

**Justice Select Committee Inquiry into the Working of the Family Courts  
September 2010**

---

**1. Introduction**

1.1 Barnardo's works with more than 100,000 children, young people and their families in 415 specialised projects in communities across the UK. Barnardo's works with children in care through 24 fostering and adoption services; 15 support services for young people leaving care; six services providing children's rights and advocacy for children in care and three residential special schools.

1.2 This paper refers to England and Wales and focuses on delay in the family courts in care proceedings. Although this is not explicitly included in the terms of reference for this inquiry, we believe it is an area where urgent reform in the working of the family courts is necessary to improve outcomes for vulnerable children. Our response includes some analysis of the role of CAFCASS in respect of the appointment of guardians and delay.

**2. Summary**

2.1 There are currently unprecedented delays in the family courts which are having a devastating impact on vulnerable children. The overall average for completion of care proceedings is around 51 weeks – almost a year of a child's life. In some courts cases are taking up to 65 weeks. The delays are part of a five year long deterioration in the timeliness of court decision making.

2.2 The uncertainty and instability caused by delay can have long term and irreversible consequences for a child's development by damaging the ability to form positive attachments. This often results in multiple problems in adolescence and later life. In addition, delay significantly raises the costs associated with child care proceedings.

2.3 There are a number of factors causing the delays; but Barnardo's is particularly concerned about the sequential requesting of additional expert assessments and the lack of confidence that the courts have in evidence provided by social workers - as highlighted in the recent Plowden Review of Court Fees in Child Care Proceedings.

2.4 This submission sets out a number of measures that could be taken to tackle the delays. Critically, strong political and judicial leadership is urgently needed in the short term to highlight the impact of delay on children and ensure immediate action is taken to tackle the unprecedented delays.

### **3. Family court delays – key trends and facts**

- 3.1 Data from Parliamentary Questions that Barnardo's asked Annette Brooke MP to table earlier this year shows that in 2008/09 the average time taken for care proceedings was 45 weeks in the Family Proceedings (magistrates) courts and 57 weeks in the county court.<sup>1</sup> This means that the overall average is around 51 weeks – almost a year of a child's life.
- 3.2 In the county court, where in general the more complex cases are heard, only two out of 18 HM Court Service areas completed care proceedings in less than a year (52 weeks). Three court areas took more than 60 weeks to complete court orders. These were London (65); West Midlands and Warwickshire (64); Cumbria and Lancashire (61).
- 3.3 In the family proceedings court only three areas completed care proceedings in less than 40 weeks i.e. less than nine months. Three out of 18 areas took 50 weeks or more i.e. nearly a year or longer to complete care proceedings. These were South East Wales (50); London (50); Cheshire and Merseyside (56 weeks).
- 3.4 Data prior to 2008/09 is only available for the county court. It shows that the average time has increased since 2005/06 from 51 to 57 weeks and that in 2008/09 cases took longer than in any of the previous five years.
- 3.5 The number of open cases in the system gives a further indication of delay. Figures set out in response to the parliamentary questions show that at the end of 2009 there were 12,994 open care cases in the courts. This is almost 50 per cent more than at the end of 2008 when there were 8,677 cases open. According to CAF/CASS, in England new applications account for less than half of this increase.
- 3.6 The current level of delay is far greater than it has ever been and cases are taking longer than ever envisaged. Unpublished work - carried out prior to the General Election 2010 by what were then Department of Children, Schools and Families officials - notes that in 1993 the average duration of proceedings was 26 weeks. When the Children Act 1989 was first implemented Government agreed that 12 weeks would be a desirable timescale.

### **4. The consequences of delay**

- 4.1 The uncertainty and instability caused by delay can have long term and irreversible consequences for a child's development by damaging their ability to form positive attachments. This often results in multiple problems in adolescence and later life. Two months of delay in making decisions in the best interest of a child equates to one per cent of childhood that cannot be restored.

---

<sup>1</sup> House of Commons, Written Answers 3<sup>rd</sup> June 2010 , Col. 54W

4.2 Barnardo's emergency foster carers often highlight the negative impact on the children they look after. For example, Helen, an emergency foster carer for Barnardo's, says: *'I can't answer Tom's questions. He wants me to make him promises about what is going to happen but I can't, it's very difficult to know what to tell him. He has such little concept of time it's hard to explain that we have to wait and see because a week feels like a lifetime to him'*.

4.3 Research based on interviews with social workers has found that the longer a case goes on the more likely children will be subject to placement changes, multiple assessments, change of social workers and complex family contact arrangements.<sup>2</sup> This causes tremendous stress for the child contributing to further emotional harm. One example from the research is the case of Michael:

*'Michael was just under two when he was removed from home on an Emergency Protection Order (EPO). A full care order was not made on him until over two years later, when he was four years and four months old. However, it was another year and a half before he was placed with an adoptive family. He went through eleven placement changes between the first EPO and adoption. If we disregard short respite breaks, this figure reduced to seven changes involving five sets of carers. During the proceedings, he was involved in parenting skills assessments at two different family centres, he was seen by a psychiatrist and was involved in six sessions with a social worker from an adoption team to explore his understanding and wishes, and he had three different allocated social workers. His experience included him being placed in the care of his father and his father's partner on a trial basis, this arrangement breaking down, and then again being placed with his father and his father's partner some ten months later, only for this also to break down in the same way'*.

