>37</td>
<td>11</td>
<td>12</td>
<td>100</td>
</tr>
</tbody>
</table>

n= 20
Average cost as calculated (including green form costs) = £1264.15
* Consent order/settlement or equivalent.

Figure 5.7 Standard Cost-Stage Profile for “Fizzler” cases. Average proportion of total cost per stage(%)

<table>
<thead>
<tr>
<th>Stage</th>
<th>Attend</th>
<th>Draft</th>
<th>Peruse</th>
<th>Reports</th>
<th>Travel/Wait</th>
<th>Hearing</th>
<th>Corresp</th>
<th>Disb</th>
<th>Counsel</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Instruction to certificate</td>
<td>14</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>16</td>
<td>2</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td>Certificate to last work</td>
<td>14</td>
<td>7</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>28</td>
<td>3</td>
<td>0</td>
<td>58</td>
</tr>
<tr>
<td>Total</td>
<td>28</td>
<td>14</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>44</td>
<td>5</td>
<td>0</td>
<td>100</td>
</tr>
</tbody>
</table>

n= 17
Average cost as calculated (including green form costs) = £319.86

Figure 5.7 shows that ‘fizzler’ cases never reach as far as a first hearing and therefore costs are restricted to two stages. The proportion of work carried out under the advice and assistance stage (stage 1) therefore looks high (42%). As many fizzler cases have no formal end point, often as a result of no further instructions from the client, it is unsurprising that the largest proportion of case costs are spent on correspondence - often the solicitor will be trying to contact the client to take instructions. The next most important work elements are attending the client in the initial stages and drafting documents for the client. The disbursement costs are very low and there are no counsel fees. The average cost of this type of case is therefore low at £319.86.
Two Contrasting Case Studies: Individual Profiles of Lawyer Activity and Associated Costs

Two profiles for two family cases are presented below in graphic form to reveal patterns of lawyer activity. They are two very different cases: one is a simple domestic violence "fizzler" where the client failed to return and provide instructions; the other is a long "runner" where children issues took some time to resolve. These are two individual cases, they do not represent average profiles.

The domestic violence case involved a straightforward injunction in the county court (this case was cheaper than the average domestic violence only case: the solicitor's costs were just £483). The applicant was a 30 year old woman with 2 children (aged 7 and 11). The first instructions took place on 17 January 1994, an emergency certificate was issued on 18 January 1994 when the first hearing occurred. A second hearing took place on 2 February 1994 but the client failed to turn up and the case fizzled out. The last work by the lawyer (prior to bill preparation) on this case took place on 3 March 1994. This is a very straightforward case, but even the simple description above does not give such a clear idea of lawyer activity as figure 5.8.

The contact and residence case which has been chosen in contrast to the domestic violence case is a much longer drawn out and more complicated case when looking at lawyer activity (this case was more expensive than the average cost for children cases in this sample: the solicitor's costs were £8,700). The simple facts of the case are that of a 30 year old man making a contact and residence application to the county court for one of his two children (aged 4 and 8). The first instructions were taken on 20 January 1995. The legal aid certificate was issued soon after, and counsel was instructed on 23 February 1995 after the first court hearing (8 February 1995). A welfare officer's report was written on 27 February 1995. Much activity continued until a consent order was finally made in court on 2 February 1996. The last work by the lawyer was recorded as being on 7 February 1996. The outcome was for one child to live with each parent with staying contact.

The contact and residence case lasted for 13 months whereas the domestic violence case lasted for 3 months.

It is clear from both graphs that there are periods in the profile of the cases where there is no lawyer activity. For example, in the domestic violence profile, in the week of the 29 January, 12 February and from 11 March until the case end there was no lawyer activity. This is contrasted with the large amounts of activity in the first week and the third week when there is much lawyer activity. This sort of information is hidden when looking at average case lengths and costs.

The domestic violence graph (figure 5.8) clearly shows that most of the work is done in the first week: the client is interviewed for a substantial period,
Figure 5.8  Profile of Lawyer Activity in a Domestic Violence Injunction
Figure 5.9
Profile of Lawyer Activity in a Contact/Residence Case

Units of Work
(1 unit = 6 minutes)
Figure 5.10  Domestic Violence Injunction Costs Profile

[Diagram showing units of work (1 unit = 6 minutes) and unit cost over time from January 13, 1994, to June 23, 1994, with categories for attendances, documents, hearing, travel/waiting, and cost.]
Figure 5.11  Contact/Residence Costs Profile
documents are produced (including letters), court documents are produced (in this case an affidavit), there is an 18 minute ex parte hearing (the other side does not attend) for which the solicitor spent 30 minutes travelling to court and waiting at court. Then there is a week of inactivity. A week later there is the return date hearing (6 minutes) where the client fails to attend (more time is spent waiting at court for this hearing) and some letters are written. More correspondence follows after a period of inactivity and finally the case ends. Some time is spent preparing documents at the end of the case; this will include a letter telling the client that the file is to be closed, the bill being prepared and sent to the Legal Aid Board and possibly a letter to the other side.

The contact and residence case (figure 5.9) looks very different from the domestic violence case in terms of lawyer activity. Some of the activity seems to be clustered around the various hearing dates; in particular, the court documents and the client interviews and the travel and waiting. The "other documents", however, (including letters, telephone calls, drafting and file review) occur as we might expect throughout the duration of the case. Again, just as the domestic violence profile shows, there are marked periods of lawyer inactivity, for example in the two week periods of 15 May, 7 August, and 27 November where very little or no work is performed by the lawyer.

When we look at the lawyers profit costs relating to these two profiles there are also marked differences between the two. For these graphs (figures 5.10 and 5.11) costs are represented by cumulative units. The domestic violence costs profile shows how the profit costs are weighted towards the beginning of the case, where they rise steeply and then level off. The costs profile for the children case looks quite different as there is a steadier increase over the first few months with a peak at the first long hearing and again at the end of the case when the lawyer spends further time in hearing.  

Qualitative analysis of 150 files: Features of Case Types

The analysis in this chapter so far has been quantitative, however, additional information was noted from files. This is anecdotal in character, but illustrates the particular features of the different types of case. Whilst collecting the data for this chapter, additional information was gleaned from the files and noted. The following represents an analysis of the findings from this data source.

The analysis of the 150 files has been divided into several sections. The first deals with the files by subject matter.

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2 Other costs relating to the domestic violence case were green form: £45.99, disbursements: £31.22 and no counsel fees. Other costs relating to the contact/residence case were green form £0, disbursements: £3229.31, and counsel fees: £4056.68.
Children only files

Diversity

The files relating to children only cases were diverse and ranged from DNA paternity testing cases to cases where grandmothers were seeking residence orders for children on grounds of alleged drug abuse by parents. Some cases involved repeat players, i.e. people who entered the litigation process more than once under different legal aid certificates to deal with the same problem. One such example is of a man who had three certificates for the same problem - trying to resolve contact arrangements.\(^3\) Thus there was a broad range of subject matter and different levels of complexity and seriousness. However, the majority of cases were fairly straightforward (in legal terms): contact, residence, specific issue orders, parental responsibility orders etc.

Contact and residence applications

As the results in chapter 4 suggest, most contact applications are made by men seeking contact with their children once they no longer live in the same household. However, four cases involved mothers who wanted to define contact arrangements.

In one contact case, a mother made an application for contact with her baby twin daughters. Medical reports in the file indicated that she was a recovering alcoholic. After successfully gaining contact with her children, she went on to gain residence. This was a fairly cheap case (partly because it was held in the Family Proceedings Court) with a total cost of £1711.49 including 1 medical report (£163). Other problem cases included one where a mentally ill mother wanted contact with her child. In a structurally similar case a child chose not to live with his religious fundamentalist mother. The child (aged 11) decided to live with the father.

Age of parents was also found to be a reason for fighting over contact of children. For example, in one case a man wanted contact of his baby daughter because he thought his 17 year old girlfriend was too immature to look after the

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\(^3\) Though public children cases were officially outside the scope of this project, one case was included in the sample when the firms' accessible supply of private children and matrimonial files was exhausted. This was a care proceedings case where there had been allegations of sexual abuse by the child's stepfather and stepbrother, and where there was also a history of overdose by the child's mother. This case has been included in the analysis of this sample to illustrate how different the cost profiles of public law children work can be. It is clear that this is an area which will demand further work. In this particular case, 4 counsel were employed and the total case cost was £6,106.28. The total case duration was 8 months from first instruction to last work. Compared to the private law work included in the main part of this study, 'public law children are more expensive cases in general (see chapter 3).
baby properly. In fact, the Judge ordered that there should be no change in current arrangements.

**Delay**

Several examples of causes of delay in legally aided family cases were found in this high level sample. For example, in one contact case a man wanted contact with his children. His ex-wife opposed the application. The case took almost 2 years with 2 main hearings and 10 directions hearings and cost £2,424.08. In the end he withdrew the application. Delay was caused by the respondent not attending court hearings on at least 2 occasions. Eventually, the judge made a supervised contact order, with a penal notice attached to the order.

Other causes of delay include breakdown of communication with Legal Aid Board Area Offices. For example, one solicitor described in an attendance note how his office had attempted to fax an emergency application to the Legal Aid Board Area Office (which deals with applications). The fax, however, was busy so they used the alternative fax number. As the solicitor wrote: "minutes later I received a call from X at the LAB to inform me that I had used the wrong fax machine and [he] gave me a severe reprimanding. Apparently you have to have prior authority to use the alternative fax machine...X put me through to Y in the Emergency Applications section who confirmed that legal aid had been granted and a fax sent yesterday...I informed her that we had not received the same..." This sort of confusion and breakdown of communication was noted on several files and was seen to be a problem with other bodies or organisations such as building societies and the courts too. In one case, some delay was caused by the fact that the Department of Social Services would not accept a copy document, and it took some time for this information to reach the solicitor and then for the solicitor to supply the original documentation.

**Applications by People other than Parents**

Cases where people other than parents had made applications for contact and/or residence of children were also quite common and give an illuminating picture of the breadth of these sorts of applications. For example, in one case the client opposed a contact application made by the paternal grandmother. In this case there was a long period of negotiation and conciliation. At the second hearing it was agreed that no order was necessary and proceedings were withdrawn. This case could be characterised as short and cheap. In another case the maternal aunt and uncle of the child in question wanted a residence order for their niece. At the final hearing, the aunt got residence of the child and the mother got limited contact. This was also a simple, short and cheap case.

In a socially more difficult case, the applicant (father of the child in question) was accused of heroin abuse by the respondent who was the child's grandmother. In the final hearing, the judge dismissed the residence application, but made an
order relating to contact between the child and its father which was specified as 1 hour a week at first which should be eventually built up to 1 day a week (as advised in the Court Welfare Officer's report). The case took 1 year and 3 months to conclude and cost just over £1000.

The alleged heroin abuse cited in the case above was not the only case where alleged drug abuse was specifically mentioned. At least 4 other children cases in this high level sample involved alleged drug abusers and a further 3 involved alleged alcohol abusers. In at least one of the files, allegations of sexual abuse by a family member were also made.

**Court-based Mediation**

Children cases, and in particular contact cases appeared to make good candidates for dispute resolution through court based mediation. In one particular contact case, the mediation service provided at court appeared to work very well. No order was needed as all arrangements were agreed during the mediation process. Mediation in children cases, and particularly in contact cases is seen to be an appropriate method of dispute resolution as it allows people to make agreements that they have more active input into. Importantly, it also keeps the relationship between the parents as amicable as possible. As children grow up and have different needs, a good relationship is needed to cope with changing arrangements over time.

Mediation is not, of course, so successful in all cases. One example of this is a case where first one party did not turn up to the mediation appointment, then the other did not turn up to the next one. The mediation sessions subsequently collapsed. On what criteria can suitability for mediation be assessed? If those cases which will benefit from mediation can be separated from those where couples are entrenched and cannot resolve their differences without court intervention, mediation could be extremely beneficial.

**Process**

At least one firm of solicitors in the sample appears to have separate files for children issues as opposed to money or property issues relating to the same case. This is discussed in chapter 6. Notes were found on files saying, for example, “do not discharge certificate, ancillary relief work remains to be done on this case” after contact/residence issues have been resolved. Thus at this firm two separate files could be found for one client and one legal aid certificate. In this way cases are split over two or more lawyers and often between the firm’s own departments.

In another firm, cases were seen to be split over 2 certificates, where the case had started up again after a speedy certificate discharge, or where two
substantive issues were running continuously. This can also happen where there are both private and public children issues in a case.

The above examples make the process sound complicated. However, very simple cases were also found. For example, one case in the family proceedings court, which lasted 3 months from start to finish, involved a father (post divorce) who wanted residence of his 7 year old daughter. The Court Welfare Officer wrote a report which suggested that no order should be made and that the child should stay where she was. The judge agreed and so no order was made and the total cost of the case was £400.

Domestic Violence Only Files

Social Problems

Of the 38 domestic violence only files, almost a third also had other social problems noted on the file. Six were recorded as men with alcohol problems, and in one case there was alleged drug abuse. In two cases the man was violent towards the children as well as the woman, and in two other cases psychiatric problems were recorded. These figures give a good idea of the sorts of issues which can accompany domestic violence.

