RESEARCH ARTICLE

'It's good to talk' – judicial allocation decision making and the Family Court

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This article focuses on the opportunities and potential benefits of collaborative judicial working and social processes within the new Family Court. To illustrate this, findings from a recent evaluation by the authors of the Greater Manchester Gatekeeping and Allocation - Care Proceedings Pilot (the Manchester Pilot) will be presented. In the Manchester Pilot, the allocation of care cases to a particular level of court became a collaborative judicial decision, to be achieved through consensual decision-making. The social processes of face-to-face communication, negotiation, knowing and learning from each other in this new procedure, provide the main area of analysis in this article. Findings from our evaluation illustrate issues and opportunities for the lower courts under the new allocation arrangements within the Family Court, and may in some respects reflect aspects of other research of social processes such as Paterson's studies in the appellate courts (Paterson 1982 and 2013).

Key words – family court; judiciary; care proceedings; allocation decision-making; social processes.

Introduction

The Greater Manchester Gatekeeping and Allocation – Care Proceedings Pilot (hereafter the Manchester Pilot), was introduced in April 2012 in the context of the ongoing Family Justice Review (Ministry of Justice 2011a & Ministry of Justice 2011b) and the anticipation of a single Family Court. The Pilot introduced a system whereby the allocation of care cases to a particular level of court became a collaborative decision between a legal adviser and a judge, to be achieved through discussion and 'working together', as opposed to the pre-existing system where allocation was the decision of a sole legal adviser of the Family Proceedings Court. Our evaluation of the Manchester Pilot was commissioned with the aim of contributing to an evidence base for anticipated and proposed national changes (Ministry of Justice 2011a).

The social processes of face to face communication, negotiation and 'knowing each other' in this new system provide the main area of analysis for the article. The context for the changes are provided in historical background to the development of the single Family Court, with a focus on long-standing concerns about delay, attributed in part to issues with allocation and transfer. A summary of the methodology and findings from the evaluation is also presented, focussing on our findings in relation to social processes. We suggest that our findings about collaborative working and social processes within the Manchester Pilot are relevant to developing judicial practice within the new single Family Court.

The creation of a single Family Court was a key recommendation from the Family Justice Review (Ministry of Justice, 2011b), taken forward in the Government Response (Ministry of

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Justice/Department for Education 2012). The formation of the Family Court was enacted by the Crime and Courts Act which received Royal Assent on 25 April 2013 (s17 amends the County Courts Act 1984 to create a single Family Court), and the Family Court formally came into existence on 22nd April 2014. The Family Court provides a single jurisdiction for family proceedings, bringing together the previously separate levels of court and court administration within a unified process and, in some places, within the same building. It is believed that a unified jurisdiction will promote a seamless, accessible system for all involved, contributing to reducing delay by removing boundaries and barriers within the process, (previously) caused by separate administration and management systems (Doughty & Murch, 2012). Co-location and integrated working systems within a single Family Court provide a framework for magistrates and legal advisers to work more closely with judges and other court staff in processing and managing family cases, and to develop the service provided by the Family Court through collaborative working.

Historical background: Finer (1974) to Norgrove (2011)

The achievement of a single Family Court has a long and arguably frustrated history (Eekelar & Maclean 2013). It was first proposed in the report of the Finer Committee (Finer Committee 1974) and has been revisited in subsequent reviews and recommendations (Department for Constitutional Affairs, 2005a; Department for Constitutional Affairs, 2006; Ministry of Justice, 2011b).

> In principle, a family court should… be a unified institution in a system of family law which applies a uniform set of legal rules… and organise its procedure, sittings and administrative services and arrangements with a view to gaining the confidence and maximising the convenience of the citizens who appear before it. [Finer Committee, 1974 paras 4.283(2) and 4.283(6)]

