



THE CONTRIBUTION OF EXPERTS IN CARE PROCEEDINGS EVALUATION OF THE WORK OF INDEPENDENT SOCIAL WORK ASSESSMENTS

STAGE I - APRIL 2012

EXECUTIVE SUMMARY

Dr Julia Brophy
Charlie Owen, Judith Sidaway, Dr Jagbir Jhutti Johal
University of Oxford

1 Introduction

Several concerns surround the use of independent social work (ISW) assessments in care proceedings. Some result from the exclusion of this work from a review of legal aid for expert assessments in this field, a cap on ISW fees, and fears about a resulting reduction in the availability of ISWs. At the same time, submissions to the Family Justice Review (FJR) claimed that ISWs cause delay, simply duplicate existing local authority assessments, add nothing new and undermine confidence in social work assessments. It was also said that ISW reports result from parents utilising human rights claims to gain a second opinion of a local authority assessment – and to which courts too readily accede.

In the interim report, the FJR indicated it was persuaded by criticisms of ISWs and made a number of recommendations to restrict their use. The final FJR report however acknowledged the concerns it had generated in this field including a view that that it had singled out independent social workers unfairly. The final report therefore broadened recommendations stating the court should seek material from *any* expert only when the information is not available from parties already involved; it accordingly recommended future use of ISWs should be exceptional.

The government subsequently accepted those recommendations, and by implication, claims about ISWs. It stated that it would legislate to make it clear that it would only be permissible for expert evidence to be commissioned where it is necessary to resolve the case, and the information is not already available through other sources.

But while strong views have been expressed about the use of independent social work assessments, there is little hard evidence. This evaluation, commissioned following submissions to the FJR, begins to address that lack. It is based on 65 cases concerning 121

children and 82 reports for courts in England and Wales. The sample was drawn from the records of three independent agencies providing ISWs.

Findings

1 Profile of children and parents

- Children and parents in cases referred to ISWs demonstrated multiple problems: 'co-morbidity' was a defining feature of the profile of children and parents in this sample.
- Most children were subject to allegations concerning more than one form of ill-treatment, most were aged six years and under, almost all were subject to an interim care order, mostly placed outside their birth family. Most were well known to children's services.
- Most parents were subject to multiple concerns or allegations contributing to failures of parenting. Almost half had mental health problems; over 40% had drug and alcohol problems. Over half of mothers were subject to domestic abuse. Many parents (42%) were themselves ill-treated as children.

2 (a) Who instructs ISWs?

- Findings do not support a view that parents are solely responsible for the use of ISW assessments – or that applications were based solely on rights to a second opinion of an existing local authority assessment.
- Parents were involved in most instructions to an ISW (79%), but most of those (64%) were joint instructions; almost half of these involved all three major parties (the local authority, the parent(s) and the guardian).
- The local authority was a party to instructions in a majority of cases (65%) – most of these were joint instructions but it was the sole instructing party in 15%. The guardian on behalf of the child was a party to 56% of instructions - all were joint instructions.

(b) Letters of Instruction

- All letters of instruction (LOIs) instruct ISWs as an expert witness. Letters are drafted according to Guidance/Practice Direction on instructing experts in children cases. ISWs are referred to Guidance/Practice Direction and letters specify the principles, duties and responsibilities of expert witnesses to the court thus distinguishing experts from professional witnesses. The ISW is also required to include a statement that he/she has read, understands and adheres to Guidance on the duties and responsibilities of experts.
- Most LOIs complied with the terms of the Practice Direction but a small number fell short of the standards set, questions were repetitive, lengthy, and in some instances lacking a clear structure. The median number of tasks or questions was 13.
- Local authority social workers act as a professional witness for the applicant. ISWs have an additional role as an expert witness for the court.