Informal Case Conclusion

Some domestic violence cases, however, are known to 'fizzle out' or end without a formal conclusion (see chapters 4 and 6). Of the domestic violence cases in this study at least 5 were seen to ‘fizzle out’, sometimes where the client and the other party reconciled (even if the reconciliation was only temporary). For example, in one of the above mentioned cases, “the situation improved” to the extent that the client agreed that she no longer needed the protection of an injunction. In another example of a common pattern the client came into the solicitors office saying that she needed an injunction following a specific incidence of domestic violence. The affidavit was prepared after a lengthy initial interview and an ex parte hearing was listed for the next morning. However, the client (female) failed to attend court on the following day and so the application was withdrawn and the case concluded without a formal conclusion.

In another case, the client's boyfriend had recently come out of prison. The client had taken out previous injunctions against him as there was a history of domestic violence and also of drug abuse. The injunction on this occasion was needed after an incident where the man mistakenly struck the couple's child.
intending to hit the applicant. In this case the certificate was discharged as the parties hoped to reconcile.

In these sorts of cases the result code usually given was “no further instructions.” This suggests that though in some cases it is possible to identify the reason for the end to the case (e.g. reconciliation), in others it may not even be possible for the solicitor to determine why it came to an end.

Range of cases

Again the range of domestic violence cases is broad. There were simple undertakings which only take a few weeks and are very cheap (some cases in this sample cost as little as £300 in total), or straightforward DVMPA injunctions with female applicants, which take about 6 weeks, (including an ex parte hearing and 2 service fees for enquiry agents who served the injunction) for around £1,000. But there were also very costly cases, for example where costs exceeded £1,000 without the case reaching court. In one case, this was due to the fact that the client required an interpreter. The case was relatively straightforward, but costs were inflated by the length of the client interviews and the interpreter’s fees.

In some cases repeat players were seen, as among children cases. One unusually expensive and lengthy case cost £18,326, was carried out over 4 certificates and lasted 4 years. This case is too expensive to include in the general analysis in chapter 4. However, it provides a good example of the repeat player. In this case the man had been violent. He had an injunction taken out against him, which he then breached. A further injunction was sought. This too was breached. Eventually the man was committed to prison for breaching the injunction. As soon as he was out of prison the pattern of behaviour resumed. This was believed by the solicitor to be as a result of the woman’s relationship with a new partner.

In other examples, people other than partners were seen to take out injunctions, though these were rare. One example is that of a grandmother (guardian of the two children in the case) who wanted an injunction against her son and his girlfriend to stop them harassing her and the children. In another example threats were made by one woman to another woman. A solicitor in one case said that the “decision [was] made to close the [file] without further correspondence as that [was] likely to prompt further calls from her [the client]. It is unreasonable for the LAB to continue to fund this case.”

Delay

Delay can also be a problem in domestic violence cases though the total duration tends to be shorter. One such cause of delay is difficulty in serving the respondent with the order. For example, in one case it took three attempts by
the enquiry agents (at a total cost of £300). In another case, the enquiry agents experienced severe difficulties in serving a man who was eventually found in police custody and then in a number of different hostels.

Children and Domestic Violence

Of the ten cases which involved both domestic violence and children issues in this high level detail sample one involved alcohol abuse, one involved drug abuse, one involved allegations of sexual abuse by a new partner, and one involved extreme violence - where a woman's teeth had been knocked out and her partner had threatened to kill her.

Two of these cases fizzled out. One firm had an interesting approach to reducing delay and getting cases moved up the court list. This was for the partner to go to court personally to serve documents and as one attendance note recorded, "asked X on the counter to move the application to "urgent"...he advised me he would try to get it moved up the pile waiting to be processed". This appeared to be an unusual but innovative approach!

Money / Property Only Files

Case descriptions

Of the 29 financial cases, at least 6 concluded "informally". In two cases the matrimonial home was repossessed, in one case it was found that though the applicant believed there to be assets, the other party was in fact found to have no assets. In one case the couple reconciled as the solicitor wrote in a file note: "the clients received a lot of valuable counselling over the past couple of months...through RELATE".

In a further case, legal aid was being used to redistribute debt rather than assets. This is another side to the money cases which should not be overlooked. In this case the building society secured a possession order over the house and the excess "if any" was to be split between the parties when the property was sold. The solicitor in this case predicted that it was unlikely that there would be much left.

Unreasonable or Disproportionate Cost

Some cases which might be considered unreasonable for the tax payer to fund were found. For example, in one case where both sides were legally aided, the couple fought for five years over a relatively small sum. The solicitor noted on the file that, "although the claim was modest, it was very important to the
petitioner.” In this case the sum of money they were fighting over was £2500 and the costs incurred by the Legal Aid Fund (for one side only) were £3000.

Another case in this group could be characterised as unreasonable as a client had unrealistically low expectations of outcome. In this case she was found to be suffering from schizophrenia and was willing to settle her case for an unreasonably low amount. In these sorts of cases the lawyer’s function is often seen to be to “educate” the client as to what is “reasonable”.

Delay

The very nature of property and financial redistribution make delay inevitable in many cases. For example, in one case, once the settlement had been agreed, it took 2 years to sell the house and transfer the money into the children’s accounts. In another case, the parties decided to adjourn the application until the ex-husband was in a position to be able to give the woman a lump sum.

In Profiling Civil Litigation it is suggested that another cause of delay may be the fact that the lawyer has to negotiate with people other than the client. For example, correspondence with building societies discussing mortgage repayments or avoiding repossession can increase delays. One case from the high level detail sample illustrates this. It involved a straightforward dispute over ancillary relief and the house. The following were recorded: 6 letters written to the building society, 3 letters received from the building society and 5 telephone calls to the building society.

Other causes of delay stem from other organisations in a matrimonial case such as the LAB area office itself, the Benefits Agency, the Child Support Agency and the court. In one case from the Profiling sample, the Benefits Agency lost an assessment which caused delay. In another, a court sent papers back to the solicitor rather than to the other side in an ancillary relief case.

Other examples of court delay include the significant delay by a County Court Judge who took 2 months to look at a consent order, and then did not approve it. The Judge would not approve the order unless it had periodical payment details attached to it too. Eventually the Judge gave in.

Lawyer Activity

Lawyer strategy or patterns of activity and inactivity may have the most influence on the cost and length profile of a case. As the two individual case profiles below show, there are marked periods of lawyer inactivity. Why should these periods of inactivity occur? In ancillary relief cases, there is evidence that delay

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4 Supra n1., p62 para 3.5.7.
5 With the new “in-house” means assessment, stray documentation should become less of a problem.
occurs as a result of non-disclosure of financial information. Results from this study show that the lawyer considered that there was non-disclosure by the other side in 40% of money/property only cases and in 60% of children and money cases. Information can be requested in an ancillary relief case about the other side’s resources (Family Proceedings Rules 2.63) when it is considered necessary to the case. One solicitor in a study by Ingleby⁶ admitted using this provision when the other side made what she regarded as an unacceptable offer. This can increase delays and costs as the request must be replied to formally and may require further client conferences. One solicitor in a case from the Profiling sample involving money and property, recorded in an attendance note: “As usual firm X are wasting time and money and not dealing with providing pension details.”

In a study from the US by Mather et al⁷, 20% of the lawyers interviewed admitted to using strategic delaying tactics. As the profile of this sample suggests, the majority of legally aided applicants are women and only half their opponents are also legally aided. To be able to withhold information and to be able to survive in relative comfort without a resolution of the dispute gives one party the power to wait and seek settlement on more favourable terms for themselves. It is, therefore, often the imbalance in power and assets which can also lead to delay.

Other delays can stem from the fact that a case is part privately funded and part legally aided as communications with means assessment procedures and the LAB applications sections can slow things down.

The Client

Client characteristics may also have a lengthening effect on the duration of a case. In this sample 3% of cases were recorded as having communication needs; usually where English was the client’s second language. In 9% of cases the client had health needs.

In all family cases, the level of emotional involvement makes it difficult to predict how long the case will last and how much it will cost. Complexities stem from the fact that divorce, for example, is an emotional business.⁸

As an example of the sorts of things with which solicitors have to deal, one solicitor from this study recorded an attendance note in a divorce case which stated: “Attending a very distressed Mrs X on the phone. Her husband left her

yesterday...he told her that he was leaving her and wanted a divorce. She is devastated. I calmed her down and told her she was not going to lose her children..."

General Billing

There appeared to be general observable differences in billing methods or in the approaches to billing. For example, one firm recorded the following work elements on file for a children and domestic violence case: 50 minutes of travel and waiting, 25 minutes of attendance on the client, 30 minutes of preparation and 4 letters. These work elements were all present but not billed for (an estimated £206 worth (at current remuneration levels) of work. This was not work carried out before the certificate was issued, or after the bill had been submitted, nor was the client paying privately for the work. It is possible that the solicitor made a mistake on this case, but it is also possible that the solicitor was making decisions about how long things ought to take, and how much it is reasonable to bill for. Thus the amount of time billed for may underestimate the amount of work carried out in some cases. Previous research has shown that when comparing solicitor recall with researcher observation of how solicitors spend their time, these results were often quite different.9

Perhaps they thought that the bill would be provisionally assessed to reflect the work they claimed for by the LAB anyway. Most of the firms used costs draftspeople (professional bill preparers who take a fixed percentage of the total costs, usually approximately 5%) for drawing up bills, especially in the expensive cases. It was also noted that some firms were better at knowing what they could bill for than others (and there seemed to be some slight geographical variation in what the LAB assessors / judges considered to be allowable).

For example, some firms appeared to routinely use the green form for filling in the legal aid application. Others did not (even where it was obvious from the start that the case would progress onto a certificate). Some practitioners routinely billed for periodic file reviews when cases have been diarised to be looked at but when no work is required on that file. As one of the solicitors who was interviewed said, “I probably should bill for that shouldn’t I?” but in her case she did not charge the 6 minutes routinely charged by most other firms (the smallest billing unit for most firms). It would be difficult to argue that either of these approaches is wrong, but the difference in approach should be noted.

Claiming for bill preparation or checking was another item which some firms routinely claimed whilst others did not.

Another occasional difficulty was separating out the green form divorce costs (relating to anything to do with the actual divorce) from the ancillary work certificate costs which may cover the same time period. This is further complicated when the ancillary part of the case is legally aided but the divorce is paid for privately. This was found in at least one file. Some firms had separate files for green form work, whereas others had one file per client.

In a few cases the green form bill was more expensive than the main bill. This was unexpected but appeared where most of the work was done under extensions to the green form limit (normally 3 hours work only in family cases) and in one particular case, where a woman was applying for a lump sum order for herself, the green form cost was £521.76 and the bill for the certificated work was £428.86 (The husband had no appreciable assets and so the wife was awarded nothing).

Advice and assistance was discussed by one solicitor in particular who stated that: “under GF the LAB is getting a good deal as few solicitors stop at the 2 or 3 hour limit”. This comment is echoed by one solicitor who said that she too would finish cases off even if the certificate or green form had expired. In one unusual case, however, a solicitor got a green form extension after the certificate was discharged to do 2 hours more work on the case. This might be considered unusual practice, however it does not mean that it is uncommon.
6. Practitioners’ Views about Legally Aided Family Work

Findings from the Interviews

(Source: in-depth Interviews with 14 Practitioners)

Introduction

Semi-structured interviews with 14 legal aid family practitioners were carried out between August and November 1997 by the researchers. Practitioners’ experience, with particular reference to the findings of the earlier stages of this study, were discussed. 13 of the 14 interviewees worked in firms previously visited by the researchers for the purposes of collecting high and medium level data. This approach was chosen to follow the triangulated methodology and also to build on the relationship the researchers had developed with these firms. It was felt that these practitioners, or others in their firms, had already contributed to an earlier stage of the project, and they would therefore be more likely to be willing to take part in this stage. In fact, only one solicitor declined when asked to take part in this stage. In the main, solicitors were happy to give up their time to be included in this part of the project and most seemed genuinely interested in the provisional findings.

This chapter sets out the results from these interviews, in many instances quoting directly from the interviews. The findings are set out in three main parts: first, the structure and nature of the firms themselves; second, the legally aided case including practitioners’ views, amongst other things, on the structure, length, cost and outcomes of cases; third, practitioners’ views on and experiences of working for fixed fees or under block contracting.

Methodology

The interviews lasted between 45 minutes and 2 hours (1 hour and 15 minutes on average). 8 interviews were carried out in person, and 6 were conducted by telephone. When the practitioners were visited, the interviews were conducted in the solicitors’ offices. These interviews were tape-recorded (with the solicitor’s consent) and later transcribed. Most of the telephone interviews were not tape recorded, instead the researchers noted the interviewees’ responses to be included in the analysis.

The firms were selected primarily according to their geographical location. This was to ensure that the views of practitioners from all over England and Wales, from both rural and urban, wealthy and less wealthy areas, were represented. It is of course difficult to conduct interviews with solicitors from every sub-group of firm. However, the methodology chosen at least attempted a good spread of
firms in terms of geographical location, rural and urban client populations, amount of family work conducted by the firm, and the amount of legally aided family work carried out by the firm.