In part due to concerns about the cost of implementation (Doughty & Murch 2012) and in part due to debates amongst policy makers and academics as to the potential models for a restructured Family Court (Hogget 1986; Masson 2010), little progress was made over time. The Children Act 1989 did not include the formation of a single Family Court, rather it introduced a concurrent jurisdiction for child proceedings involving three tiers of court: Family Proceedings Court (magistrates), County Court and High Court. The administration, legal rules and procedures in each remained separate, as did the levels of judiciary, resulting in the need for administrative and judicial processes for the 'movement' (transfer) of cases between the tiers of court if required. These appeared in the form of Children (Allocation of Proceedings) Order 1991, SI1991/1677. Under the rules, for the first time, all public law children cases were to be commenced in the Family Proceedings Court with transfer only being permitted in accordance with the rules. The aim of this structure was to utilise all available court resources, addressing a perceived imbalance in workload and consequent resource pressure on the higher courts. Additionally the aim was to 'match' the case to the appropriate tier of the court, based on complexity (Masson 2010). As outlined below, there was (and there remains) an explicit view that appropriate allocation and transfer decisions assist in reducing delay.

Despite the requirement under s1(2) of the Children Act 1989 to avoid and prevent delay, and despite rules to manage allocation and transfer between the tiers of court, the implementation of the Act did not result in a reduction in delay within proceedings; quite the contrary (Masson 2010).

Within a few years of implementation, growing concerns about increasing delay and cost in Children Act 1989 cases resulted in the commissioning of a series of judicial and government reviews. Among them, the Booth Report (1996) and the Lord Chancellor's Department Scoping Study on Delay in Children Act Cases (Lord Chancellor's Department, 2002) informed the Advisory Committee responsible for the development of the Protocol for Judicial Case Management in Public Law Children Act Cases (President of Family Division and Lord Chancellor 2003). This Protocol sought to proceduralise judicial case management in care proceedings, including tasks such as allocation and transfer, within a maximum timescale for care proceedings of 40 weeks. A thematic review of the Protocol by the Judicial Review Team (Department for Constitutional Affairs, 2005a) produced a range of suggestions for change, including the need for improved criteria for allocation and transfer to ensure that cases were heard in the correct level of court. A concurrent review of Judicial Resources (Department for Constitutional Affairs 2005b) also considered issues of allocation and transfer of cases between levels of court in care proceedings, in the context of promoting efficient case management and appropriate deployment of judicial resources. The reviews reported ongoing issues for the courts and those using them in relation to the appropriate allocation of cases, as well as potential delay if there was a subsequent need for transfer between the separate levels of court and judiciary. (Department for Constitutional Affairs 2005a; Department for Constitutional Affairs 2005b).

The 2006 Review of Care Proceedings (Department for Constitutional Affairs, 2006) echoed findings from the Booth Report (1996) that increasing numbers of cases were being transferred from the Family Proceedings Court to the County Court with resulting capacity issues in the higher courts (Department for Constitutional Affairs, 2006). The review recommended optimising the use of judicial resources by ensuring cases were matched with the appropriate type of judge and level of court, in effect seeking a re-balancing of work, given the apparent overall trend of fewer cases remaining in the Family Proceedings Court (Masson 2010). There was an explicit acknowledgement of the benefit of on-going work towards a more efficient, single Family Court (Department for Constitutional Affairs 2006); however this would only be realised as a clear possibility some years later, with the legislative change that followed the Family Justice Review (Ministry of Justice 2011b). The Department for Constitutional Affairs Select Committee Report (2006) on 'Family Justice: The operation of the family courts revisited' led to developments within Her Majesty's Courts and Tribunal Service (HMCTS) which sought to streamline practice and processes within and between the levels of court, including issue, allocation and transfer (Heenan & Heenan 2012). Additionally a series of revised judicial protocols for case management (the Public Law Outline (PLO) 2008 and later the PLO 2010) aimed to improve practice and reduce delay and procedures for allocation and transfer of cases were included as key features in these protocols (Ministry of Justice, 2008 and 2010),

It is clear from the various government and judicial reviews, that government, policy makers and the senior judiciary have regarded allocation and transfer issues as significant contributory factors to delay within care proceedings. Additionally, research into the process of care proceedings has looked at allocation issues in relation to rates of transfer and the timing of transfer of cases (usually) to higher courts (Brophy, 2006; Masson, 2008; Masson et al., 2008). A lack of court data in relation to transfer has been a limitation of such studies, and even within large-scale studies of the system (such as Masson et al 2008), it has not been possible to draw clear conclusions as to transfer rates. Nonetheless, acknowledging the limitation of lack of data, studies have indicated variation between

