



Consulting with stakeholders to establish priorities

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Nuffield Family Justice Observatory for England & Wales

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Introduction

The **Nuffield Family Justice Observatory (England and Wales)** will be launched as a pilot in the Spring of 2019. The overarching aim of the new Observatory is to support the best possible decisions for children and families involved in the family justice system, by improving the use of data and research evidence alongside practice knowledge and experience. The background to this project and vision for the pilot Observatory have been set out in two reports which are both available from the Observatory website¹.

A development team is now completing the necessary set up work, to enable the launch of the new Observatory². A collaborative ethos is at the heart of this project. Two stakeholder events were held in England and Wales in June 2018. In this report, we provide summary messages from those events. The purpose of the workshops was to narrow the priorities for the new Observatory and help inform an inaugural work plan. Improving the use of evidence in the family justice system requires close working and collaboration across all stakeholder groups to set agendas and pilot and test Observatory outputs.

In the workshops we presented stakeholders with a set of priorities, already established through an earlier comprehensive scoping exercise (2016 -2017).³ The workshops were designed to further unpack these topics and specify priority questions. For example, “mediation” is a broad topic and might refer to models of mediation, pathways into mediation, or questions of outcomes and effectiveness. At the same time, the development team wanted to test out how stakeholder engagement could work most effectively, to inform plans to establish a Stakeholder Advisory Council following the launch of the pilot Observatory in 2019.

¹ Towards a Family Justice Observatory; Making it happen <http://www.nuffieldfoundation.org/towards-family-justice-observatory>

² Summary of the development team and development phase is available at <https://projects.invisionapp.com/share/Q7N25DTNP9K#/screens/309706744>

³ Broadhurst et al., <http://wp.lancs.ac.uk/observatory-scoping-study/files/2017/08/National-Stakeholder-Consultation-Main-Findings-Report.pdf>

Consulting with Stakeholders to establish priorities

We presented our workshop participants with the following list of priority topics in public and private law:

Public Law	Private Law
1. Longer term placement stability and wellbeing outcomes for children	5. Impact of LASPO ⁴ and litigants in person
2. Contact	6. Mediation
3. Sibling placement	7. Contact in high-conflict separation cases
4. Impact of domestic violence on children	8. Child arrangement orders

We were conscious that at the time of the workshops, there was widespread concern about the high volume of cases in public law⁵ and concerns about some aspects of the implementation of the reforms following the Family Justice Review.⁶ In addition, there was considerable concern about the impact of the reduction in the availability of legal aid, particularly in private law cases. Therefore, we expected that workshop participants might validate, add to, and update our list of topics.

It was important for everyone participating in the workshops to understand that for some topics the Observatory could readily make available or appraise and summarise an existing body of national and international evidence. For other topics, the task for the Observatory would be to flag to a range of research funders, or to directly address major gaps in evidence. We had conducted a rapid scoping of the relevant published literature against each topic (April to June 2018), so that when we presented the priority topics to workshop participants, we could indicate whether the topic lent itself to new research or evidence appraisal and summary.

⁴ Legal Aid Sentencing and Punishment of Offenders Act (LASPO,) *United Kingdom: Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*, United Kingdom: Parliament, House of Commons Library, 1 May 2012, available at: <http://www.refworld.org/cases,UKHCL,58a6fbe94.html> [accessed 13 July 2018]

⁵ Care Crisis Review Options for Change (2018) London: Family Rights Group

⁶ Family Justice Review 2011 –

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf

Key Messages

As well as commenting on the specific topics as above, workshop participants also made a number of important general points that we have summarised below.