All the practitioners included in this part of the survey came from firms which already held franchises in the family category. One was a sole practitioner (who was not part of the medium level data set) but who was included to represent this type of firm.

The interviews were semi-structured, i.e. some set questions were included in all the interviews. However, the interviewees took an active role in guiding some of the discussion and though the same ground was covered in all the interviews, some questions were open ended to allow scope for general discussion. The findings from the interviews provide a rich source of information and put much flesh on the bones of the quantitative analysis discussed in the preceding chapters.

The Practitioners and their Firms

Of the 14 practitioners interviewed, 4 were male and 10 were female. 4 were not partners in the firms included in the study (these were all women; 3 were salaried solicitors and one was a legal executive). It was considered important that some junior members of staff were included in the interviews as some firms indicated that it is often they who spend more of their time on legally aided cases. As one senior partner explained: "I am having to make a conscious effort to do more private work in the department and leave the assistant solicitor and legal executive (very competent people) to do the legal aid work, which I don't like but it's a fact of life...an inevitable trend...". This solicitor considered that his time was more cost effectively spent on private clients. Legal aid rates are, in general, much lower than those paid by private clients.

One of the practitioners included in the survey was a sole practitioner from the North of England, the remainder were all in partnerships. Thus the range of size of firm was from 1 to 35 partners (average 8), and from 0 to 65 fee earners (average 18). The practitioners were less sure about the numbers of paralegals and legal executives, however, only 3 firms had none, and the majority of firms (10) also had trainees (the average number of trainees per firm was 3.3 at any one time).

The average number of partners per firm undertaking family work was 2, and the average number of other fee earners undertaking family work in a firm was 2.7.

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1 A copy of the interview schedule is presented in Appendix 1.
2 Thus, as one of those interviewed was not a qualified solicitor, the group of interviewees will often be referred to as "practitioners". Where the term "solicitors" is used, this will accurately reflect the nature of the group.
The amount of family work as a proportion of a firm's total work (in terms of gross fee income) ranged from 5-10% to 60-70% with an average of 25%. Of this family work, the interviewees estimated (in a few cases calculated) the amount of legally aided work. The proportion of family work that was legally aided ranged from 40-50% to 90%. The average proportion was 65%, suggesting that even though the firms varied in the amount of family work they did, the proportion of that work which was legally aided was high in all cases. A similar proportion has been found from the Law Society's Panel Survey.3

Of the 14 people interviewed, only 2 spent less than 95% of their time on family cases (both privately funded and legally aided). 10 spent all their time on family matters and the average proportion of time spent amongst these practitioners was 95%. Thus 13 of the 14 described themselves as "family specialists" (the remaining one was a legal executive who did not feel qualified to describe herself as a specialist (she spent 66% of her time on family work). 10 of the 14 were also members of the Solicitors Family Law Association (SFLA) which has a code of practice which advocates a conciliatory approach to family law cases.

The majority of the practitioners were also experienced in terms of the number of years they had been practising. The number of years of experience of family law matters ranged from 3 to 25 with an average of 13 years.

The Type of Work

When asked how much of the firms' or their own work fell within separate categories of work, most of the practitioners found it difficult to say what proportion of their work was, for example, 'domestic violence only' cases. It was easier for them to describe proceedings. 12 of the 14 practitioners said that divorce cases made up 50-80% of their work load (average 62%) with unmarrieds or breakdown of a relationship making up the next largest proportion and Judicial Separation4 making up a small percentage of their work. The interviewees did, however, describe a general increase in the number of unmarried couples who were coming to see them regarding relationship breakdown (rather than divorce) and related (children and money) issues. The rarest sorts of cases were applications for contact or residence made by people other than parents (e.g.grandparents).

3 Unpublished figures from the Law Society Research and Policy Planning Unit's Panel Survey show that in firms with 5-10 partners the average proportion of family law fee income from legal aid was 65%. The average figure for all firms with fewer than 80 partners was 59%. Sidaway J.,(1998) Unpublished.

4 Judicial Separation may be used tactically. As one solicitor said: "[in some cases] we don't want to file a divorce petition because we don't necessarily want to be divorced until we get disclosure, we don't know whether he can afford to let us get divorced because his pension may be good and he may have no other assets; and OK there is ...pension earmarking, but until pension splitting is available...yes, that's a reason sometimes for doing a JS."
Those who felt able (7 practitioners) to estimate the proportions of their work gave indications as follows. Domestic violence only cases were thought to make up between 5 and 15%, though some mentioned that this was lower than it had been in previous years. When asked why this might be, practitioners answered that they were not sure, but one answered that “domestic violence often goes in cycles. Sometimes it is more popular to pursue than at other times.” The same solicitor also suggested that there was an element of seasonality in the domestic violence cases she saw: “Domestic violence definitely goes up after Christmas...after the kids have been on holiday, couples have been together far too long, they find they have a problem, so you find a peak in January/February.”

Some practitioners mentioned that they expected that there may be an increase in the number of domestic violence applications following the implementation of Part IV of the Family Law Act 1996 which came into force on 1 October 1997. This provides a single set of remedies for domestic violence and occupation of the family home through non-molestation and occupation orders. It is thought that this might increase the number of applications and accordingly the number of legally aided applications as Part IV extends the categories of people who can apply for these orders to people who live in the same household (including same sex couples), those who have agreed to be married, natural parents of adopted children, and certain relatives who up until now have been excluded from this type of application.

Children only cases were thought to make up between 25% and 50% of practitioners’ work. Money only cases were described as making up between 0 and 30% and combinations of cases were seen as the largest group in general. It should be noted that these are figures relating to the work of the individual practitioner interviewed and are not necessarily a picture of the firm’s work as a whole. It is interesting to note that few (7) of the practitioners felt able to estimate percentages for the different types of case and that when answering they made it clear that these were, in the main, guesses. It appears, then, at present that practitioners have fairly low levels of accurate knowledge about the categories of case in their individual caseloads. Some added that they could probably find out from their computer print-outs a more accurate picture, though the case categorisation for these did not seem to allow for a breakdown of case types by issues arising.

When asked whether there are types of case that are more likely to be legally aided than other types, 13 of the 14 answered. 10 mentioned ‘domestic violence only’ cases (injunctions and ousters - non-molestation and occupation orders

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5 The same solicitor suggested that seasonality in public child care cases was also common, “because it is connected with the budgetary controls of the Social Services Department. At the moment it has gone incredibly quiet because they have probably reached the end of their funds for this year.”
under the Family Law Act 1996) and 9 mentioned Children Act 1989 cases (in particular contact and residence cases, and, of course, public children cases).

Client characteristics

When asked about the age ranges of their client populations, 9 practitioners stated that they got a whole range of ages, and 4 said that they tend to get younger clients (the following age ranges were mentioned: under 40; 30s-40s; and 20s-30s). These 4 practitioners also appeared to have clients who were mainly from the lower end of the socio-economic scale and involved in cases where both sides are legally aided.

The ethnicity of the different firms' client base was interesting as the majority of practitioners (9) stated that their client base was predominantly white. The remainder stated that they had a client base with a mix of ethnic backgrounds. One practitioner said that though there was a large Asian population in the area, she did not see any Asian clients, though she was not entirely sure why this was. She suggested that patterns of client referral tend to mean that some firms in that area saw a lot of Asian clients whereas hers saw almost none.

When asked about the socio-economic status of their clients, 9 practitioners described their clients as being at the "lower end of the socio-economic scale" and 5 described them as coming from a mixture of backgrounds. Those who said their client base was predominantly from the lower end of the socio-economic scale were consistent (except in one case) with those practitioners who said that in general, in their legally aided cases, both sides tended to be legally aided. One practitioner in the North of England, for example, said "we have a lot of clients who are fourth generation Income Support claimants". These sorts of observations suggest that different firms may indeed have quite different client bases.

One indicator of the differences in client base of the different firms appeared to be how often the other party (in a legally aided case) was also legally aided. 5 of the 14 practitioners stated that in their legally aided cases, both sides (their client and the other side) tended to be legally aided. As one solicitor from a seaside town said, "We have certain catchment areas which includes two council estates, a lot of the old guest houses are now DSS hostels and so there is not much money flying about".

The remaining 9 stated that they tend to get a mixture of cases where both sides have been granted legal aid and where one side is legally aided and the other side is privately funded. One solicitor explained: "I act for consultants' wives who are eligible for legal aid, but similarly we get lots of clients where both parties are

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6 More information about the profile of the legally aided clients will be available from the forthcoming Legal Aid Board Research Unit project "Assessing Means Assessment."
Another solicitor from a busy London firm reflected on the fact that though she gets a mixture of cases with regards to how the cases are funded the reason for this is her background in family law: "Because I trained at one of the big London firms I get a lot of recommendations from the big London firms where they either have a poor wife, or have spent all their money on legal fees!"

There was also general agreement that legally aided clients are more likely to be women (though 2 practitioners stated that they get roughly equal proportions of male and female clients). This concurs with the findings in chapter 4. This was seen as part of the general pattern of women more often making applications or petitioning for divorce than men. It was also noted that as women still tend to be the primary child carer in a family, and are therefore often not formally employed or in low paid, often part-time occupations, they are more likely to be financially eligible for legal aid. One solicitor also suggested that seeking any form of help may be gender-based behaviour: "women go to doctors; women go to solicitors: they seek help from professionals more readily than men do. Also women find women lawyers, because we are an all women team, we tend to get women clients."

The proportion of legally aided clients who are applicants as opposed to respondents seen by a firm is also interesting. Half the practitioners interviewed said that they saw mainly applicants, whereas the remaining half saw a mixture of applicants and respondents. This may be due to more applicants in total getting legal aid and being represented. However, it is interesting to note that some firms may have different reputations or client referral systems which encourage more applicants.

The practitioners were asked whether their clients ever moved in and out of legal aid eligibility. 10 said it was "rare" for this to occur and 4 said it "sometimes happened". Thus it does not appear to be a frequent occurrence, but when it does occur, for example if a client gets a job having been on Income Support, or where a client moves in with a new partner and the household income increases, it can cause problems and delay for the solicitor. Solicitors mentioned that clients are often not clear about what benefits they are on, and as one practitioner said, "the self employed, cash in hand people are very difficult to assess." Another solicitor said that she sometimes found it frustrating that people "don't necessarily tell you the truth [for example about changes in financial circumstances]...and the powers of investigation by the LAB are not terribly strenuous."7

7 It should be noted that since this fieldwork, a Special Investigations Unit has been set up by the LAB.
The Legally Aided Case

Issues Arising

When asked whether they saw cases as being made up of separate elements (such as divorce, children issues, money, property) the vast majority of the practitioners said that yes they do see them as separate elements. Only 2 replied that they could not see the case as being made up of separate issues as all the issues relating to a case are linked. When asked if the issues were dealt with separately the majority still replied yes, they treat them separately. However, 5 said no they cannot treat them separately as they are all part of the same case and therefore have to be dealt with together. It was clear from the answers to these questions that though issues such as children and money may be separate at one level, at another they are linked so that, as one practitioner said, if there are children, who gets the house depends on who gets the children in most cases. Additionally, if one party does not feel at ease about contact between the children and the other party, negotiations concerning finances may take longer to sort out. Thus the issues are separate at one level, but in practice may be more difficult to deal with in isolation.

Two firms in the sample, however, definitely separated issues. A partner from one of these firms described how cases were divided by issue so that one partner would deal with the financial aspects of a case and another would deal with the matters concerning the children. In this way, two files are opened by two solicitors in the firm under one legal aid certificate. The solicitor stated that this was the only way of making the work profitable.

New Issues

How often do new issues arise in a case? The answers to this question ranged from “rarely” to “very often” and “half the time”. This depended on the interpretation of the question which was posed in order to see how often new issues arise during a case which change its nature.

The question was posed because the LAB’s database records each case with a case code which remains with that case for the length of the legal aid certificate. Some of the practitioners seemed to think that the question was trying to get at how well they assessed the nature of the case at it’s starting point. Therefore, the answers divide into those where new issues were said to arise fairly frequently to very often (7 answers), and those where new issues arising was said to happen sometimes/rarely (6 answers).

One solicitor said “yes...domestic violence does crop up...or sometimes in contact matters, private law contact, you will find that allegations of sexual abuse are suddenly thrown into the ring." Another solicitor pointed to the suggestion that: “a new partner can upset the balance" because if they live together this can
either make contact a problem for the absent parent, and/or complicate the financial aspects of a separation as the household may have to be reassessed with regards to means. The fact that half the practitioners said that new issues do arise part way through a case brings up the issue of how difficult it is to predict what sort of case it will turn out to be. This adds weight to the argument that it is difficult to predict case length and case cost near the beginning of a case. These findings reiterate those relating to cost prediction discussed in chapter 4.

Cases which ‘Fizzle Out’

How often do cases ‘fizzle out’ without a formal resolution? Again the answers to this were broad ranging: from “not many” to “frequently, 15-20% of the time.” 7 answers ranged from “sometimes” to “frequently” including 2 practitioners who specified 15-20% of the time. 5 answered in the range of “not often” or “0-5% of cases”. The reason for this mixture of percentages and verbal descriptions of proportions is that the questions were framed in order to try to get practitioners to estimate percentages. However, some felt completely unable to do this and could only give descriptive answers. From these findings a qualitative analysis can be performed, but as some were able to provide or estimate percentages these are given where relevant.