court locations as to the level of court at which cases were finally heard, with "substantial differences between Family Proceedings Courts in the numbers and proportions of cases which were transferred" (Masson et al 2008:44). Studies, (McKeigue and Beckett, 2004; Judicial Review Team, 2005; Masson 2008) have also found variation over time, indicating increasing numbers of transfers to higher courts since the early days of the Children Act 1989. Suggested reasons for this have included difficulties in maintaining judicial continuity in the Family Proceedings Court when listing potentially lengthier cases (Judicial Review Team, 2005). It has also been suggested that there may be a preference for transfer amongst some advocates based on a perceived 'superior' judicial case management approach in the higher courts, in comparison to legal advisers and lay magistrates in the Family Proceedings Court (Masson, 2008; Masson, 2010).

The Family Justice Review (2011)

Sir David Norgrove was commissioned by the Government in 2010 to lead the Family Justice Review , to examine the whole Family Justice System and make recommendations in the context of imperatives to reduce delay and cost (Ministry of Justice 2011a). Previous attempts to address delay in the form of judicial protocols and streamlined processes, outlined above, had not improved processes sufficiently and a strong case was made for structural reform in the Review. This was reflected in one of the Review's key recommendations, subsequently accepted in the Government Response (Ministry of Justice/Department for Education 2012):

> A single family court, with a single point of entry, should replace the current three tiers of court. All levels of the family judiciary (including magistrates) should sit in the family court and work should be allocated according to case complexity [Ministry of Justice 2011b:para 36]

The Family Justice Review final report identified two concerns about the proposed single Family Court. Firstly, implications relating to the work of the Family Division of the High Court and secondly, issues about the appropriate entry point for cases, including who should be the 'gatekeeper/s' with responsibility for allocation of cases within the Family Court (Ministry of Justice 2011b, para 2.167: 75). Specifically, in the consultation following the interim report of the Family Justice Review (Ministry of Justice 2011a), concerns were raised that the proposed gatekeeping and allocation system might add delay and it was suggested that the proposal was not evidence-based (Ministry of Justice 2011b, para 2.170:76).

By the time the Family Justice Review final report was published in November 2011 (Ministry of Justice 2011b), the Designated Family Judge (DFJ) for Greater Manchester had already implemented a process of centralisation of the existing Family Proceedings Courts into a new central Civil Justice Centre building. From April 2011, all care proceedings cases in Greater Manchester were heard in the Civil Justice Centre, with all the magistrates, legal advisers and judges dealing with care proceedings co-located in one court centre. This co-location and the emerging messages from the ongoing Family Justice Review were key factors in the decision to pilot a new gatekeeping and allocation process for care cases in Greater Manchester.

Gatekeeping and allocation in care proceedings – the Manchester Pilot

Despite the centralisation, and perhaps contrary to expectations, there continued to be an imbalance of work between the levels of court in Greater Manchester , with more cases being retained by the

FPC, and a problem of late transfers to the County Court. Specifically, the DFJ observed a fall in the numbers of transfers up to the County Court and 'inconsistency in the nature and complexity of cases being transferred from or retained in the Family Proceedings Courts.' (Designated Family Judge for Greater Manchester 2012:2). The DFJ specifically highlighted difficulties in the Family Proceedings Court being able to find early enough hearing dates, resulting in cases being transferred on the basis of 'another good reason for the proceedings to be transferred' (Article 15(1)(i) Allocation and Transfer of Proceedings Order 2008). This reflected earlier comments on wider practice, made by the Judicial Review Team (2005) and Masson (2008).

In response to these issues, the Manchester Pilot was introduced with effect from 30th April 2012, with the approval of the Family Division Liaison Judge of the Circuit and the Judge in Charge of the Modernisation of Family Justice. The aim was to address imbalance in workload between the tiers of court, to improve consistency of allocation decision-making and reduce the numbers of cases being transferred at a late stage in the proceedings due to inappropriate allocation at the point of issue. The allocation decision was to be made jointly by a legal adviser of the Family Proceedings Court and a District Judge of the County Court, with the DFJ maintaining an overview and overall managerial control of the allocation of cases within the centralised Care Centre. Under the Pilot, a nominated District Judge from the County Court and a nominated Legal Adviser from the Family Proceedings Court met from 10a.m. to 11a.m. each working day to consider all newly issued proceedings from the preceding day and determine allocation to the Family Proceedings Court, the County Court or the High Court. The Evaluation was commissioned in July 2012, to gather empirical evidence as to the effectiveness of the Manchester Pilot, within the context of national reform.