The new pilot Observatory should:

- 1. Understand the context of both nations it serves.** England and Wales have different legal, policy and practice contexts regarding family justice. These differences need to be reflected in the structures and in the mechanisms utilised for engagement, knowledge mobilisation and communication. Translation of relevant documents into Welsh is vital.
- 2. Span both public and private law and understand the interface.** Activity needs to be carefully balanced between public and private law issues in the family justice system. In addition, it is important to understand the potential overlap between public and private law activity. For example, local authorities are being directed by the courts on a more frequent basis to provide reports for the courts in private law cases.
- 3. Develop a USP.** The Observatory needs to be distinctive. Creating safe access to, and building capability in the use of core family justice datasets, is a unique function of the Observatory, along with collaborative action to support the co-production, interpretation and application of empirical evidence.
- 4. Work through contested issues - have a myth busting function.** The Observatory should capture the beliefs and myths that sustain particular practices within the family justice system and develop mechanisms for working through contested issues. This would require the testing of long-standing practice assumptions against the substantive evidence.
- 5. Combine quick wins with longer-term streams of work.** It will be important for the Observatory to demonstrate its capability at an early point. It cannot be all things to all people, but ensuring it combines immediate outputs with longer-term goals is essential.
- 6. A collaborative ethos is critical but given pressures on services, the Observatory should take advantage of scheduled policy and practice meetings**

and forums. Close engagement with practice and knowledge initiatives are already underway and engaging with routine leadership groups (for example, Local Family Justice Boards), will reduce the risk of duplication and ensure relevance of the Observatory's activity. Identifying opportunities for collaboration with the Children's Social Care What Works Centre⁷ is important.

- 7. Showcase innovation and stay ahead of the curve.** An important role for the new Observatory is to showcase best practice and innovation and connect stakeholders. International innovation and published literature must be in scope.
- 8. Think creatively about outputs.** The Observatory reports and other outputs will have greater uptake if they are presented in a range of formats, including short films or webinars, mobile and tablet friendly. It will be critical to consider the range of audiences that will access Observatory materials.

⁷ <https://whatworks-csc.org.uk/>

Prioritisation Exercise

Practitioners generally agreed with the public priorities that we had distilled from our earlier scoping study⁸. Practitioners also said that it was difficult to prioritise because all the topics reflected pressing concerns within the family justice system. However, in private law, there was a clear consensus that LASPO is top priority, together with the profiling of children and families in private law using large-scale administrative data.

Stakeholders understood that addressing some questions required new research, whereas for others, the Observatory could provide a reliable summary of the evidence. All stakeholders agreed that the Observatory should prioritise both of these functions and take a pragmatic approach to sequencing.

⁸ More information on the Scoping Study can be found at <http://wp.lancs.ac.uk/observatory-scoping-study/>

Public Law

1. Longer term placement stability and wellbeing outcomes for children

There was general agreement that the new pilot Observatory should play a leading national role in tracking children's pathways using large-scale data. However, participants were keen to stress that analysis needed to capture pathways *into* public law proceedings, through and beyond. Participants readily endorsed the importance of making far greater use of national administrative data, in both England and Wales and across fields of health, welfare, education and justice.

2. Contact

There was widespread concern about contact decisions and the quality and purpose of contact. Participants listed the following particular concerns:

1. The challenges of managing post adoption contact in the context of children's increasing access to social media.
2. The frequency of infant-parent contact after proceedings have been initiated.
3. The frequency and mechanisms for reviewing contact plans for children in long-term foster care.
4. Contact for children on the 'other' edge of care – that is those leaving the care system who frequently re-connect or return to birth family networks.
5. The quality of contact, including new and innovative approaches that have a therapeutic element.

Participants emphasised the importance of keeping contact for children in foster care under review – because birth families are not static. Also contact plans should not be formulaic. Contact planning ought not to be a last minute hurried activity as care proceedings draw to a close; rather this issue should be given far more attention earlier in proceedings. Learning from international models and research was seen as very important to bring challenge to our own thinking.

3. Sibling placement

This theme was seen to overlap with contact. Here, participants argued that a child-centred perspective needed to be central to research and decision making but, in addition, we also need to know far more about the *experience* of sibling contact and its impact on outcomes.

Workshop participants wanted to know more about sibling contact in the context of large sibling groups, where siblings are scattered across multiple placements or different

placement types (kinship, foster care, adoption). The multiple questions raised by workshop participants suggests that this ought to be a major theme within the Observatory's inaugural work plan.