Although 5 of the practitioners mentioned above indicated that cases which fizzle out are unusual, the fact remains that some cases do fizzle out. The reasons given for no formal resolution in some cases was also broad ranging. A common pattern which tends to affect green form only is where a client comes in for advice on the financial consequences of divorce if they were to initiate proceedings; with whom are the children likely to live and who will live in the family home, or will it have to be sold. As one solicitor said “clients will say ‘I am only coming in today to talk to you about leaving my husband, but I want to know will I get the children, I want to know about the financial implications, I don’t really know yet.’” Often these clients are women who might realise the consequences would be selling the family home and so they decide not to proceed. In other cases the client may disappear for a number of months or a year and return to the solicitor and say now I am sure I want to proceed.

‘Domestic violence only’ cases provide another example of a type of case which is prone to concluding informally. It appears to be quite common for an applicant to not turn up at court for the first hearing as the couple has reconciled. As one solicitor described, “People get terribly excited and get emergency legal aid, you will get the paperwork done and either they won’t contact you to complete their affidavit, or will not turn up at court.” This may be a repeating pattern in some cases. This type of situation is difficult for the solicitor as of course relationships may be saved, however, solicitors indicated frustration caused by the amount of time spent preparing seemingly-useless documents. For those victims who are
at real risk of domestic violence, however, the process must surely remain the same.

Reconciliation may be an important factor more generally in cases which fizzle out. In a study carried out in the Netherlands, up to 20% of couples were recorded as reconciling after having visited the lawyer. This figure is higher than those quoted by the practitioners interviewed for this study. However, the proportion of reconciliation given by the practitioners ranged from 1% to 20% with most clustering around the 5-10% range. These figures are difficult to assess accurately as clients may disappear and the solicitor will not know if this is due to reconciliation or any other factor. For this reason levels may be underestimated, however, the reconciliations may not be permanent thus the figures may overestimate the reality of the situation. Two practitioners mentioned that domestic violence cases were particularly likely to involve reconciliation followed by a repeat incidence of violence, followed by reconciliation and so on. In fact, one of these two stated that she thought about a third of all domestic violence cases resulted in reconciliation (at least in the short term).

The fact that some cases do not conclude formally adds another factor into the case prediction model as it cannot always be easy to predict from initial instructions which cases are going to run and run, and which are going to fizzle out after a relatively short period of time.

*Domestic Violence*

When asked how often domestic violence was involved in a case, again there was a range of responses from 0-5% to 33% of the time. Some practitioners said that recently they had experienced a lull, but one confirmed that she had recently experienced an increase in caseload as the local Police domestic violence unit was now referring clients to her. Other solicitors were unhappy with the term domestic violence as they saw it as a kind of continuum from extremely violent repetitive episodes to one off incidents. One remarked: “In my experience (though this is not very politically correct) I find when a relationship breaks down the women behave hysterically and the men become violent. But what does violence mean? Some men shout, some kick. If you are talking about how often we get injunctions for our clients I would say between 0-5% of the time, but I don’t think that they are very effective so if you compared our results with another firm our figures would look low. If you take a broader definition of violence, the incidence would be much higher.”

It can also be argued that individuals have very different tolerance levels and that what one person might describe as domestic violence worthy of seeking an injunction, another might find acceptable or excusable behaviour. These.

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differences may also attach to different cultural values. As a solicitor from the North of England said: "I have clients who say to me 'he's not violent to me' and then five minutes later it will transpire that he blacked her eye three weeks ago, but, she doesn't really think a black eye is violence because in the North East of England it isn't. This is what men do on a Friday night when they've had a skinful".

The distinction between what are sometimes called "slap" cases and physical abuse sustained over a long period of time was made by a different solicitor: "I think what you have to do is distinguish between what may be happening in the three to six months where a relationship has broken down, when people will get very angry and throw things and slam doors...as their relationship breaks down, as distinct from a course of wife bashing. I think you have to distinguish between domestic violence in its kind of true form and the conflict that people can experience as their relationship breaks down."

One solicitor also reflected on the problem of how to deal with rape within relationships: "I know for a fact, that when clients admit to me they have been hit, I usually say to them 'is he sexually violent to you?' - 'what do you mean?'  'Has he ever raped you? or forced you to have sex when you didn't want to?' And very often clients' eyes will drop to the ground and tell me 'no'. You know they are lying, but it's almost like it's the ultimate, that's one thing you really can't push."

At the other end of the scale is the issue of emotional abuse, as one solicitor affirmed: "It's not just the physical violence that goes on. It's this power, control, possession."

When asked whether they routinely screen for issues of domestic violence, 6 practitioners said no, they wait for the client to bring it up. 5 said that yes they do ask routinely and 3 said that they do ask but in an indirect way. Findings from a study of 36 solicitors by Piper show similar slightly higher levels of screening. Fourteen solicitors said they 'always' asked about domestic violence, 20 said they did so 'sometimes' and two said 'never'. One said, "I don't ask the questions unless I start getting a smell. After 30 years or more of doing this job I can nearly always smell [domestic violence]."

Piper's study also asked solicitors how 'useful' it was for them to know about domestic violence. Almost half referred to the fact that it was useful in terms of client protection and 6 said that is could be useful in the context of contact visits with children, where minimising the risk of abuse to children is important. One said domestic violence is "always important in regard to the suitability of unsupervised access."  

10 Ibid p277
In the Case Profiling sample, there did not seem to be much difference in the way that different sorts of clients were approached about the subject of domestic violence, though one solicitor did say that the more educated and middle class a client is, the less likely it is that she (for it is usually the woman who is the victim) will admit that she has experienced violence. At the lower end of the socio-economic scale, domestic violence appears to be more openly talked about. When asked if she ever thought people were covering up violence, one solicitor answered: “I would say that it is more common than I appreciate because I think many clients would look me in the eye and deny it had happened... If the client is about to end a relationship ... and they are going to be able to get rid of this person, then if they don’t want to tell me that he has been violent to them, I think it’s their prerogative really.”

These comments indicate some of the complexities involved in the definition, the experience and the accurate measurement of the incidence of domestic violence.

**Case Duration**

The practitioners were asked what they considered to be the most time consuming aspect of family cases. In general, the answers to this question were fairly consistent. Attending the client (especially at the initial stages) was cited by 7 practitioners, preparation for hearings was highlighted by 5, and discovery was mentioned by 5 practitioners as being amongst the most time consuming aspects of their day to day work. The following description illustrates why, for example, taking instructions from a client can be time consuming. One solicitor described how seeing a confused, distressed client can be enormously time consuming. She explained: "you are trying to take a chronological statement from them about, for example, the course of violence over several years and she is saying ‘well I have been in hospital 3 times’ ‘when approximately?’ ‘I don’t know’ ‘Can we link it to the ages of the children?’ and so on...". Other time consuming activities were preparation of statements and affidavits. One solicitor also pointedly mentioned the completion of franchising documents required by the LAB as very time consuming.

The issue of delay produced a diverse range of comments from the practitioners interviewed. These include court listing time (5 practitioners), the other side’s solicitor (4 practitioners), pressure of work (2) and other miscellaneous factors such as waiting for Court Welfare Officers’ reports, waiting at court, waiting for Child Support Agency assessments, valuation reports on property, and information from building societies and insurance companies.

12 of the 14 practitioners interviewed declared that they had experienced delaying tactics by other solicitors, 1 of those said that often this stemmed from the parties’ behaviour and 3 even admitted to using them themselves. Examples of such delaying tactics are: asking for unnecessary documents to be produced
Partly because of these sorts of delays, and partly because of other factors, 11 of the 14 practitioners thought that, in general, family cases take too long. Of those who thought that family cases do take too long, 5 specified that this was particularly the case in financial cases and 1 cited children cases. 3 stated that they did not think that family cases take too long, as often the clients need time to readjust to new situations. For example, one of these 3 answered: “no, it takes a number of months for the client to make a clear and rational decision about his or her future. You can't fast track matrimonial cases...certain issues can be resolved over time, such as children...let the woman have time to accept the fact that her husband has a new girlfriend.”

The practitioners were asked whether it is easy to predict how long a case will take near the start of that case. 5 practitioners stated categorically, no, it is not easy to predict near the start of a case what its duration is going to be. 5 answered that yes it is easy to predict how long a case will last, and said that they have to do this anyway to comply with the transaction criteria for maintaining their franchised status. It should be noted, however, that the indications of how long a case will last required for this purpose are fairly broad and are revised at least at six monthly intervals. The prediction of case length in this way therefore allows the prediction to change over time. It might be suggested then, that, though predictions can be made, those made near the start of the case may look very different from those midway through a case. Thus the accuracy of the early predictions may be called into question.

The remaining 4 practitioners gave a qualified response saying that some types of case were easier to predict than others for various reasons (see also cost section below). When asked which type of case duration is easier to predict, 11 gave domestic violence cases as the easiest as they are driven by a fairly rigid but brief court timetable and their very nature means that emergency legal aid is usually granted and the whole process is relatively short. ‘Children only’ cases were also cited by 3 practitioners as easier to predict in terms of duration than other case types. It should be remembered, however, that these responses relate to the experiences of the individuals so that, as many of them were senior partners who tended to do more financial cases and in some cases virtually no domestic violence cases, their points of reference may not reflect the experiences of other lawyers in their firm.

Chapter 4 suggests that there is not always a direct correlation between case length and case complexity. In other words, a case which may on the facts appear to be relatively straightforward such as a contact and residence application may take longer to resolve than a prima facie more complex financial case. 11 of the 14 practitioners agreed that their experience would support this
finding (2 disagreed). When asked why this might be, solicitors pointed to the comparison between cases where the parties are on fairly good terms and want a quick resolution and a clean break order, and those cases involving a bitterly contested contact hearing where a resolution is difficult to reach as both sides are entrenched.

Chapter 4 also states that the findings of the preliminary part of this study show that, where a case involves a number of issues, if the issue of domestic violence is present then it tends to have a shortening effect on case length, whereas money or property issues tend to have a lengthening effect. Responding to this finding from the sample, 12 practitioners said that this finding concurred with their general experience. Thus the above-mentioned findings from the Case Profiling Study are supported by the views of the practitioners interviewed.

Case Cost

The first question the practitioners were asked relating to case cost was: what is the most expensive element of family cases? The answers to this question were again quite varied with limited consensus of opinion. 5 said that they considered barristers’ fees to be the most expensive element of a case. 2 said that solicitors’ costs are the most expensive single element, whereas 2 others pointed to discovery in financial cases as being the most expensive part of family work. 2 also mentioned preparation for final hearings as the most expensive part of family work. Though the question was quite broadly framed, most practitioners found it quite difficult to separate out single elements as more expensive than others.

In several interviews, solicitors answered the question about case cost with case categories rather than work elements. When comparing different types of cases and those which go to a final hearing with those which settle early on, it is very difficult to make general comments about cost. However, the practitioners in this study found it even more difficult to say what proportions of total case costs are made up by: solicitor’s profit costs; disbursements; counsel fees; green form. Again it is very difficult to talk generally, but the practitioners did find this part of the interview particularly difficult. One solicitor said, “no, I definitely cannot give you percentages!” At present, there is no need for solicitors to have this kind of information at their fingertips as there is no particular reason for them to be acutely aware of how different cost elements make up their final bills. In fact, it was notable, though there were some exceptions, how little the practitioners were concerned with their legal aid bills. However, it was not the researchers’ impression that this disregard was an attempt to drive up matrimonial legal aid bills, rather a result of other more pressing issues facing the practitioners.

There was, however, a general agreement that profit costs are usually the largest proportion of the bill, disbursements are usually quite small, and counsel fees are big if they are used, and green form is, by its very nature, a small
proportion of case cost. One solicitor recognised how important the solicitor's work is in terms of cost as she said in children cases, 60% of the work for a final hearing is in preparation alone. Another said that she would expect solicitors' fees to make up half the bill, the rest split between green form and disbursements and counsel when used. However, yet another said that counsel fees and solicitors' profit costs are about the same with disbursements making up 5-10% of the bill and green form 1-2% of the bill.

One solicitor was able to split the costs up even further by stating that in an average ancillary relief case she would expect to see green form making up 0%, profit costs 80% (50% correspondence and 30% attendance on client) disbursements constituting 10% and counsel fees 10%. This is close to the results from this study described in chapter 4 where profit costs were found to make up 75% of case costs on average, with the remaining 25% split fairly evenly between green form, disbursements and counsel fees.

Thirteen practitioners thought that their work (making up profit costs) was clustered rather than evenly spread over the duration of the case. This confirmed the preliminary findings from the analysis of the medium detail set (see also chapter 5 for case studies). The most important clustering points in cases were those such as hearings, in particular the final hearing (mentioned by 7 practitioners), and also attendance on the client (mentioned by 5), in particular the initial instructions from the client.