The Evaluation - Methodology

The evaluation methodology used a mixed methods approach (Creswell, 2013) involving both qualitative and quantitative instruments. The evaluation was designed to gather and analyse quantitative data within a sample of all cases in one month during the pilot period, with comparison with previous years. The qualitative elements of the evaluation were designed to gather and analyse data as to the experiences and views of the gatekeepers and other stakeholders (local authority lawyers, solicitors representing children and families and Cafcass Family Court Advisers) in relation to issues of appropriate allocation of cases according to the criteria, and the avoidance of delay. The focus in both aspects of the research design was to explore the effectiveness, or otherwise, of the Manchester Pilot allocation process, in relation to its objectives. Specifically, achieving balance in allocating levels of work to different tiers of the judiciary; consistency in the use of documentation; consistency in decision-making, reducing appeals on initial determination; and whether this contributed to reducing overall delay.

The rationale for including the other stakeholders was to capture the views of those on whom the decisions impacted, who represented the parties to the proceedings, and who would either accept the allocation decision made, or seek an appeal. The instruments and schedules used within the Evaluation were designed to ensure triangulation and comparison of data amongst and between the different stakeholders, and to add value to the evaluation process. The sampling strategy included all the Gatekeepers involved in the pilot at the time, the ten Greater Manchester local authority legal teams and a list of solicitors registered with the Law Society's Children and

Family Panel. All of these stakeholders were involved in cases within the Manchester Civil Justice Centre at the time of the Pilot. Digitally recorded semi-structured interviews were undertaken with the Gatekeepers. County Court District Judges (n=6) and Family Proceedings Court Legal Advisers (n=10) were interviewed in relation to their experiences of the pilot including its strengths, areas for development and consequences both intended and unintended. Semi-structured electronic surveys were also circulated to local authority solicitors (n=39), local solicitors who act for children and parents (n=19) and Cafcass Family Court Advisers (n=26).

In relation to the quantitative data, the research team reviewed all cases issued in the month of September 2012. This included Form PL04 (Revised) 'Public law Outline Allocation Record' completed by the Local Authority and filed on issue, and all Form PLO8 'Directions and Allocation on Issue of Proceedings' completed by the Gatekeepers and on which allocation decisions were recorded for that month (n=43). Quantitative data from Her Majesty's Courts and Tribunal Service One Performance Truth (OPT) national data system was compared between the pilot period (May to December 2012) and May to December 2011. However, in attempting to gather this national data for comparison purposes, it became clear that there were some significant and irreconcilable differences in the data collected between different courts and consequently this element of the sampling strategy was abandoned.

The context for the Manchester Pilot within historical and current reviews and reforms of the family justice system was provided by a focused, scoping literature review (Arskey & O'Malley 2005). This was used to summarise the relevant literature and research, to help to focus the research questions and to provide adequate context for the reader within the dissemination process.

Data analysis

The intention of a comparative review of current and historical, national and Manchester Pilot allocation and transfer decisions proved impossible, due to limited and inconsistent data between the different systems as outlined above. Thus quantitative analysis of court data was limited to descriptive statistics of the available data from court records. Descriptive statistics were also used to analyse the stakeholder survey data.

The qualitative data from the interviews and surveys were analysed thematically using the constant comparative method (CCM) both across and between the different stakeholders (Boeije, 2002). CCM requires a series of steps in which items of data are subject to internal comparison (open-coding), then comparison within each data set (axial coding) and then across data sets (triangulation). The focus was on similarities and differences within and between the data sets and how these could be understood in relation to the evaluation aims and objectives (Moran-Ellis et al., 2006). Following the inductive analysis of the open questions the different sets of data were linked together (Moran–Ellis et al., 2004). This data was then cross-matched and challenged with the data from the judges, legal advisers, local authority solicitors, child and family solicitors and Cafcass Family Court Advisers. Following several cycles of comparison and revisiting of the original data, no new insights were identified between the three researchers and it was accepted that data saturation had been achieved. Themes were also checked against results from the analysis of the forms PLO4 (Revised) Public Law Outline Allocation Record and forms PLO8 Directions and Allocation on Issue of

Proceedings for September 2012. The themes were used to formulate recommendations from the evaluation and were presented in the evaluation report (McLaughlin, Newton & Potter, 2013).