4. Impact of domestic violence on children

Participants stated that differentiating the impact of domestic violence upon children continued to be an issue for many frontline practitioners. However, there was also considerable and arguably, greater interest in a role for the Observatory in identifying better ways of addressing women's victimisation in the context of domestic violence, to prevent child removal. Workshop participants expressed dissatisfaction with options currently available to divert cases from court and felt that far more could be done to ensure women were not penalised on account of the behaviour of their male partners. There was widespread acknowledgement that domestic violence was a cross-cutting issue, it was a key concern in private as well as public law cases.

Additional public law priority topics

Concerns were raised about the impact of the sole performance management tool in relation to the effectiveness of the public law outline being the 26- week rule. Similar concerns were raised in response to the Care Crisis Review⁹. In particular, there is concern that the focus on completing cases within 26 weeks may be impacting on justice and on outcomes for children, with anecdotal evidence of cases being completed before care plans are finalised, or before potential placements have been properly tested. Since the workshops, the recent case of *Re P (A Child) [2018] EWCA Civ 1483* has garnered national attention. This case has raised questions about the circumstances in which it would be appropriate to extend proceedings beyond 26 weeks¹⁰. In addition, there was also concern about the operation of the pre-proceedings process, the variability in the types of orders made by the court, as well as the increase (in some DFJ areas) in the use of care orders for children at home in place of supervision orders. Finally, there was concern about the very variable operation and activities of the National and local Family Justice Boards.

A second topic was the increase in older children (aged 15 upwards) coming before the courts in care proceedings. There is also concern about the complexity of problems that these children are presenting - involvement in gang related activity, sexual exploitation and radicalisation.

⁹ Care Crisis Review: options for change (2018) London: Family Rights Group
https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf [accessed July 18]

¹⁰ Family Law (July 2018) *P (A Child) [2018] EWCA Civ 1483*
<http://www.familylawweek.co.uk/site.aspx?i=ed190839> [accessed July 18]

Public Law: Sequencing

Regarding sequencing, participants strongly endorsed a longer-term programme of work on topic 1 (using data to track children's pathways). Given the multiple questions raised about topic 2 (contact), this must also be a top priority for the new Observatory. Participants struggled to see any of the topics as lower priority, but suggested that longer-term objectives might run, alongside 'quick wins' across all 4 topics, plus new topics raised in the workshops in relation to the operation of the Family Justice System.

Overall it was suggested that a pragmatic approach should be taken to sequencing activities, that makes use of published material already available (which meets the Observatory's quality standards) as well as the production of new material.

Private Law Topics

1. The impact of LASPO on the operation of the Family Justice System

All stakeholders consistently described the strain felt by the courts as a result of rising numbers of litigants in person. LASPO has not reduced referrals to the courts, and there are huge consequences for both the self-representing litigant, but also the courts, of reductions in legal aid. A cost/benefit analysis of the impact of LASPO was suggested. Participants did not appear to be aware of the international research literature on the self-representing litigant, or its relevance to the English and Welsh contexts. This underscores the role of the new pilot Observatory in knowledge mobilisation. Stakeholders welcomed the suggestion of a summary of the national and international literature that might offer advice to the self-representing litigant. However, stakeholders also stated that it was vital that the Observatory leadership team is mindful of related work in progress on this topic. The strength of feeling and frequency of reporting of the same concerns in the workshops indicated that this topic must be a priority for the Observatory.

2. Mediation

Participants commented that there was a dearth of data regarding gateways into mediation and the cost/benefit analysis of various models of alternative dispute resolution (ADR). There was widespread concern that ADR was doing little to stem this flow of cases into the courts. It was clear that far more needs to be done to understand systemic issues regarding referral to ADR/mediation – they stated that referral comes far too late and conflict is so entrenched that couples are 'beyond' ADR/mediation. An analysis of methods of triaging and referral was suggested.

3. Child Arrangement Orders

Workshop participants stated that there needs to be more evidence and guidance about what levels of contact should be recommended for different family contexts. There was a clear feeling that evidence, if it is available, is not reaching the frontline. It was felt that judges and magistrates, are having to make decisions about contact without sufficient knowledge about attachment theory or the psychological and developmental needs of children. Again, there was concern that frequency of contact does not mean *quality* – and that the courts need to ensure all actions are child-centred. Some argued that there ought to be better ways of managing arrangements for children without recourse to court.