Ten of those solicitors interviewed said they had good computerised accounts systems and one demonstrated how written time sheets have now been replaced in her firm with time recording directly into the system by each fee earner at their desk top computer. Despite the relatively high levels of information technology within some firms (3 firms mentioned new systems that were about to be installed) the sole practitioner said that she did not have a single computer in the office. Sophisticated systems may be running in many franchised firms, however, none of those interviewed produced average case cost figures for themselves. Some said they would be able to if they needed to, but there had been no reason to up until now. However, having been shown some of the systems in detail it appeared that the case category recording in most cases was fairly basic, and that their primary function was for accounting.

How easy is it to predict costs? This question is linked to the question of predicting case length. 6 practitioners said that they do not find it easy to predict costs. By way of illustration of this point, one solicitor told me that she had recently carried out an exercise on predicting costs: "when I look at what our costs actually earn us as opposed to predicted, they bear no resemblance whatsoever. You can't predict." 5 said that yes, they can predict case cost near the start of the case and 3 said in some cases it is possible. Case cost estimates are required to fulfil franchising criteria to inform the client how much their case is costing and how much it is likely to cost in total. Again, like the
duration figures, these can be adjusted for each estimate, so although solicitors are used to giving broad estimates at the beginning of a case they are also used to being able to revise those estimates on a regular basis.

One solicitor said that in financial cases, where there are very few assets to consider, case cost is much easier to predict than in cases where there are many assets. In a similar argument, another practitioner stated that in financial cases it is not easy to predict case cost before all the assets are disclosed. In this way, one solicitor said that yes it was easy to predict rough case costs given the current facts of the case. The problem is that the facts often change and this means that estimates can no longer be relied upon. Another solicitor said that "revised estimates always go up", suggesting that cases are rarely cheaper than expected.

The practitioners were asked whether it is always cheaper to settle a case rather than go to court. 10 of the 14 practitioners interviewed said yes, in their experience it is always cheaper to settle than to go to court. 4 said that this is not always the case. There are some instances where you can see that a case is never going to settle if the two sides are completely entrenched. In these cases it is sometimes cheaper to get judicial intervention than to let the case go on *ad infinitum*. The problem is distinguishing those cases which are not likely to settle from those that are. One solicitor said that the ability to separate cases out in this way can only come with experience.

Does the fact that the client is paying contributions or the fact that the statutory charge will bite in the future have any effect on case cost or length? This question was posed because, as can be noted from the costs prediction models in chapter 4, contributions seemed to make only a little difference to case cost (reducing total case cost slightly). Of those interviewed, 7 said no, paying contributions did not seem to have any effect on case cost and 6 said that it does have an effect. The responses included: the fact that the statutory charge has a more pronounced effect than the paying of contributions (1 solicitor) and that yes, paying contributions definitely makes clients more aware of the case cost and therefore tends to reduce the length (clients who have been assessed as obliged to pay contributions must pay them for the length of their case) and therefore cost of the case.

There was also mixed opinion over whether the fact that the other side was legally aided rather than privately paying had any effect on case cost. 5 said, no, the fact that the other side is legally aided or not is unimportant as regards costs, especially in comparison with other factors such as the nature of the other side's solicitor. However, 9 said that yes, the method of funding of the other side can have an effect on the cost of a case though this often depends on other factors, too. One solicitor said that if the other side is legally aided it tends to make the case progress more slowly and therefore case costs can increase. Another agreed with this point of view when he said: "if the other side is privately paying
and they haven't got the security of a legal aid certificate, there is probably more chance of it not going the full distance. In the case cost prediction results in chapter 4 we can see that the econometric model suggests that the reverse of this appears to be true, if the other side is legally aided this tends to slightly reduce total case costs.

Another of the findings from the costs prediction chapter suggests that where supervised contact is involved in a children case, this tends to greatly increase the case cost. This was not expected, and so the question was put to the practitioners whether or not the finding was consistent with their experience. Of those 10 who answered (some did not do children work), 8 agreed with the finding, 1 disagreed and 1 said that she had no experience of these kinds of cases. When asked why cases involving supervised contact are so much more expensive, one solicitor said, "the principle of contact as opposed to just the quantum of contact tends to be an issue as well and that means you've got the parent who has got the child usually being much more intransigent about whether contact takes place at all."

Case End Points

Another important section of the interview focused on the end points of cases and how they are resolved. Thirteen solicitors answered the questions fully. All agreed that it was very rare in legally aided cases to have clients come to them with a settlement already worked out (this is more likely to happen in privately funded cases). Solicitors can then be split into those who like to make an application and those who prefer to try to settle cases without any recourse to the court. The findings from this study suggest that most legally aided cases settle within court proceedings. This is a finding common with that in "Simple Quarrels" where in a study of 80 divorce cases, 22% of the legally aided cases settled prior to the day of the trial compared to 60% of privately funded cases.\(^\text{11}\)

Though most of the solicitors argued that very few of their cases reach a fully contested hearing (answers ranged from 3% to 20%), the majority of their caseload will conclude after having made an application to the court, but prior to a final hearing. The proportions stated for those cases which end after an application but prior to a final hearing were between 25% and 80%, weighted towards the higher end of the scale. Some practitioners were unable to put figures to these categories, but 4 said that "most" of their cases fell into this category. The second largest category appears to be those cases which settle before an application to the court is made. The responses to this category ranged from 2% to 50%. The third largest category included those cases which settled on or around the day of the final hearing (approximately 10-20%) and the remainder were said to go onto a full hearing.

The results also suggested a split in the strategies of solicitors as some described a pattern where "applications are made in 75% of my cases" and others showed patterns where half their cases were settled prior to any application being made. It is likely that this split is an indication of the difference between those lawyers who like to litigate and those who like to negotiate.

When asked whether they preferred to litigate or negotiate, the answers were interesting. The vast majority (11 out of 14) said they preferred to negotiate. This finding is in line with the numbers in this survey who are members of the SFLA (10), which supports negotiation and conciliation rather than an adversarial or litigious approach. The following extract is from the SFLA’s Introduction and Code of Practice:

"An SFLA solicitor believes that in resolving the problems arising at the end of family relationships or in family crises, it is preferable to promote a conciliatory atmosphere and to deal with matters in a sensitive, constructive and cost-effective way."

The SFLA Code of Practice includes the following clauses:

"1.2 The solicitor should advise, negotiate and conduct matters so as to encourage and assist the parties to achieve a constructive settlement of their differences as quickly as may be reasonable whilst recognising that the parties may need time to come to terms with their new situation.

1.3 The solicitor should ensure that the client appreciates that the interests of the children should be the first concern...

1.4 The solicitor should encourage the attitude that a family dispute is not a contest in which there is one winner and one loser, but rather a search for fair solutions."

It is interesting to note that despite the SFLA's Code of Conduct, and the high proportion of SFLA membership amongst this group of solicitors, that cases still reach court in such high numbers. Either the Code of Practice is not rigidly adhered to, or it is more difficult in legally aided cases to reach a settlement and solicitors end up being forced to put their cases through the court process or the reality of the situation forces a pragmatic approach as described by one solicitor: "I negotiate if the other side is an effective negotiator, otherwise litigating can be an effective way of getting to negotiation."

Ironically, the new SFLA Code (1998) no longer contains the word "conciliatory" as it was too ambiguous for the Crystal Clear English mark. The SFLA assures their membership that this does not mean a change in approach to resolving family disputes.

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12 From Solicitors Family Law Association Leaflet: "Introduction and Code of Practice".
Strategy

When asked about their strategy, 10 practitioners affirmed that there was no difference in the way they run privately funded cases as opposed to how they run legally aided cases. 3 practitioners admitted using different methods of conducting privately funded cases to those which are legally aided.

Although solicitors were careful to say that they treated all their clients with the same level of respect, if a client wants to spend all day with a solicitor talking things over and is paying at private rates, 2 solicitors admitted explicitly that they would be happier spending the time with the privately paying client than a legally aided client as the rates of remuneration are so different. Similar answers were given when asked if practitioners had different strategies for differently funded cases. The majority (8 of the 10 who answered this question) said that there was no difference in strategy. However, one of the two who disagreed said that yes legally aided cases were more likely to be pushed down the litigation road to court, and that legally aided clients in general get less of the solicitor's time than privately funded clients. Another solicitor went as far as to say: "I am sure it is the case that if a lot of people who have got legal aid had to pay privately then they wouldn't perhaps make certain applications or drag things on as they do."

Use of Counsel

Chapter 4 shows that the findings from this study suggest that counsel is used in about 30% of all cases (though the figure is lower in money cases and higher in children plus domestic violence cases). When the solicitors being interviewed were asked about their use of counsel, some said they employ them in about 25% of cases, and others who felt unable to quantify said that they use counsel in general for final hearings. 2 practitioners said that they prefer to do their own advocacy and that they enjoy it. One said that in the past her firm had instructed counsel for simple things because at that point the firm was using lower grade fee earners who had not got rights of audience in court.

Research carried out for the Lord Chancellor's Advisory Committee on Legal Education and Conduct by Annand et al also investigated solicitors' views of advocacy. 13 The majority of the practitioners in this study (The Bristol Study) conducted their own advocacy most of the time. The exceptions to this are listed as: (a) if the client specifically requested counsel; (b) if the solicitor was 'double-courted' or otherwise unavailable, and (c) in complex cases, as, for example, difficult ancillary relief or child care cases. 14 One solicitor is quoted: "Assuming that I can appear in the court concerned...I would normally reckon to appear as advocate if that is what the client wants. There are occasional cases where I feel

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14 Ibid, p41.
that the complexity of the case justifies...another mind on the matter...I would then tend to instruct counsel...Of course, if the client wanted me to instruct counsel I certainly would do."

These views were sought in relation to all family work and it may be the case that there are differences in the readiness of solicitors to instruct counsel when the client is legally aided.

Another Bristol solicitor is quoted as saying: "I will still use barristers on any residence application that goes to a final hearing and I will normally do so with ancillary relief. I would usually use them for half a day or something like that - a two or three hour hearing - because they are better at it. They do it every day."

Wanting to avoid wasting time at court also featured in the Bristol study as a reason for instructing counsel. Solicitors tend to have a heavy desk-based work load and so hanging around at court can be a waste of time and therefore not cost effective.

In the Case Profiling Study, some practitioners were also concerned about the economics of the situation. For example, one solicitor remarked that if she was going to be in court for half a day or more it did not make economic sense for her to go and so she would instruct counsel. In a similar way, a solicitor in a small town in a fairly rural area said that the travelling involved meant that it was rarely worth her going to court when she could instruct counsel who are cheaper and are often based nearer to the courts. Another remarked that if she thought the case was going to be contested she would usually instruct a barrister. She continued: "I will actually ask the barrister...to draft the affidavit for two reasons (i) the barrister makes sure that they have everything in the affidavit that they would want at the final hearing and (ii) at my hourly rates, I can often get the barrister to do it for less."

However, results from the Bristol study suggest that provided court appointments are properly timetabled it can be cost effective for solicitors to do their own advocacy. Indeed all those interviewed claimed that in-house advocacy had resulted in savings for the funder and better continuity for the client.15

The Bristol study also explored how counsel might be asked to advise in conference, or in writing in circumstances such as: (a) in order to persuade the client, usually when it became clear that he/she was reluctant to settle; (b) upon evidence; and (c) in complex cases such as difficult ancillary relief hearings. One solicitor is quoted as saying: "Sometimes I instruct counsel to advise...it is very useful to bring in a third party in order to distance yourself from the client."16

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15 Ibid, p41.
16 Ibid, p42.
When the practitioners in the Case Profiling sample were asked whether they were happy with the service they got from counsel, the majority said that they were satisfied with the level of work, and that in many cases they would only use certain chambers or individuals with whom they had built up a good relationship and level of trust. At least one solicitor reflected that this was because she only liked instructing specialists. One firm who were fed up with shoddy standards of work from the bar had drawn up its own “Case Management Minimum Standards for the Bar” which are reproduced below:

By accepting these instructions from Firm X you are agreeing to comply with the following minimum standards:

1. You undertake to use your best endeavours to complete this work yourself. If this proves impossible you will notify us at the earliest opportunity.

2. This work will not be passed on to another barrister without our express agreement.

3. When attending Court or a conference you will be thoroughly prepared.

4. You will liaise with our representative at Court and, where necessary, report to your instructing solicitor after the hearing if he/she was not present at court.

5. You will return telephone calls within twenty four hours. If this is not possible your clerk will do so to inform us when we may expect to hear from you.

6. At the end of the case the brief, together with your fee note, will be returned to us within seven days.

7. Written work will be completed and sent to us within an agreed deadline of twenty eight days if there is no urgency.

These minimum standards provide insight into the sorts of problems most commonly experienced by solicitors when instructing counsel.

Related Issues

How often do clients return with the same or a related problem? Again the answers to this question were a mixture of percentages and description. The percentages ranged from 5% to 20% with an average of 16%. The qualitative answers ranged from rarely to very often. These may underestimate proportions of recurrence as clients may visit a different solicitor about a related problem.
Has the Child Support Agency had any effect on the way cases are conducted? Of the 12 who responded, 9 said yes it had affected the way cases are conducted, the 3 remaining practitioners said that it had had little or no effect. Of the 9 who thought it had caused changes, 8 thought it had made things more difficult, and 1 thought it had improved negotiations “some people might say cynically that is has taken away some work..but it has simplified things to a large extent.” One solicitor who sums up the negative feelings about the CSA of those interviewed said, “It is definitely an added friction, I would say. The CSA are a complete waste of time. I’d like to see them empowered to enforce and deal with Income Support claimants.”