3 The context in which ISWs are instructed

- Most cases (93%) indicated the local authority had filed at least one assessment relating to the care of a child(ren) in the current application; 71% contained a core assessment.
- The reasons why an ISW was instructed to assess a parent where there was evidence of a previous assessment by a local authority was because that assessment had not included this parent, or parent and a new partner; this was the reason in 43% of cases. In these circumstances the ISW does not 'duplicate' the local authority assessment, but adds information.
- In 35% of cases a previous local authority assessment was contested by parents but most (27%) were contested on grounds of content; in just 4 cases (8%) parents contested a local authority assessment on grounds of lack of independence or human rights claims.
- There were 19 cases where an ISW was instructed within twelve months of a local authority core assessment. In most of these cases high levels of conflict existed between the local authority social worker and the parent(s); in some cases an impasse had been reached.
- In most cases changed circumstances (e.g. a new partner, a birth parent not previously assessed, improved circumstances), missing information from the core assessment, further questions and new information underscored instructions to an ISW.
- Findings do not therefore support views that ISW assessments routinely duplicate local authority assessments, adding nothing new. These were not like-for-like assessments: new people, changed/new circumstances were the driving forces.
- The findings indicate that the independence and the skills of the ISW, and time to fully assess complex parents with a history of non-cooperation or engagement with local authorities are key benefits to the court of ISW assessments.

4 The Assessors: skills and experience

- ISWs employed by the sample agencies had substantial experience in child protection work; the median was 24 years. Many had held senior positions in local authorities prior to ISW work; two-thirds had a relevant higher degree.
- There is a concern that an ISW is a third social work professional to be involved with the case (in addition to the local authority social worker and the child's guardian). Findings indicate a need to unpack this issue in the context of what ISWs actually do.
- First, previous research has shown that some 40% of care cases come to court lacking a core assessment. Second, the Cafcass operating framework means that guardians are unable to undertake 'hands on' assessments where there are problems or gaps in evidence.

- Third, this perspective does not address the different duties and responsibilities. While the core welfare discipline is the same, the evaluation demonstrates that as expert witnesses for the court, the ‘terms of reference’ and thus the job of the ISW is different - both to that of the local authority social worker and the guardian.

5 ISW assessments of parents

- The ISWs drew on a range of theoretical frameworks and tools in engaging and assessing parents. The assessment of parenting is a dynamic a process, the approach is evidence-based and the method of enquiry is forensic.
- It is inevitable that some information is reproduced. Expert reports should be free-standing documents but they cannot start with a ‘blank sheet’. Rather, they are produced in response to a set of instructions based on existing concerns, allegations and available evidence. Welfare information may vary in quality, contemporary relevance and functionality in meeting the needs of courts; some checking is necessary, ISWs demonstrate that some parents had valid complaints.
- Where the ISW agrees with the local authority social worker on the placement of a child outside of his/her birth family, they ‘add value’ because the assessment underscoring that recommendation is based on current circumstances, it is evidence-based, transparent and independent, and focused on the needs of courts.
- ISW reports may reduce the likelihood of a contested hearing, assist courts to meet tight timetables and achieve early resolution of a case.

6 ISW reports for courts

- Reports were mostly of high quality; they were evidence-based, transparent in analysis and forensic in method. By ‘forensic’ we mean the application of rigorous discipline and method in identifying and referencing key issues from the assessment and disclosed papers as these relate to questions to be addressed. At its best, this enables the reader to track these from the background to the case, through the narrative of the assessment, the analysis of each domain of the assessment, through to the answers to questions and the conclusions reached.
- The independence of the ISW as an expert witness for the court is a key factor in the assessment. Reports reflect a dynamic approach to case work moving between the accounts of different parties (in statements/evidence) and events, and back to parents. Reports demonstrate assessments are robust and focused but fair.
- Working through histories ISWs provide detailed information about parents; this information underscores analyses of parental functioning and relationships, opinion about parental capacity (to show empathy with children, to change, and to work with others). It was integrated into discussions about likely time frames, and forms an important part of the evidence on which some key questions are answered.