Research ethics and governance

Manchester Metropolitan University Research Ethics Committee initially approved the research and permission was sought and provided by The Office of the President of the Family Division and the Judicial Office to interview District Judges and County Court Judges involved in the Greater Manchester Pilot. Permission to access court data, including a Privileged Access Agreement was provided via Her Majesty's Courts and Tribunal Service Data Access Panel. Key ethical issues included the need for secure data collection and storage of anonymized information, and the informed consent of judges and legal advisors including provision that they were not required to answer any of the questions without prejudice, that their answers would be anonymised and any publication would protect their confidentiality. This was important as the evaluation was of a pilot system that had been introduced by the Designated Family Judge who holds a leadership role in relation to the legal advisers and judges, which in theory might have introduced some pressure to take part in the evaluation. Given the relatively small number of participants and the fact that the location of the pilot was public, safeguards were incorporated into the production of the evaluation report and any subsequent publication to ensure that quotes and other information would not be identifiable. The surveys with additional stakeholders used electronic survey software to enable anonymous submission of responses. There was the option for participants to provide their email address if they were willing to be contacted for follow-up interview, however, other than the name of the local authority in the case of the Local Authority lawyers, the survey did not require any additional identifying information.

Limitations of the research

The research was limited due to time and resource constraints. Whilst the design was considered to address fully the evaluation objectives as provided to us, it should be noted that the evaluation was commissioned in July 2012, after the start of the Manchester Pilot in April 2012. As such, it was not possible to include specific comparisons of pre and post Pilot practice within the evaluation methodology. Available court data relating to cases prior to the Pilot was limited in relation to quality and type (as outlined above), which limited the possibility of comparisons based on court records and data systems. Consequently, whilst we outline our overall findings below, our focus in this article is primarily on the qualitative data from the evaluation, relating to process.

The research results are based on one pilot area and would be more robust if the evaluation could have been completed across a wider data set, including differing geographical locations. The distribution of the electronic surveys was conducted using a 'snowball' approach with surveys sent to employers or managers of specific services, with the request that they distribute amongst their teams. As such it is not possible to know how many people received the survey and therefore what the response rate was. In the case of the local authority legal teams, their survey asked which local authority the participant worked in so whilst we could not determine a response rate within each local authority legal service, we were able to see that we had responses from eight out of the ten Greater Manchester Local Authorities.

Additionally it would have been desirable to include an evaluation of the experiences of magistrates under the pilot arrangements. This would have provided additional stakeholder qualitative information as to the re-balancing of case allocation to the magistrates in the FPC. However this was not feasible within the timescale for the evaluation.

As described above there was a lack of appropriate local and national comparative quantitative data that could be used within this evaluation. This deficit was highlighted during the research process, expressed in the evaluation report and was fed into the subsequent national evaluation of the Public Law Outline Pilot (Ministry of Justice Analytic Series 2014). Issues relating to the quality of Family Court statistical data have been recognized in previous research (for example, Masson et al. 2008). Efforts to improve the quality of management and research information have been an explicit aspect of the ongoing work and action plans of the Family Justice Board, a national and multi-disciplinary body created following the Family Justice Review (Ministry of Justice 2011b) to take forward the reforms and provide governance and monitoring as reforms are implemented. (Ministry of Justice 2013a; Ministry of Justice 2013b)

The Evaluation - Findings

The evaluation data from the focussed sample of one month during the Manchester Pilot indicated that the Pilot had been successful in improving the balance of allocation of work to different tiers of the judiciary, and that there was consistent application of the Pilot allocation criteria by the Gatekeepers in allocation decisions. A reduction in appeals on allocation and an overall reduction in delay was more difficult to show from the court data due to problems with the comparative data sources, as outlined above. However the qualitative data from stakeholders demonstrated clear views that appeals were less likely under the Pilot system and that the changes and perceived improvements to the allocation would contribute to an overall reduction in delay within care proceedings.