Mediation

All 14 practitioners responded to the questions relating to mediation and without exception, at the time of the interview, none provided any in house mediation services. 4 of them, however, were fully trained mediators themselves or had a partner in the firm who was. 9 specifically stated that they do try to refer their clients (including their legally aided clients) to mediation. At the time of this study, legal aid was not available for mediation sessions and so the take up rate described by these practitioners was understandably very low. This reinforces the low levels found in the level three and four data (average 8.9% of cases) where most of those seeing a mediator were in a court setting and the vast majority related to children issues only. Those who did have experience had varied views about how useful it was. 3 had positive things to say about their clients’ experience, whereas 5 did not feel it had been very successful. One solicitor described a commonly expressed problem: “well you see the clients themselves who are keen to go to mediation are in the minority.” She went on to say : “then you have still got to work out when they come back and say ‘we think we have reached an agreement’, whether it is OK.”

One solicitor from a firm in a rural area without easy access to mediation services said that they cannot provide or reasonably refer people to mediation services but that she does try to have “roundtable discussions” and a facilitatory approach in some cases. The real skill being, she claimed, knowing which cases would benefit from such an approach and in which cases it would be better to go straight in and litigate.

Counselling Clients

Of the 9 who answered this question, 5 practitioners said that spending time with emotional clients can be very time consuming. For example, one solicitor said “you have the odd sobber, but you get hardened to that. You get them a cup of
coffee or a glass of water and a tissue." Another solicitor was clear, though, that she did not want to be negligent by sending clients away without listening through the tears to their problems (which may need legal advice).

Others said they try to refer very emotional clients to other organisations such as Relate or their GP as they feel it is not part of their job to perform a counselling service (4 practitioners). For example, one solicitor said: "I mean I am conscious of the fact that I'm here as a lawyer. I'm not a counsellor and I'm not trained to be a counsellor. We refer a lot of clients to the family mediation service, not just for mediation, but ...one to one sessions as well. So some clients can actually go and do a bit of emotional dumping somewhere else. I have actually got quite a lot of clients where I have said to them 'I don't think you are up to seeing me just yet, would you be prepared to see someone else first?'

One firm included in the study has recently set up its own free counselling service: "the firm offers a free in-house counselling service (which started in August) half a day a week." When asked if his clients used the service, the solicitor replied that as it was totally confidential, he did not know!

Apart from the emotional clients, practitioners were also asked if they ever experienced unreasonable clients. The question was asked: do you ever have to send clients away for being unreasonable? Varied responses were made to this from: 'very rarely' to 'yes, about 1 in 7 who rings up.' When asked about terminating the solicitor - client relationship, the solicitor from the London firm in this sample, said "I'm really strict now. As soon as their behaviour is unreasonable or we think they are abusing the LAB we just get rid of them...we suggest that they go to another lawyer and they usually do...The LAB used to just transfer the certificate...but now the LAB write to us and ask why the client is moving and we say it's because they won't accept our advice."

**Outcomes**

The most likely outcome in terms of residence was the obvious response, reiterating the results in chapter 4, that the children invariably end up living with their mother when a couple breaks up and lives apart. 13 specified the mother as most likely to get residence of children, though 2 specified that the children were most likely to stay where they were, especially after the several months that the legal process can take. These 2 practitioners asserted that judges would be unlikely to want to move a child unless there was a very good reason.

Contact levels at the end of cases are much easier to point to. Most frequently mentioned were visiting and staying contact, which made up the greatest proportions of outcomes for all the practitioners interviewed. For example, one solicitor described: "contact arrangements for the absent parent: it's alternate weekend contact and half the holidays, but only 2 weeks in the summer...and if he (sic) is lucky, he gets mid week contact." However, as legal aid is often
involved in difficult cases where violence or abuse of some kind may have occurred, levels of supervised contact may be higher than in privately funded cases, e.g. one solicitor said up to 20% of her contact cases involve supervised contact.

As to common patterns of settlement of assets and debts, these were more difficult to get a handle on as solicitors said that each case was individual and so average settlement patterns cannot easily be identified. However, one solicitor said that there are certain things she would look to, for example "if it is a short marriage with no children and both parties work and have equal earning capacity: equal division of assets. As soon as you have really unequal earning capacity and a long marriage and/or children then there is no pattern I don't think."

Pensions appear to be routinely discussed with all clients. All 13 who answered stated that they discuss pensions with all clients, young and old, male and female. 3 mentioned specifically that this was something that was not only part of the transaction criteria but also a point where professional negligence was possible if pensions were not discussed. The following is an extract from a check list from an insurance company which was pinned above the desk of one of the solicitors interviewed as an aide memoire for commonly missed elements:

**Ancillary Relief**

*Failure to consider and advise upon terms “agreed by the client direct”*
*Failure to take into account changes in property values*
*Delay leading to (alleged) change of circumstances*
*Failure to consider and advise on effect of Child Support Act*
*Failure to properly identify assets*
*Failure to take into account redundancy payment and pension rights*
*Failure to achieve a “clean break”*
*Failure to advise on the effect of the statutory charge*
*Failure to advise on effect of remarriage on ancillary relief application*
*Failure to obtain “final order”*

High and low expectations of outcome were also discussed with the practitioners. 13 answered, with differing responses. A mixture of high expectations from women about financial consequences (mentioned by 4), and high expectations from men about levels of contact (mentioned by 4) were recorded. For example, one solicitor said: "they have misconceptions, for example, cohabitees think they are entitled to half of each other’s income, which of course they are not. Even married couples think they are automatically entitled to 50% of each other’s goods and they are not." These findings of high expectations were juxtaposed with practitioners who thought their clients usually had low expectations, particularly the women (3). In these cases, one practitioner described people who “just want an easy life” and have low expectations. She
also warned that these are the people who she thinks will lose out in mediation as "timid clients might get pushed into things."

These findings concur with those in an American study by Mather et al\(^\text{17}\) in which 46% of lawyers said that they had to make their clients see reason most frequently, whereas 17% said that increasing their clients' expectations was more frequent. The remaining 37% said that other factors influenced this, with the clients' gender being the most commonly mentioned factor. Goal setting and client education seem to be the most commonly used methods of making the client have reasonable expectations of outcome.

The interviewees were questioned about client satisfaction and whether they thought that their clients were satisfied with the outcome and/or treatment of a case by the lawyer. 10 answered yes, they thought their clients were satisfied, 1 answered no he thought it was rare for his clients to be satisfied, 1 answered 'not always' and the final solicitor said he did not know what people really thought at the end of their cases. One practitioner said that she finds that women in particular are most satisfied with the outcome of their case whereas men in financial cases often think that they have got "an raw deal". A solicitor said: “if they know from the start what is likely to happen then they are more likely to be satisfied." It could be argued, then, that it is really a question of educating clients as to the reality of the situation. Another stated that “you rarely get an outcome that everybody is happy with." These sorts of comments illuminate the debate about how useful client satisfaction is as a measure of outcome.

Can lawyers foresee the outcomes of cases. This was also a difficult, subjective question to answer. But of the 12 who answered all of them said they "usually" foresee the outcome of a case. They all admitted that they occasionally are surprised by the outcome, but that sometimes it can be a pleasant one i.e. where they get a good result at a final hearing when they were prepared for the worst.

*Contracting and Fixed Fees*

Only 3 of the practitioners interviewed had any experience of working for fixed fees in family cases. Two of these related to undefended divorce only cases where green form was not available. One said that the fixed fee was for £250 plus disbursements. The third was a young practitioner who, in her previous job, had acted for the Child Support Agency for declaration of parentage cases which came before a particular court. She took these cases for a fixed fee up to a certain time limit after which she received an hourly uplift. One solicitor mentioned the practice of fixed fees for conveyancing work which seems to be a

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common phenomenon. Though conveyancing is often linked with family cases, it does not really constitute an example of fixed fees for family work.

As regards bulk provision of legal services, only 2 (different firms from those mentioned above) of the 14 had any experience. One was a firm which provided a legal advice help line for the local NHS Trust hospital for public children cases. The other was a firm which did family work for a trade union type organisation which offered its members up to £150 worth of free legal advice (akin to the legal aid advice and assistance or green form scheme), which it then paid for. However, the experience of the group as a whole was limited, and those who did work for firms with experience claimed that the majority of the bulk provision cases (including those for Trade Union members) were usually personal injury cases.

The possible introduction of block contracting was also discussed with the practitioners, though perhaps in more abstract terms than other subjects. On the whole, the practitioners seemed wary of the idea of such a method of remuneration, and wanted to know specific details of what contracts would look like and how they would be managed. However, practitioners did cite several advantages which they perceived might follow from reform of the legal aid system through the introduction of contracting. The benefits cited by practitioners included: guaranteed income (2); keeping their present client base (1); and capping the amount of work that can be done (1). Domestic violence cases were seen as the best suited to payment under a contractual system because of their general homogeneity in comparison with other case types.

In general, the practitioners interviewed had more concerns about the possible introduction of block contracting for family cases: clients will suffer as a result of lower quality of work (4); they were worried about having to turn clients away (4); the prospect of earning less money (2); even going bust (1); and the introduction of conflict of interest between what is right for the client and what is economically viable to do on a case for the solicitor (1). One solicitor believed that the general quality of work would be affected: “I’m really, really against block contracting...because, unfortunately, my main problem is that there are many people [solicitors] out there who aren’t that good...a lot of these people will go for contracts...they don’t know what they are doing...the clients have no idea that their case has not been handled properly but we know because we are experts.”

A related concern was that firms who are not that good would make a profit under such a payment system as they would not do all the work that needed doing because they would not realise this and nor would their clients. Another problem raised was the example of the litigant in person and how being against a litigant in person could wreck all the assumptions about how long a case should take as they invariably take longer.
A further point was raised by one solicitor who said, “the thing that worries me about block contracting is the amount of paperwork and statistics we would have to provide to the LAB and the fact that we would probably have to work for even less than that which we get now.” When asked whether the case management systems in place at present in the firms were considered good enough to cope with a new system, over half the practitioners said no. One declared, for example, “we have worked out in the past what we perceive to be an average cost per case, but that was just taking everything as a whole and dividing it by the number of files.”

Despite these concerns, 7 practitioners answered the question: would they or their firm apply for one? 5 replied yes, though they had concerns, they would probably apply for one once they had a better idea of what a contract for certificated work looked like. 2 were unsure. One said, “I think it would depend on the terms and conditions of it [the contract] and it would depend on whether or not we felt that we would lose the opportunity to do legal aid work if we didn't [have a contract]”. In the main, the solicitors displayed a deep commitment to legally aided family work which is not a particularly lucrative area of law.

At least one solicitor admitted that the family department in his firm was subsidised by the commercial department. Another said that last year was the first in seven years for the family department to actually make a profit. These firms were all franchised, and though the interview period was short, none of those interviewed appeared to be incompetent. These comments are rather a reflection of the economic situation of family practitioners who do substantial amounts of legal aid work.

None of the practitioners who answered the question of would they apply for a contract were they to be introduced, said categorically no they would not apply for one. One solicitor said, “personally, I think the best thing would be if you would say ‘OK, we will give you salaries for your solicitors at this much per annum to do this many hours of legal aid work and we have an expectation that that would involve...some kind of quantification of output’”. Another solicitor thought that the best approach to take would be an accreditation scheme for family lawyers to ensure specialists are undertaking the work.
7. Discussion: Legal Aid and the Family Justice System

Introduction - 'Compromising in the Shadow of the Court'

The Case Profiling Study was designed to describe 'ordinary' family legal services currently supported by the Legal Aid Board against an agenda for reform. This final chapter aims to draw together findings from previous research and from this study and place them in context. In particular, changes currently facing family law practitioners will be discussed, including state funded family mediation and reform of modes of lawyer remuneration.

Currently, under legal aid, the bulk of solicitors' work consists of negotiations between parties to a divorce on the division of their joint assets, arrangements for children and support for children and perhaps the spouse. Generally the arrangements are negotiated and a 'deal' is presented to the court in the form of a consent order. Some couples do fight the matter out in court but can find themselves making agreements at the 'door of the court'. In privately funded divorce cases, the negotiating process has been aptly described by Mnookin and Kornhauser in their seminal article as "Bargaining in the Shadow of the Law". Privately funded cases are more likely to steer clear of the courts and attempt to settle within a framework of knowledge about what would happen if they were to go to court. Although lawyers in legal aid cases must also be mindful of what a judge would decide if a certain case was to reach court, findings from this and other studies suggest that cases are likely to reach court, (even if this is only for directions hearings). For this reason, the process of negotiating, settling or battling may be described as occurring with recourse to the court. In addition, it seems that in legally aided cases where there may be fewer assets in dispute, compromising is a better description of the process than bargaining. The court therefore provides a framework within which compromises can be made and later varied if necessary.

The Case Profiling Study has found that there is more contact with the court in legally aided cases than privately funded cases and thus while private cases "bargain in the shadow of the law", legally aided family cases might be described as "compromising in the shadow of the court."