4.4 It is also important to note that the chances of finding a permanent placement are severely diminished the longer a case drifts on. It is well established from research that delay reduces the chances of finding a permanent adoptive family.<sup>3</sup>

4.5 In some cases children will be allowed to remain in the home if there is not an immediate concern about their welfare or safety, which is often the situation in cases of chronic neglect. They might then be subject to further distress and enduring damage. This was highlighted by Sir Mark Potter, who stood down earlier this year after nearly five years as president of the family division in England and Wales, when he told the Guardian in June 2010 that: *'Delays are causing children to be left for a considerable proportion of their early lives in atmospheres of violence, high emotion and*

---

<sup>2</sup> Beckett and McKeigue (2003) *Children in limbo: cases where court decisions have taken two years or more*. Adoption & Fostering Vol. 27 2003; Beckett and McKeigue (2009) *Objects of concern: caring for Children during Care Proceedings*, British Journal of Social Work

<sup>3</sup> Sinclair, I et al (2007) *The Pursuit of Permanence: A study of the English Child Care System*, London: Jessica Knightly.

*parental dispute which, if prolonged, is bound to interfere with their long-term development and give rise to problems in adolescence and later life’.*<sup>4</sup>

4.6 In addition to the devastating consequences of delays on children there are also significant financial costs. Case studies examined in the Plowden Review of court fees, published in March 2010, show that those which last more than a year cost between £65,000 and £95,000 whereas cases that are resolved in a timely manner cost approximately half or a third less.<sup>5</sup> This indicates that improvements in the timeliness of court proceedings would lead to substantial savings. Furthermore, Barnardo’s understands that the Legal Services Commission estimates that spend on assessments has nearly doubled in five years from £15m in 2004/05 to £28m in 2008/09.<sup>6</sup>

## 5. The causes of delay

5.1 Barnardo’s family placement staff are concerned that the courts routinely order further assessments from experts causing unnecessary delays. This has also been highlighted in recent academic research<sup>7</sup> and the Plowden Review also reported that: ‘There was an almost universal view from local authorities that many judges and magistrates are too willing to accede to requests for additional assessments from the other parties, imposing costs on both local authorities and the legal aid budget’.<sup>8</sup> Furthermore, the Ministry of Justice has reported that: ‘There has been a substantial increase in the number of experts instructed in each case despite cases remaining very similar from one year to the next.’<sup>9</sup>

5.2 There is also a widespread concern, highlighted by Barnardo’s family placement staff, that the courts do not give sufficient credence to evidence provided by social workers in court. This view is supported by research: ‘The low status and lack of confidence in social workers professional expertise meant that their recommendations were sometimes given little weight by the courts, which preferred to delay proceedings to wait for an ‘expert’ opinion.’<sup>10</sup> These research findings have been backed up recently by the Plowden Review which noted: ‘There was a widespread view that assessments completed by social workers were not being recognised by the court and therefore further – and sometimes duplicated – assessments were commissioned during proceedings, adding delay’<sup>11</sup>.

---

<sup>4</sup> The Guardian 6<sup>th</sup> June 2010, <http://www.guardian.co.uk/society/2010/jun/06/sir-mark-potter-interview>

<sup>5</sup> Plowden, F (2010) *Review of Court Fees in Child Care Proceedings*, London: Ministry of Justice

<sup>6</sup> Correspondence with then Department of Children, Schools and Families officials

<sup>7</sup> Selwyn, J. et al, (2008) *Pathways to permanence for black, Asian and mixed ethnicity children*, London: DCSF [http://www.education.gov.uk/research/data/uploadfiles/DCSF-RBX-13-08\(V2\).pdf](http://www.education.gov.uk/research/data/uploadfiles/DCSF-RBX-13-08(V2).pdf) ; Selwyn, J. et al (2009) *Adoption and the Interagency fee*, Sheffield: DCSF <http://www.education.gov.uk/research/data/uploadfiles/DCSF-RR149.pdf>

<sup>8</sup> Plowden, F (2010) *Review of Court Fees in Child Care Proceedings*, London: Ministry of Justice

<sup>9</sup> Ministry of Justice (2010) *Establishment of a system-wide target for reducing unnecessary delay in care and supervision proceedings*

<sup>10</sup> Ward et al (2003) *Outcomes for Looked After Children: Life Pathways and Decision Making for Very Young Children in Care or Accommodation*, Loughborough: Centre for Child and Family Research; Dickens,

<sup>11</sup> Plowden, F (2010) *Review of Court Fees in Child Care Proceedings*, London: Ministry of Justice