The collaborative decision-making approach used in the Manchester Pilot was subsequently incorporated into the procedures within the national pilot of the Revised Public Law Outline, introduced between July and October 2013 (Ministry of Justice 2013c; Ministry of Justice 2013d). The documentation for this national pilot included an Allocation Proposal Form that was modelled on the Form PLO4 (Revised) created for the Manchester Pilot. We had found concerns about the efficacy of the Form PLO4 (Revised), with significant variation between local authorities in the completion of the forms and in their 'success rate' in identifying the appropriate level of court in their proposal. Local authority solicitors suggested in the e-surveys that the Form PL04 amounted to a duplication of information that should be contained in a well-drafted application form C110.

Recommendations from our evaluation about the efficacy of the separate form for allocation proposals, and the benefits of local monitoring groups, were considered by the national evaluation team during their Action Research to explore the implementation and early impacts of the revised Public Law Outline (Ministry of Justice Analytical Series 2014). Our recommendations were subsequently included in the processes within the Public Law Outline 2014 which came into force on 22 April 2014 (Ministry of Justice 2014) under which the allocation proposal is no longer made on a separate form but on the application form C110.

In addition to our findings about the outcomes of the procedures in the Manchester Pilot, as outlined above, a strong theme emerged in the evaluation in relation to the social processes within the new allocation decision-making system, primarily from the qualitative interviews with gatekeepers and stakeholder e-surveys. Findings in relation to social processes were not included as objectives for the Manchester Pilot or our Evaluation; however, the evaluation team found consistent expression of perceived benefits, including effective and robust decision-making and improved understanding and learning across the tiers of judiciary. These findings, presented below in three summary areas, suggest that the new, unified Family Court provides possibilities for exploration of the potential benefits of collaborative allocation decision-making, in relation to learning and development across the tiers of the judiciary, contributing to a cohesive and collegiate approach within the Family Court.

Gatekeeper perceptions of effectiveness and collaborative working

Data from interviews with Gatekeepers indicated a strong view amongst legal advisers and judges that the new collaborative allocation decision-making process produced more appropriate allocation, thus reflecting a more effective process that reduced the need for unnecessary late transfer. (It was acknowledged by the gatekeepers and the research team that there will always be cases where circumstances require late transfer, and thus in some cases this would be appropriate).

> *The new system has stopped late transfers, it's stopped cases going on and on and needing to be transferred 18 months down the line (Legal Adviser)*

This view of effectiveness in the new system was linked to the collaborative and consensual approach to decision making under the pilot, with Gatekeepers also indicating a strong view that this approach made allocation decision-making outcomes more robust. Overall, the collaborative or team approach involving consensual decision making by the different tiers or levels of court was seen as a particularly positive influence.

> *…it has got to be an improvement on simply what would have been historically a Legal Adviser looking at the incoming application and making a decision. It's just naturally right that there's 2 opinions coming in here, each may have a different view but it seems to be a consensual solution, vastly improved in my judgment (Judge).*

Stakeholder perceptions of robust decision-making and collaborative working

Data from e-surveys with parent and child solicitors, local authority lawyers and Cafcass Family Court Advisers echoed the Gatekeepers' views about the effectiveness of the new decision-making process. Stakeholders' views reflected a perception that active consideration of allocation decisions within face-to-face meetings of Gatekeepers from across the tiers of judiciary, involving discussion of the case against specific criteria, would lead to better allocation decisions in the first instance.

> *The Court is more aware of the key issues at an earlier stage and therefore it has been my experience that cases requiring transfer to the County Court have been identified at issue and appropriately listed for initial hearing. (Local authority solicitor)*

Appropriate cases appear to be allocated to a circuit judge without the need for long discussions in the FPC. (Cafcass FCA)

I've noticed far less discussion of allocation issues in recent months. (Child and parent solicitor)

This active consideration of allocation decisions, based on discussion of cases by representatives from across the tiers of judiciary, was suggested by some stakeholders to indicate robustness in the allocation decision. In this way, the decision was perceived as less open to challenge than previously, when allocation decisions were made by a legal adviser from the Family Proceedings Court. This was considered to reduce the likelihood of appeal on allocation. Additionally, and in line with findings by Masson (2008) of a perceived 'superior' judicial case management in the higher courts, the stakeholders suggested that the input of a judge to the allocation decision-making process produced more confidence in the decision than if it were made by a legal adviser in the Family Proceedings Court alone. This perhaps reflected some perceptions among stakeholders of case management capabilities in the Family Proceedings Court, as compared with the District and/or the Circuit bench:

In examples of cases where a party disagrees with a decision, those parties take the view that active consideration has already been given to the issue by the court and so an appeal is unlikely to succeed. (Local authority solicitor)

The Court are (sic) making decisions like these with clear guidelines. This means the decisions are usually uncontroversial. (Child and parent solicitor)

If you know an experienced District Judge has looked at the papers then most parties will think that any appeal is unlikely to be successful. (Child and parent solicitor)

Social processes and collaborative working

The evaluation findings included clear views from Gatekeepers and other stakeholders as to the positive impact of a collaborative system for judicial allocation decision-making. Historically, a legal adviser of the Family Proceedings Court would make allocation decisions alone. Whilst there were mechanisms for the legal adviser to consult with members of the judiciary if required, there was no regular, case-specific discussion at the point of the allocation decision. One of the aims of the Manchester Pilot was to re-balance the allocation of work to the different levels of judiciary and it appears that this was achieved, supported by the introduction of a collaborative decision-making process involving a face-to-face meeting between representatives of different levels of the judiciary.

At the point of application, Local authorities were required to specify their allocation proposal, cross-referenced to the Pilot allocation criteria, in a separate, additional form to the care proceedings application form (C110). The intention was that this allocation proposal form (PLO4) would provide the basis of the discussion and decision-making within the daily Gatekeeping and Allocation meetings. Our evaluation showed the opposite; Gatekeepers did not refer to the local authority allocation proposal form (PLO4) until after they had discussed the case between themselves in their meeting. Gatekeepers had usually read the application form (C110) to reach a preliminary view as to allocation. In some instances the case details meant that the allocation decision was obvious, based on the Pilot allocation criteria. However, where the allocation decision was not so obvious and/or where the Gatekeepers came to the meeting with initially differing views,

it was clear in our data that it was the case discussion and debate between the Gatekeepers that they found to be beneficial in reaching a secure, agreed allocation decision.

> *If we start off with a different view, both of us will talk through the evidence...and look through the criteria together during the discussion...I've not had a time when we've not reached the same conclusion.* (Legal adviser)

The Gatekeepers also highlighted the benefit of this social process to their knowledge and understanding of each other and the requirements and practices of the different levels of court. In other words, the social processes involved in collaborative working were found to be of significant benefit to the allocation decision-making process, and to the professional development of the individuals involved in it.

> *I think it's been helpful. Not only have the legal advisers helped and benefitted from it, I think also the district bench have in terms of discussion about general debate of issues that might have arisen on cases that might have been allocated or dealt with differently...we learn from each other, that's to my view a very, very good thing. (Judge)*

Case-related discussion and communication across and between the levels of judiciary was experienced as positive and more helpful to the decision making process than had been anticipated. The sense of 'knowing each other' and learning from the experiences of those working within different levels of judiciary was experienced as constructive to the decision making process. Overall, an improved understanding between the levels of judiciary was considered likely to result in a more effective allocation process, contributing to the avoidance of delay and reduction in appeals on allocation, as well as contributing to the professional development of the judiciary on an ongoing basis.

> *At the outset I wasn't in favour of it because I didn't think we needed any help, we knew when to seek help and I was quite happy to continue making decisions on my own. However I've really enjoyed the process and I've used it as an opportunity to learn and to discuss and build relationships with other parts of the judiciary. (Legal adviser)*

This discussion and debate was experienced by the Gatekeepers as beneficial to ongoing learning, development and relationships, beyond case specific allocation decision-making. The Gatekeepers were clear in our data that the learning was mutual and not influenced by perceived hierarchical differences. This is a potentially important consideration in relation to the operation and management of the new single Family Court, including the effective 'processing' of cases (Moorhead and Cowan 2007; Mack and Roach Anleu 2007) and the development of better informed, collaborative judicial 'workgroups', across and between the levels of the judiciary of the Family Court (Fielding 2011) .