Apart from divorce and separation cases, the study has shown that section 8 Children Act proceedings make up an important part of expenditure. These

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types of cases also fit the description of achieving "compromises in the shadow of the court". The only family cases which are intrinsically more structured and therefore do not fit this model so neatly are domestic violence injunctions (now known as occupation and non-molestation orders). These are more likely to involve court intervention.

Dewar has described how the "law's shadow needs to be well defined if private agreement is to be feasible"\(^4\), but equally thinks it is easy to underestimate the extent to which legal provisions are translated by professional advisers and others in a way that may make the law seem clearer than it is. He argues that current frameworks of family law and family cases are in a state which he terms "normal chaos". This description would appear to be supported by the findings of the Case Profiling Study which show legally aided cases to be complicated by inherent tensions and uncertainties.

The structure of this final chapter is as follows. First a summary of the main findings is presented under the headings: cost, duration and outcome. The second section describes the current changes facing lawyers in the family justice system. Two of these changes are then described in greater detail: family mediation and block contracting.

**Summary of Main Findings - Characteristics of Legally Aided Family Work**

Summary statistics show an increase in the number of Children Act 1989 applications, particularly contact and residence applications. Matrimonial cases have been declining as the divorce rate slows, yet they still comprise 60% of all proceedings. Private law Children Act cases make up 31% of all proceedings. The same pattern is observed in advice and assistance work.

Interviews with specialist practitioners from a range of firms showed that, on average, family law work made up 25% of the firms' total fee income. Over 60% of family fee income, on average, was from the Legal Aid Fund. Thus the importance of legal aid in the family justice system is clear.

Though single issue cases made up the largest proportion of the sample, multiple issue cases were also found. In these cases, lawyers said that though they saw the case in its entirety, individual issues could be dealt with separately. Practitioners also stated that it is common for new issues to arise during the course of a case which makes predicting case cost and duration at the start very difficult.

A proportion of cases (between 5 and 15%) were found to ‘fizzle out’ without a formal conclusion. Reasons for fizzling out ranged from reconciliation to the solicitor receiving no further instructions. In previous research studies these cases have not been included as they do not constitute full cases. However, for the purposes of this study they have been included as they make up an important part of a lawyer’s total caseload.

Cost

In 1996-97, the average total cost (excluding green form) of a legally aided matrimonial case was £1,800 and a private law children case was £1,500. Domestic violence cases cost on average £1,000.

Both the macro and the micro figures from the Case Profiling Study show that standard deviations around the mean case costs for different types of case are large for family cases. This suggests that there may be more variation within case categories than between them.

Solicitors’ costs are the most important cost component. In general, solicitors’ costs make up three quarters of the total case cost. The remaining quarter is divided fairly evenly between green form, disbursements and barristers’ costs.

Cost per stage analysis allows a more accurate picture of how case costs are built up within the framework of different stages of a case. In general, the sample results show that the green form stage advice and assistance makes up 10% of the total costs, the next stage (certificate to first hearing) makes up 21%, the third stage is the most important making up 40% (first to final hearing or equivalent) and the final stage (final hearing/consent order to last work) makes up 29% of the total case costs.

Correspondence costs are the most important single work element making up on average, a quarter of the case costs. This reflects the nature of solicitors’ work much of which is conducted by letter or telephone. Aggregating the costs in this way allows an accurate picture of cost components to be drawn. As a practitioners’ guide states: “good communication from practitioner to client is essential...A well informed client is more likely to give good clear instructions and raise important matters...Poor communication is invariably the cause of complaints.” Certain client care letters are also required by the franchising transaction criteria. Solicitor attendance at hearings was found to be the least important element in terms of cost.

Predicting case costs ex ante proved difficult. Many factors which were expected to have cost driving effects were not found to be significant. For

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example, neither a change of solicitor, using court mediation services, nor multiple issues arising had cost driving effects. The results support Sarat and Felstiner's description of family law as an "emotional business". The results suggest that extra-legal factors play a large part in determining case cost in family law.

The following cost driving effects were found. If the client was the applicant the case cost decreased, but by only £1 on average. A similar effect was found if the client was paying contributions.

More significant cost drivers included the fact that supervised contact was the outcome in children cases. This effect was confirmed by some practitioners when interviewed as these cases are more likely to be contested, and may involve violence. Case costs were also seen to increase significantly if the case went to court. But while this is an example of a strong cost driver, it has little predictive applicability.

Another interesting effect was found from analysis of the 650 solicitors files data set concerning the legal aid status of the other side. If the other side also had a legal aid certificate the cost of the case decreased very slightly. Some practitioners who were interviewed said that this might be the case, however, 2 disagreed and said that if the other side is also legally aided there is less incentive to settle and so case costs tend to be higher on average.

It is clear that there are significant regional variations in case cost with cases in Northern areas costing significantly less than cases in Southern areas. These cost distributions are important when considering future patterns of expenditure, for example by the newly formed Regional Legal Services Committees.

**Duration and Lawyer Activity**

On average, ancillary relief cases take 2 years to complete, Children Act cases take approximately 1 year and domestic violence cases routinely conclude in 6 to 12 months.

Domestic violence cases can be characterised as 'quick and cheap', children cases (private law) are longer and more expensive. Financial cases are the longest and most expensive.

Two individual case studies show how individual cost elements can build up over time even though there may be marked periods of inactivity.

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On the whole, the lawyers interviewed said they thought family cases take too long, though they realised that some time was needed for clients to come to terms with changing circumstances and relationships. Reasons for delay included the client themselves, the other side, the other side’s solicitor and other third parties such as building societies, the LAB and the court.

Outcomes

Results or measures of outcome in family cases are notoriously problematic. For example, a third of all matrimonial cases and 42% of private law children cases were described as ‘otherwise disposed of’ as opposed to a judgement in favour or against, or a settlement. It appears, then, that though a majority of legally aided family cases have contact with the court, and that few go on to a fully contested hearing, results might be better defined as something along the lines of agreement or compromise between the parties following some guidance from the court rather than any formal adjudication.

The data collected relating to financial outcomes was poor. However, in children cases, results indicated that the status quo was preserved where residence was at issue. Where a case resulted in contact, 14.5% of contact orders were supervised. This figure appears high but may reflect high levels of conflict or violence. One solicitor said up to 20% of her contact cases (which tended to be contested) resulted in supervised contact.

The practitioners interviewed also found it easier to describe likely patterns of outcome in children cases than in other types of case.

Client satisfaction, one possible measure of outcome, was also discussed with practitioners. The majority (10) thought their clients were usually satisfied, 1 thought his clients were rarely satisfied, 1 thought not always, and one said he did not know what his clients thought at the end of a case.

Practitioners did point to differences between the sexes, one explicitly stating that women tend to be satisfied with the outcome of the case, whereas men (particularly in financial cases) tend not to be.

Legally Aided Clients - Characteristics

The majority (60%) of applicants are women. Patterns in the gender of the legally aided appear to be case specific with 94% female applicants in domestic violence cases and 22% in children cases.

From the interviews, it appeared that firms had mixed client bases. Some firms tended to see clients from the lower end of the socio-economic scale whereas
others seemed to be equally as likely to be instructed by 'consultants' wives.' Clients' ethnicity also varied as some firms saw a mixture and others said that they thought there were very specific referral routes. This meant that certain firms tended to see a much higher proportion of certain ethnic groups than others even though they might be situated within the same geographical catchment area.

Solicitors interviewed stated that clients do occasionally move in and out of legal aid eligibility which could be problematic.

Social problems such as alcohol and drug abuse were found in some of the high level detail data set of 150 solicitors' files. These were particularly prevalent in cases involving domestic violence.

Evidence of low expectations of outcome by clients was found in the sample. In 15% of the cases which settled, the lawyer had previously advised the client against settlement, usually because the offer made by the other side was too low. Similarly, an American study found that low expectations of outcome are fairly common, particularly amongst women.

**Use of Court and Counsel**

80% of children cases, 45% of financial cases and 68% of domestic violence cases reached court. These findings concur with those in 'Simple Quarrels' that most legally aided cases will at some point reach the courtroom. These levels of invoking the court add weight to Galanter's argument that litigation and negotiation are not necessarily different processes. Rather 'litigotiation' may be a better description of the process of strategic pursuit of settlement within the framework of the court.

When cases are described as having reached court it should be made clear that many cases may only reach directions hearings before they settle. It is rare for family cases to go all the way to a fully contested final hearing. Directions may last for only a few minutes, whereas fully contested final hearings may take days. Directions appointments or hearings bring a case management or pre-trial approach to family cases as the parties come before the judge or the magistrate or the justice's clerk at a date some weeks prior to the date set down for the full hearing. Directions have been described by Walsh as the time when issues which can be agreed are agreed leaving the court to give directions about how

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proceedings will be conducted, for example if any reports or evidence will be required.\(^9\)

Counsel was employed, on average, in approximately a third of all family cases, though this figure was slightly higher for domestic violence and children cases than financial cases. This pattern fits with the higher levels of settlement in financial cases. Findings from previous research (the Bristol Study) reinforces the views of solicitors elicited by this study. Some individuals like to instruct counsel for difficult or long final hearings, especially if they are contested. It can be cost effective for solicitors to carry out their own advocacy, for example, 2 respondents in the Case Profiling Study said that they preferred to do their own advocacy, but others had concerns about travelling and wasting time waiting at court. In general, solicitors seemed to have high levels of satisfaction with the quality of the work carried out by counsel.

The high rates of cases having some contact with the court, but rarely reaching fully contested hearings, fit with the proposition that lawyers and clients in legally aided cases are concerned with 'compromising in the shadow of the court.' In fact, it might be more accurate to say that the parties are compromising, having stepped briefly into the courtroom.

*Period of Transition - “These are Exciting Times”*

Three main types of change facing family practitioners may be identified. First, demographic trends, second legislative change and third reforms in the form of pilots.

First, general population changes are having an effect on the work of family lawyers. For example, the changing demographic trends associated with evolving family structures mean that practitioners are much more likely to see clients who have cohabited without having married. Children are more likely to come from serial relationships and family units are more likely to include children who might not live with both biological parents and children who might spend significant amounts of time in other households.\(^10\) These demographic shifts are important when considering the broad picture within which family lawyers must operate.

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\(^9\) The majority of reports in family cases are written by Family Court Welfare Officers after they have had access to the court file, interviewed the parents, child, grandparents, teacher and other relevant people. The report often includes conclusions and recommendations as to the orders to be made. See for, example, Walsh E., (1998) Working in the ‘Family Justice’ System. A Guide for Professionals’ Family Law Publications, p37.

Secondly, there is new legislation such as the Family Law Act 1996 and the Protection from Harassment Act 1997 which will mean substantial changes to the way in which divorce cases are conducted and result in new procedures for all domestic violence cases.

As the Parliamentary Secretary for the Lord Chancellor's Department, Geoff Hoon MP, wrote in Family Law: "These are exciting times in the development of family law as we are seeing the progressive implementation of the FLA 1996. Parts I and III were implemented in the early summer of 1997 and Part IV in October 1997. Phase Two of the Mediation Pilots are well under way now and the first five information sessions were launched in June." Hoon goes on to describe the effects of these changes to the family justice system which may lead to an altered role for lawyers: "The FLA 1996 challenges us all with fundamental questions relating to how best professionals, whether marriage guidance counsellors, mediators or lawyers, working in this important field, can come to better understand the needs of all those adults and children who seek out their services...". It is interesting to note that lawyers are preceded by counsellors and mediators in this list.

The third main group of changes include pilot schemes such as the ancillary relief pilot scheme with its financial dispute resolution (FDR) appointments. State funded family mediation is also currently being piloted. At the time of writing, evaluation of these pilots is ongoing.

Other changes which have been mooted include 50/50 property division rules, pre-nuptial agreements and the now familiar arguments for merging the two branches of the legal profession. Perhaps the most concrete changes concern the introduction of state funded family mediation services and reforms to the modes of remuneration for lawyers. These two are discussed more fully below. The future for family law legal aid practitioners has never before been subject to such fundamental review.

Mediation, Domestic Violence and Legal Aid Practitioners

Following the full implementation of the FLA 1996, mediation will increasingly be used as a means of resolving family law disputes between separating couples. In legally aided cases, the introduction of section 29 will mean legally aided couples will attend assessments to determine the suitability of mediation for that case. This may represent a change in the nature of legally aided family cases, which up until full implementation of the FLA 1996, remain lawyer focused. Mediation services at present can be divided into independent services and

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lawyer mediators. Couples will not have access to a legal representation until they have completed this process as s 29 explicitly states:

"(3F) A person shall not be granted [legal aid for] representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator -

(a) to determine-
(i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and
(ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm"

Results from the Case Profiling Study show that as yet, solicitors have relatively little experience of any form of mediation, none of those in the sample yet provide any in house mediation services. Though they do try to refer their clients (including their legally aided clients) to mediation, at the time of this study, legal aid was not available for mediation sessions and so the take up rate described by these practitioners was understandably very low. This reinforces the low mediation levels found in the quantitative results (on average 8.9% of cases) where most of those seeing a mediator were in a court setting and the vast majority related to children issues only. Those who did have experience had varied views about how useful it was.