5.3 As well as the two factors already noted, which are of particular concern to our family placement services, Barnardo's recognises that the causes of delay are complex and are a result of the interplay of a number of additional factors. These include the following which have been highlighted in Government commissioned research:<sup>12</sup>

- ineffective case management
- scarcity of judicial resources
- variation in quality of legal representation
- late allocation of the children's guardian and/or lack of a guardian report;
- alternative kinship carers emerging late in proceedings.
- missing or incomplete core assessments
- complex issues (such as drug and alcohol rehabilitation) taking longer to address and test in the community
- regional variation in practice

5.4 Most recently the rise in care applications reported by CAFCASS - a 34% increase between 2008/09 and 2009/10<sup>13</sup> - is also contributing to current delays with cases waiting long periods for guardians to be allocated. However the 2008/09 figures set out above will not reflect the full impact of the post Baby Peter case rises.

5.5 The current problems faced by CAFCASS are both a cause and a symptom of the continuing long delays. Delay is exacerbating the difficulties faced by CAFCASS in providing guardians, whilst the shortage of guardians is exacerbating delays. However it is not the only or most significant factor – the use of assessments is also of considerable concern. The longer a case goes on the more assessments are ordered and the more work the appointed guardian is expected to devote to any one case. Thus, the opportunity to appoint a guardian to a new case is impeded by working full time on cases which have not closed. If delays could be reduced and more cases closed more guardian time would be available for other cases.

## 6. Proposed reforms

6.1 Barnardo's primary concern is that the chronic delays which have existed in the family courts for many years are unnecessarily damaging the welfare of vulnerable children. The Children Act 1989 sets out that the welfare of the child is the paramount consideration and that 'in any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child'.<sup>14</sup> The courts appear to have lost sight of the damage that delay causes to children. In our view decisions must be taken within timescales that meet the

---

<sup>12</sup> Department for Constitutional Affairs and Department for Education and Skills (2006) *Review of the Child Care Proceedings System in England and Wales*; Jessiman, P., Keogh, P and Brophy, J (2009) *An early process evaluation of the Public Law Outline in family courts*, London: Ministry of Justice

<sup>13</sup> CAFCASS (2010) *Care Applications Continue to Rise*, press release May 2010

<http://www.cafcass.gov.uk/pdf/Quarter%20care%20applications%20FINAL%20Press%20release.pdf>

<sup>14</sup> Section 1 (1) and (2) Children Act 1989

child's needs and ensures that the child's welfare is paramount as set out in the 1989 Act.

- 6.2 Barnardo's believes that all cases should be dealt with in less than 30 weeks (seven months) with a tiered, fast track target of 12 weeks for children under 18 months. We would like to see the introduction of highly skilled assessment teams to ensure the fast tracking of cases that involves very young children who are clearly at high risk. We recognise that this has resource implications but at the same time there are substantial savings to be made by reducing the current level of delay.
- 6.3 Based on our service delivery experience we would like to see an entitlement to family group conferencing<sup>15</sup> for all children and families prior to care proceedings. This would assist in ensuring the early identification and consideration of kinship carers and therefore contribute to reducing delays in court.
- 6.4 It is also our experience that relationships between court staff and children's social care are not as effective as they could be which contributes to a lack of mutual understanding. In our view special forums should exist to allow informed dialogue between the legal and social work professions to ensure there is greater confidence in social workers' professional expertise.
- 6.5 It is imperative that all parties involved in the family court decision making process have a full understanding of the impact of delay on child development. We are concerned that currently this is not the case and would like to see the implementation of high quality training for all court staff to improve their understanding of the impact of delay on child development.
- 6.6 There also needs to be more effective case management and local ownership and monitoring of performance. Lessons should be learned from the experiences and improvements in reducing delay in the criminal courts from the implementation of Criminal Justice: Simple, Speedy, Summary (CJSSS) which achieved a 70 per cent reduction in extra hearings and the time from start to finish of cases was halved. The cost savings were also substantial. A key driver was the leadership from the senior judiciary and local implementation and ownership of performance measures.
- 6.7 Barnardo's recognises that current workload pressures and staffing problems within many children's services have a knock on effect on the family court system. This is reflected in the fact that missing core assessments are one of the contributory factors to delay. However, we believe that despite this far more could be done to address the various causes of delay.
- 6.8 Finally, we welcome the decision to set up a Family Justice Review to take a fundamental look at reforming the system and we will be submitting evidence to the

---

<sup>15</sup> A Family Group Conference is a decision making and planning process where the wider family group makes plans and decisions for children and young people who have been identified either by the family or by service providers as being in need of a plan that will safeguard and promote their welfare.

review. However, we believe there are more immediate steps, as we have set out in this submission, which should to be taken to address the current unprecedented delays. Critically, strong political and judicial leadership is urgently needed in the short term to highlight the devastating impact of delay on children and ensure immediate action is taken to tackle the unprecedented delays.