4. Contact and high conflict separation

This topic was considered a very high priority in private law; with a clear message that in such cases, local authorities were increasingly being instructed by the courts to produce s.37 welfare reports¹¹ Guardians are also being appointed with increasing frequency under s.16.4 of the Children Act¹² in protracted private law disputes. High conflict cases are making huge demands on all agencies and the courts and there is clear concern about the impact of children in these cases. There was also clear concern about parental alienation – with participants arguing that often accusations of domestic violence were often countered by fathers with allegations about parental alienation. Participants argued that examining and understanding what constitutes parental alienation needed to be given priority (actual frequency and nature of complaints). Again, the impact of LASPO was considered a critical factor in high conflict cases and repeat litigation because lawyers were no longer available to gate-keep or diffuse parental conflict.

Additional private law topics

Stakeholders felt that the need for basic descriptive information about children's pathways into, through and beyond the family court in private law cases, was pressing. They argued that, as in public law, basic intelligence about children's pathways into, through and beyond the family justice system is insufficient. There was a strong feeling that high conflict private law cases cut across social class, can be intertwined with public law concerns, but at present basic national and regional profiling of these cases is insufficient. In this context, it is very difficult to understand demand, or how or where to intervene to reduce demand on the courts.

¹¹ If during private law proceedings under the Children Act 1989, concerns arise regarding the welfare of the child, and the court considers that it might be appropriate for a Care Order or Supervision Order to be made, the court will direct a local authority to investigate and assess the child's welfare and report to the Court.

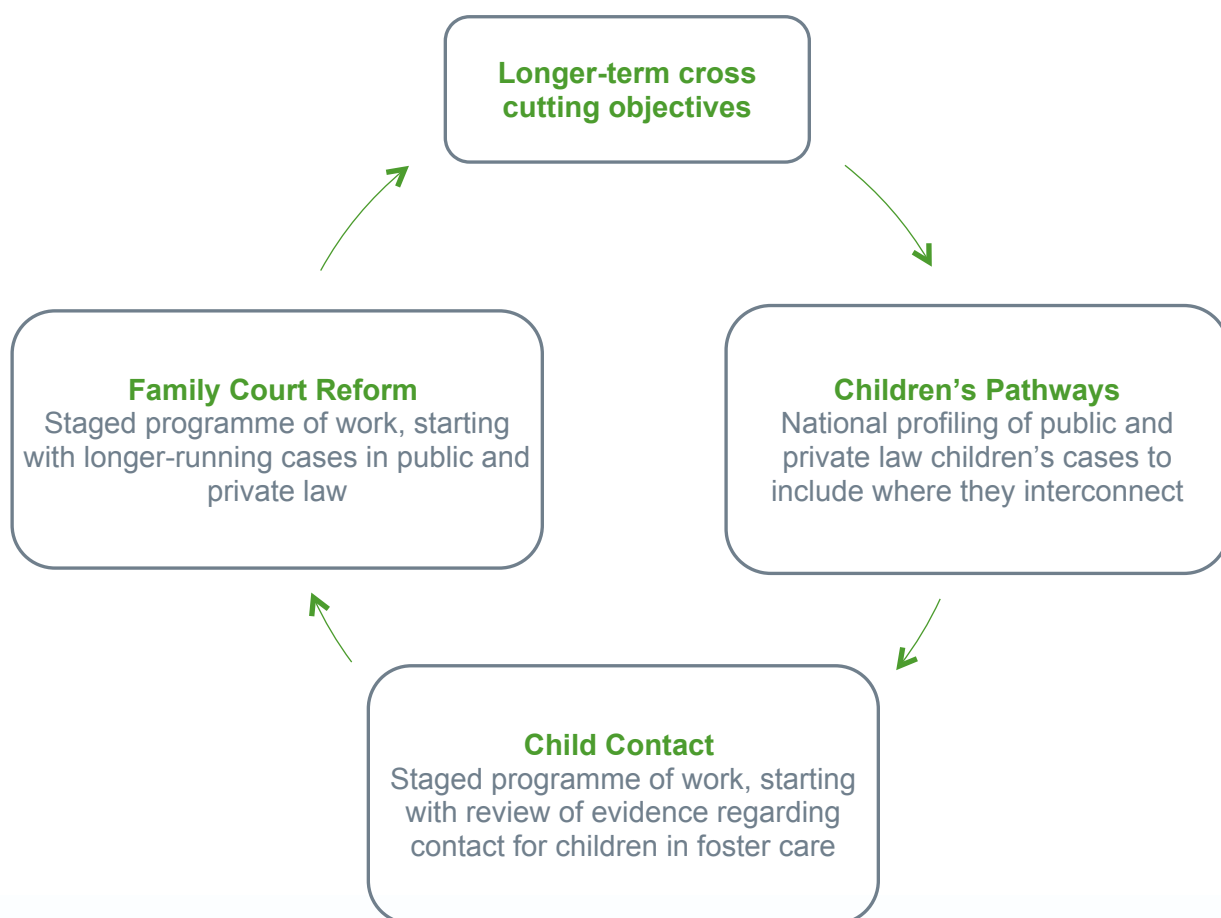
¹² A Guardian appointed by the court in private law proceedings is called a Rule 16.4 Guardian. The court must appoint a children's guardian for a child who is the subject of proceedings, which are not proceedings of a type referred to in rule 16.3(1), if -