The Case Profiling Study has also shown that it is quite common for one side to be legally aided and for the other to be privately funded. In children cases, it is most likely that both sides will be legally aided, though in financial cases it is less likely. Differences in sources of funding for the parties may have an effect on their attitude towards mediation.

Further problems may arise where cases involve some form of domestic violence. High levels of domestic violence were found in the random sample of 650 "ordinary cases" in the study. Approaching 40% of all the sample family cases (matrimonial, cohabitees, children cases, domestic violence cases and any combination of the above) involved some element of domestic violence. This figure may seem relatively high. However, other studies have found similar levels to support this finding e.g. as many as one in three divorces may involve violence. Can mediation ever be appropriate for couples with a history of violence. Section 29 of the FLA 1996 makes the presumption that it can not.

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13 Family Court Welfare Officers have a mediation role, particularly in relation to children issues. The court can adjourn a hearing in order for mediation to take place - this can be carried out by CWOS or sub-contracted out to National Family Mediation Services which receive some financial support from the probation services.

Other studies provide examples of where this may not always be in the best interests of the parties, for example, in an Australian study, women who had experienced abuse found mediation represented empowerment and was a positive experience.\textsuperscript{15}

Domestic violence is an important issue for family practitioners in its own right. In particular, legal aid is the most important funding source as Judicial Statistics show that in 1996, 70% of all DVMPA applications were legally aided. Though Part IV of the FLA 1996 and the Harassment Act 1997 have replaced the existing legislation, it is likely that legal aid will continue to be the most important source of funding. Issues which may be of concern emanating from the Case Profiling Study include the low levels of screening\textsuperscript{16} for violence and issues surrounding client safety and, in particular, child safety. Research has shown that non-resident parents' contact with children can be a flashpoint for violence.\textsuperscript{17}

\textit{Block Contracting and Fixed Fees - "You can't fast track family cases"}

In its response to the Lord Chancellor's consultation paper \textit{Access to Justice with Conditional Fees}, the Legal Aid Board clearly recognises the need for "radical reform of the civil legal aid scheme."\textsuperscript{18} The response continues: "a system based on general entitlement to legal aid with no effective means of controlling the costs of individual cases or of the scheme as a whole is no longer sustainable."\textsuperscript{19}

Legal aid reform set out in the White Paper "Striking the Balance - the Future of Legal Aid in England and Wales" (Cm 3305) in 1996 by the last government proposed a shift in the mode of remuneration for legal aid. The new system of fixed fees and/or block contracting would mean that lawyers would no longer be paid on an individual case (fee-for-service judicare) basis, but for blocks of cases or for blocks of time. Contracting has already been introduced in a pilot scheme for advice and assistance work by advice agencies and solicitors.

If family law only brings in, on average, 25% of a firms' (not including large city firms) income, and 65% of that comes from the legal aid fund, effects of changes to the way in which lawyers are remunerated for their legal aid work will be wide reaching.

\textsuperscript{15} Keys Young, (1996) "Research/Evaluation of Family Mediation Practice and the Issue of Violence" for the Attorney General's Department, Australia.


\textsuperscript{17} Hester M., Radford L., (1996) "Domestic Violence in England and Denmark", Bristol University Press.


\textsuperscript{19} Ibid p6.
Cases currently carried out by solicitors under legal aid certificates are fairly thinly spread out over England and Wales. For example, 40% of firms conducted 5 or fewer matrimonial cases in 1996-97. Legal aid reforms therefore look set to alter the current supplier base for family legal aid. As a quality assured service is important for the LAB, franchising has a large part to play in contracting. Contracting with franchised firms only would significantly reduce the current supplier base, although many firms currently do very little legally aided family work.

The strategies solicitors use were also investigated. 10 of those interviewed said that there was no difference in the way in which they dealt with legal aid versus privately funded clients. Three, however, admitted that there were differences, mainly stemming from the knowledge that it is more profitable to spend time with a private rather than a legally aided client.

Those practitioners interviewed did not have a very clear idea of average case costs or the proportions of case costs from different elements such as disbursements and counsel fees, though most knew that correspondence costs are important as well as attending the client and preparation for court.

Findings from the Case Profiling Study suggest that cost distributions of cases are very broad both within and between different case categories. These cost differentials are partly due to the fact that economic factors do not always play the most important role in determining the case costs. Family cases which involve many non-legal, non-economic, social and emotional characteristics. Commenting on this, one practitioner said “you can’t fast track family cases”. By this she meant family cases are different from most other cases, as previous research has shown: Sarat and Felstiner commented20 “Divorce is different from most other areas of legal practice. Divorce, more than most litigation, originates in personal failure and rejection. The number of clients in divorce who are experiencing some form of personal crisis is high, probably higher than in parallel fields such as criminal law, personal injury, worker compensation, landlord and tenant, consumer, and bankruptcy.”

The lack of objective cost driving factors in family cases suggests that there may be less opportunity for ‘cherry picking’ or ‘cream skimming’ the simple cases. As has been mentioned above, the ‘law’ element in most family cases is relatively straightforward. What seems to complicate matters in family cases are the non-legal factors such as the degree of entrenchment of the parties.

Despite some negative comments about fixed fees and block contracting, five of the practitioners had experience of working under systems of remuneration other than the present hourly rate judicare system. Examples of such experience include green form equivalents for simple divorces, CSA parentage cases carried out under fixed fees, trade union cases for fixed fees and a legal helpline.

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20 Supra n. 6 p.152.
In general, the practitioners seemed wary of the introduction of block contracting, seeing it as leading to lower quality work and having to turn clients away. However, certain benefits were identified such as guaranteed income, keeping the present client base and capping the amount of work to be done. Domestic violence cases were considered the most suitable category of case for such contracts. Five of the seven who answered said they would apply for a family contract, but the majority thought that their present accounting systems would not be able to cope.

Alternative approaches were discussed with one practitioner advocating a salaried service for legal aid and another supporting the introduction of a comprehensive accreditation scheme to ensure specialists are carrying out the work.

The Future for Legal Aid Family Practitioners

It is very difficult to make any predictions about the future for family legal aid practitioners except to say that it holds a number of changes. It is possible that we will witness a harmonious transition from the current situation to one mediation services process the majority of divorcing couples and lawyers are left to deal with the difficult (legally complex) cases and those where violence is evident. It also seems likely that different types of issues may be dealt with largely by different professionals, for example, mediators dealing mainly with children issues and lawyers with financial disputes.

As fixed fees and/or contracts are phased in, will we see legal aid lawyers competing to secure limited funds or will the new legislation provide more scope for lawyers e.g. in the wider applicability of the domestic violence legal framework. What we can predict with a degree of certainty is that legal aid lawyers will need to operate, at least in part, in an increasingly business-like way. It may be that changes to payment structures for legal aid work leads more and more firms providing fixed rates for certain types of cases such as the green form advice and assistance equivalent mentioned by some of the practitioners interviewed.

What other observers have described observing is the increased efficiency of solicitors working practice which must be seen as beneficial to all stakeholders, but also an increased profit motive which introduces a conflict of interest between the interests of the solicitor and the interests of the client. Commentators put the case for achieving some kind of balance.21

What is clear is that with more than one set of radical reforms, predicting the effects on the legal profession is very difficult. It is difficult enough to predict what one set of changes may bring for the legal profession, but attempting to foresee the effects of multiple changes is nearly impossible.
Profiling Family Cases:  
Semi-Structured Interview with Solicitors 

ALL INTERVIEWS ARE GIVEN IN STRICTEST CONFIDENCE

1 The Firm and Your Work

1.1 What is the size of the firm? (principals/partners, fee earners, trainees, paralegals, total) Ratios?

1.2 How many fee earners undertake family cases? How many people does a partner supervise?

1.3 What proportion of the firm’s work is made up of family cases? (time spent/gross fee income)

1.4 What proportion of family cases undertaken by this firm are legally aided?

1.5 What proportion of your fee earning time is spent on family cases?

1.6 Would you describe yourself as a family specialist? SFLA Member?

1.7 How many years experience of such work do you have? Have you always undertaken it?

1.8 What proportion of family cases undertaken by the firm fall within these categories?

   Domestic Violence only; Children only (public, private); Money/Property only (ancillary relief etc.); combinations?
   Divorce; JS; Breakdown of Cohabitee Relationship; Other

1.9 Are some types of case more likely to be legally aided than others types?
1.10 Do different fee earners work on different types of case or different stages of a case?

2 Parties

2.1 In your legally aided cases, are one or both parties generally legally aided?

2.2 What effect does the gender of the client have on the probability of the case being legally aided?

2.3 Do parties ever move in and out of legal aid eligibility during a case? If yes, what happens?

2.4 In your legally aided cases, are your clients weighted towards any particular socio-economic group? Or towards any age groups? Ethnic groups?

2.5 What proportion of your clients are applicants as opposed to respondents?

3 Family Cases

3.1 Do cases tend to contain a number of distinct elements? (e.g. dv, children, money) If yes,

3.2 Do you deal with the individual elements separately?

3.3 How often do new elements arise during the course of a case?

3.4 How often do cases fizzle out without any formal resolution? For what reasons? (legal or other reasons?)

3.5 How often does domestic violence form part of a case?

3.6 Do you routinely ask clients about issues of domestic violence (screen)? Are there any client groups you would not ask?

4 Case Duration

4.1 What aspect of family work is the most time consuming? Does this differ between case categories?
4.2 What are the principal causes of delay? Do these differ between case categories?

4.3 Do you think family cases take too long? If yes, how could they be shortened?

4.4 Can you predict how long a case will last near the start? How?

4.5 Is it easier to predict case duration in some case types as opposed to others? e.g. are domestic violence more uniform?

4.6 We have found that case length is not necessarily proportional to case cost or case complexity. What is your response to this?

4.7 We found patterns relating to certain issues. E.g. domestic violence tends to shorten compound cases, whereas money or property issues tend to make them longer. Is this your experience?

5 Case Cost

5.1 What are the most expensive elements of family cases? Are these different between categories? If yes, why?

5.2 What proportion of the costs of family cases go towards:
profit costs - attendances, documents, correspondence; disbursements;
counsel fees; green form?

5.3 Is your work evenly distributed throughout a case or clustered? If clustered, when do you put in your time and why? (own firm case management e.g. periodic file reviews or court process) Does this affect costs?

5.4 Is it possible to predict the cost of a case near its start? How? If not right at the start, when?

5.5 In your experience is it cheaper to settle or to go to court? When is this not the case?

5.6 Does the fact that a client is paying contributions/statutory charge have any effect on the length and cost or any other aspect of the case? If yes, what?

5.7 Does the fact the other side is legally-aided or privately paying make a difference to case cost or length? If yes, how?
5.8 Are cases involving supervised contact generally more expensive than other contact cases?

6 Strategy/Pathway of Case

6.1 What proportion of your cases are settled (i) before the clients even get to you, (ii) before making an application to the court, (iii) after proceedings but before the final hearing (iv) at or around the final hearing (v) after the final hearing? What proportion of the total make applications?

6.2 How often do you instruct counsel? When and why? Different in legally aided cases?

6.3 What percentage of your clients return with the same or a related problem?

6.4 How would you describe your negotiating style? Negotiate or Litigate?

6.5 Do you think legally aided cases are conducted differently to privately funded cases? Do you have a different style for private and legally aided cases?

6.6 What difference does it make to your strategy if one side is legally aided and one is not?

6.7 Has the Child Support Agency had an effect on your negotiating strategy? What?

6.8 Mediation: Do your legally aided clients ever use mediation services other than court welfare services? (where one side is privately paying) Do you/your firm provide mediation services? What has been your experience of them?

6.9 How often do you have to turn any clients away (duty to Legal Aid Board) because their case / behaviour is unreasonable? How much time do you spend "counselling" emotional clients

6.10 Have you ever experienced or used delaying tactics? How often? In what circumstances?
7 Outcomes

7.1 What percentage of your clients settle on or around a court hearing? Is it usually amicable? Is this the case for both legally aided and privately paying / mixed cases?

7.2 Can you describe any common patterns of settlement? (routine contact arrangements, division of assets etc.)

7.3 Where do children usually end up?

7.4 What levels of contact are usual at the end of a case?

7.5 Do you discuss pensions with all clients younger and older, male and female?

7.6 What percentage of your clients are reconciled?

7.7 To what extent do clients have unrealistically high or low expectations as to the likely outcome of their case?

7.8 At the end of a case, are your clients usually satisfied with the outcome? If not, why not?

7.9 How often does a case conclude in a way that you foresaw earlier on in the case? (case conclusions, how easy to predict near start of case) if not right at the start, when?

8 Contracting

8.1 Does your firm have any experience of working for fixed fees? (e.g. private simple divorce - equivalent to Green Form) If yes, what are the characteristics of that type of work which allow you to quote a fixed fee?

8.2 Does your firm have any experience of bulk provision of legal services? Would your firm be interested/have sufficient legal aid turnover to bid for block contracts for family or other legal aid work?

8.3 Do you think certain types of family case would be more suitable for this type of funding arrangement than others?

8.4 What do you think would be the benefits of working under block contracts? What would be your main concerns?
8.5 Have you considered how you might change the way you manage cases in order to best utilise block contracting arrangements?

8.6 Are your current case management systems sophisticated enough to cope with such arrangements? Do you already work out average case costs for your own purposes?