- However, there were some quality assurance issues relating to the layout of about 25% of reports. Poor layout and lack of signposting made such reports hard reading and in places, process driven. Key information was usually included, but poor layout and no contents page made these reports time consuming to analyse. Given substantial written evidence, tight timetables and limited reading time for judges, this issue requires attention. Equally, the recording of ethnic and religious diversity requires attention, and the use of peer reviewed research increased.

7 Timetabling, delay and duration

- Where there were no changes in the circumstances of a case most ISW reports were delivered to the lead solicitor on time. Where reports were delayed, in most cases it resulted from changed circumstances and was *purposeful*. Very few reports (7/63) were lodged with the lead solicitor later than the due date with no case driven factors; almost all of these (6/7) were no more than *three days late* (3/6 spanned a week-end).
- Like other expert reports, ISW reports are generally timetabled to come in shortly before a scheduled hearing (5 -10 working days).
- Excluding cases which experienced *purposeful delay*, indications are that ISW reports were well in time for the next court hearing. There was no evidence that ISW reports routinely cause delay in proceedings through the late delivery of reports.
- Allowing for purposeful delay - and major travel disruption caused by heavy snow - 34% of assessments exceeded 8 weeks; 20% exceeded 12 weeks. Key features contributing to increased duration of parenting assessments were changes in the circumstances of the case and the number of children involved: cases exceeding 8 weeks were significantly more likely to involve three or more children.

8 Conclusions and policy recommendations

- Findings so far do not support the view that ISWs simply duplicate existing parenting assessments and cause delay - or high use by parents seeking 'second opinion' evidence based solely on human rights claims.
- Findings also indicate that in certain circumstances courts may be severely hampered in the absence of access to the skills and expertise provided by ISWs - not least in case managing to meet the six month 'standard' for completion of care cases recommended by the FJR and accepted by Government.
- Any legislative changes and adjustment to the Family Procedure Rules and Guidance would need to take account of these findings.

FJR and the Government's response

- Findings indicate this field is more complex – but potentially more fruitful - than initially indicated. The FJR did not seek hard information on the use of ISWs. Moving forward on policy change in the absence of evidence runs a high risk not simply of failing children through poor outcomes – but of increasing delay.

Family Justice Modernisation Programme (FJMP) and faster justice

- Given the findings on the quality and duration of ISW reports it would appear that with minor adjustments the deployment of ISWs in certain cases may assist the FJMP to meet targets and without sacrificing quality.
- In terms of concerns and allegations cases referred to ISWs although complex are not atypical of most care cases. Thus it is not simply a case of establishing exceptional circumstances *within* cases which might necessitate the appointment of an ISW. There are structural issues such as available expertise, but also timeliness for reporting and independence as key factors to facilitate the engagement of parents and the quality of report likely to result.

Improvements and development to services

- Several issues arise as to the optimal use of ISWs. In the current policy climate which seeks faster and cheaper proceedings two issues may be key. This evaluation focused on the use of ISWs within legal proceedings but where necessary and helpful to local authorities that role could be extended: first, to improve core assessments for proceedings so that where necessary these are better focused on the needs of courts, and second to provide a mentoring and training role.
- While overall quality assurance measures in agencies appear to have worked reasonably well, some areas need attention. The layout of some reports requires improvement. Certain information and its location in reports should be standard and this should include ethnicity and the child's timescale. Equally, the use of research evidence should be increased. This is an evidence-based field, clinical and welfare knowledge is dynamic, and peer reviewed evidence, used appropriately, can assist the court and make a good report compelling.

Gaps in the data and further research

- Two key questions remain. First, we have yet to explore the impact on judicial thinking and decision making of ISW reports and that is a key gap in data.
- Second, the views of local authority social workers and advocates require attention. There are some clear benefits to local authorities who – for whatever reason – have been unable to engage parents or cannot meet the PLO timetable for the filing of evidence. The relatively high involvement of local authorities in instructions to ISWs also requires unpacking.
- A further issue is the timing and quality of some local authority core assessments. While access to a sample of these would provide valuable comparative data, of itself, that will not resolve why so many cases came to court without such a key document.