- the child is an applicant in the proceedings;
- a provision in these rules provides for the child to be a party to the proceedings; or
- the court has made the child a party in accordance with rule 16.2.

Private Law: Sequencing

The two priorities which appeared most pressing for workshop participants were topic 1 (the impact of LASPO) and topic 4 (contact and high conflict separation). The production of robust evidence about the consequences of LASPO, or the surfacing of on-going analyses or actions by other bodies about litigants in person, was an overwhelming priority for participants in England and Wales. Participants also strongly endorsed descriptive profiling of private law cases using administrative or other large-scale datasets and an examination of the interconnectedness of private law and public law cases (additional topic). Again, stakeholders recommended a pragmatic approach and a number of quick wins emerged from the workshops: summary guidance for litigants in person; review of training needs for judges and magistrates regarding contact in private law with a child-centred focus; examination of methods of triaging and referral in private law cases; and expert roundtable discussion that begins to surface the evidence on parental alienation.

Summarising stakeholder priorities



Conclusion

The stakeholder workshops were invaluable in providing further detail about the priority topics identified during previous scoping work. As we found from our previous scoping study, participants placed considerable importance on the production of better knowledge about children's pathways by making greater use of national administrative and other large-scale datasets.

The experience of the workshops confirmed that stakeholders welcomed interaction with each other and that actively working together on practical tasks was more meaningful than being asked to consider information or concepts in abstract. There was a general consensus that the membership of the new Council should comprise the range of frontline practitioners, but also policy leads. Participants reminded the development team of the importance of making use of practice and policy forums already up and running, given demands on the frontline. It is better to request an allocated slot in such meetings, than request attendance at too many supplementary meetings or events.

Balancing quick wins with longer-term objectives was advised and ultimately the FJO leadership team will have to consider questions of resources and feasibility in drawing up work plans. Collaborating with other organisations undertaking related work was seen as a way of maximising the Foundation's investment and the Observatory's outputs. The Observatory should collaborate with the What Works Centre for Children's Social Care, and the range of Government departments, but without compromising independence.

Paying close attention to the increasingly divergent contexts of England and Wales, noting the importance of publishing in the Welsh language and ensuring representation of Welsh colleagues within the Observatory is vital.

Quick Win Options:

Summary guidance: litigants in person

Review of research/activity being undertaken by related organisations on LASPO

Roundtable: parental alienation

Examination of triaging and referral in private law, to include pathways to ADR/mediation

International key informant consultation regarding innovative and effective practice in the context of high conflict public and private law cases