The evaluation was conducted in relation to proceedings in the lower courts. Our findings in relation to the social processes within the new judicial allocation decision-making system may also have some limited similarities with Alan Paterson's studies of the judiciary in the House of Lords and latterly in the Supreme Court (Paterson 1982 and 2013). Paterson's studies recognised appellate decision-making as a social and collective process. We suggest that a broad similarity exists in that Paterson identifies the importance of specialisation as well as 'knowing each other' in promoting

dialogues between the Justices (previously the Law Lords), which reflect and constitute a social process analysis of legal decision-making.

> You are discussing the case the whole time with your colleagues and…it is infinitely helpful. From what they have been saying, you may suddenly see a thing in a new light. (Paterson 1982, Lord Cross: 90)

> It has been argued that dialogues are a particularly fruitful line of investigation because of the light they shine on the dynamic nature of appellate judicial decision-making as a social and collective process. (Paterson 2013: 312)

A difference in the social processes involved in the lower courts as found in this evaluation, and Paterson's studies in the appellate courts is perhaps reflected in the term 'collaborative' decision-making used within this evaluation and 'collective' decision-making as referred to by Paterson (2013). The Manchester Pilot aimed for a consensual decision-making process between the Gatekeepers, with allocation decisions that were not agreed referred to the DFJ for determination. Our data indicates that this was something that occurred rarely, if at all, in the Manchester Pilot. Gatekeepers were encouraged and expected to collaborate in reaching an agreed allocation decision, unlike the processes in the appellate courts where agreement amongst the collective decision makers is not required and dissention within judgements is commonplace. We therefore do not seek to make direct comparisons with Paterson's research, rather to illustrate the potential for considering social processes in the lower courts, in the context of the creation of a single Family Court.

As outlined, under the Pilot and now within the Public Law Outline 2014 (Ministry of Justice 2014), the pair of Gatekeeping decision-makers operate within a system designed for consensus based decision –making. There is an extensive literature on individual versus group decision-making, and consensus based decision making that spans, for example, social psychology; economics; leadership and management theory; and the biological sciences (see, for example: Michaelsen et al. 1989; Ambrus et al. 2009). It is likely that intra-pair and wider group processes in this new arrangement for allocation in care proceedings may have influenced the allocation decision-making of the gatekeepers in various ways. This is a potential area for further study, we would suggest in combination with further research into judicial practice and social processes in the context of the implementation of the Family Court .

Conclusion

In response to a climate of national change and reform arising from the Family Justice Review (Ministry of Justice 2011b), the Manchester Pilot introduced a collaborative, consensus–based process to judicial allocation decision-making. Our Evaluation findings indicate a strong theme in relation to social processes within judicial allocation decision-making in the Manchester Pilot. These social processes, including face to face communication, negotiation and a consensus approach to decision-making were required of the legal advisers and the judges in the Manchester Pilot, and the subsequent national Public Law Outline pilot (Ministry of Justice 2013c and 2013d). These processes are now embedded in the national gatekeeping and allocation system under the Public Law Outline 2014 (Ministry of Justice 2014).

The idea of a single Family Court has a long history and its creation undoubtedly brings significant changes in practice and procedure in care proceedings and the wider family justice system. We suggest that the formation of the Family Court, and the centralisation of Family Court Hearing Centres in many areas, bring increased opportunities for dialogue and learning between levels of the judiciary.

We suggest that it will be important to recognise and build on the potential benefits and improvements in judicial practice that are likely to come from the social processes involved in closer and more regular case-related dialogue between levels of the judiciary within the Family Court. Recognition of these issues and opportunities for closer working between levels of the judiciary has the potential to contribute to the ongoing development of an effective and more expert judiciary within the new Family Court, which it is hoped will support the new systems in improving processes and outcomes in care proceedings for children and families.

As aspects of collaborative judicial practice such as allocation decision-making become embedded, and as the judiciary of the Family Court experience their new structure and co-location, we suggest there is scope for further research in relation to the work of the judiciary of the Family Court. Such research should build on existing studies of group and consensus-based decision making (for example Michaelsen et al. 1989; Ambrus et al. 2009) and 'judgecraft' (for example Cowan & Hitchings 2007; Mack & Roach Anleu 2007; Moorhead & Cowan 2007; Fielding 2011). Ideally the study of outcomes and process should be combined, maintaining an integrated focus on the quality of the decisions made and the important social processes involved in reaching those decisions.

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