

The Children Order Advisory Committee

Fifth Report



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CHILDREN ORDER

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FOREWORD

The Fifth Report of the Children Order Advisory Committee (COAC) covers the period 1 April 2003 to 31 March 2004. This year has seen the culmination of two very substantial pieces of work that have commanded the attention of the Committee for over two years. In the first place, we have now published COAC Best Practice Guidance. This purports to provide a definitive statement of the most up-to-date and appropriate practice on all major aspects of Children Order proceedings and is now regularly in use throughout the court system. In addition Committee members have engaged in a series of seminars to proselytise its use and to generate an all-inclusive interest in its future refinement. It remains to be seen what affect the advent of these guidelines will have on overall delay in the system but the reaction so far provides cause for optimism.

Our second major enterprise has been the publication and distribution of the report on delay. This report is also featured on the departmental web sites at **www.courtsni.gov.uk** and **www.dhsspsni.gov.uk**. We are now in the period of consultation and next year's report should be in a position to set out the responses to that paper. The platform has now been set for some constructive input throughout the childcare system on a multi-disciplinary basis dealing with specific problems of delay that have surfaced.

This year has also seen the Committee tackling head on a number of specific old chestnuts which have in the past proved intractable to movement and which arguably are causes of delay within the system. Hence our sub-committees are in the process of investigating the need for court welfare officers, lateral transfers within the court system, the provision of additional contact centres in Northern Ireland so that we can at least approach parity with England & Wales, practical problems of court hearings where secure accommodation issues arise in order to better and efficiently use court time, and contact and domestic violence as issues which are recurrent themes in all too many cases.

Our standing committees on multi-disciplinary literature, adoption, best practice and separate representation are all still in being, ready to respond to developments that occur in these fields. This Committee therefore has not only been proactive in examining these problems, but by virtue of the standing committees we have, we are in a position to swiftly respond to developments in the areas outlined.

We continue to have the benefit of addresses on topics of concern to the Committee including a regular report from the Northern Ireland Guardian ad Litem Agency (NIGALA) as to the delays engendered by lack of funds and

personnel within the Agency, the Legal Aid Department (LAD) as a possible cause of delay and from the Ulster Community and Hospitals Trust a presentation concerning Lakewood and the use of television live-links.

The Committee at each meeting has regularly considered the work of the Family Court Business Committees. On each occasion we receive a report from the three Family Care Centres and a detailed discussion is given over to their work. It has been gratifying to observe how the work of these business committees is parallel to and in many respects giving the lead to this Committee in considering appropriate practices, procedures and progress of cases.

Once again we have lost some distinguished servants to this Committee. Robert Alcorn, Leslie Frew, Eric Strain and Eileen Magee have all been obliged to step down from the Committee due to other commitments. I am indebted to the time, energy and contribution that each of them has given. Their successors are equally welcome and, relying on past experience, I am confident that their arrival will engender further vigour into the tasks to be carried out.

The nature of our work is time consuming and exacting. We now meet more often than ever before, and even a cursory glance at our agenda reveals the growing test of the subjects with which we deal. This work could not be carried out without the assistance of the Northern Ireland Court Service and the Department of Health, Social Services and Public Safety (DHSSPS) to the secretariat of the Committee throughout this period. That secretariat has played an invaluable role in our work.

The work of this Committee has therefore been extensive. We are anxious that the multi-disciplinary approach that forms our backbone should be reflected in a vigorous and constructive approach to the tasks that confront us. Each year presents new challenges and fresh issues. This report is an outline of our response.

A handwritten signature in black ink, appearing to read 'John Gillen'. The signature is fluid and cursive, with a large initial 'J' and 'G'.

The Honourable Mr Justice Gillen
Chairman of the Children Order Advisory Committee

The Children Order, The Courts and The Committee

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The Order

The Children (Northern Ireland) Order 1995 came into operation on 4 November 1996. Widely recognised as the most comprehensive legislation relating to children ever introduced in Northern Ireland, it enshrines a number of key principles:

- The child's welfare shall be the paramount consideration in court proceedings,
- Any delay in determining the question is likely to prejudice the welfare of the child,
- No order or orders should be made unless that would be better for the child than making no order at all,
- Where possible, children should be brought up and cared for with their own families,
- Children should be safe and protected by effective intervention, but such intervention should be open to challenge,
- Children should be kept informed about what happens to them and should ordinarily participate (subject to age and understanding) when decisions are made about their future; and
- Parents continue to have parental responsibility even when their children are no longer living with them. They should be kept informed about their child and participate when decisions are made about their child's future.

Court proceedings under the Children (Northern Ireland) Order 1995 are known as "family proceedings". The term also encompasses a range of proceedings under other legislation including:

- The inherent jurisdiction of the High Court in relation to children,
- The Matrimonial Causes (Northern Ireland) Order 1978,
- The Domestic Proceedings (Northern Ireland) Order 1980,
- The Adoption (Northern Ireland) Order 1987,
- Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,
- Section 30 of the Human Fertilisation and Embryology Act 1990; and
- The Family Homes and Domestic Violence (Northern Ireland) Order 1998.

The main court orders available under the Children (Northern Ireland) Order 1995 are set out below under the broad headings of Private and Public Law. Orders concerning financial matters are not included:

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PRIVATE LAW

- Parental Responsibility Orders (Article 7)
- Residence, Contact, Prohibited Steps and Specific Issues Orders (Article 8)

PUBLIC LAW

- Care and Supervision Orders (Article 50)
- Child Assessment Orders (Article 62)
- Education Supervision Orders (Article 55)
- Emergency Protection Orders and Extension of Emergency Protection Orders (Article 63)
- Parental Contact with Children in Care Orders (Article 53)
- Secure Accommodation Orders (Article 44)

In any family proceedings in which a question with respect to the welfare of a child arises, the court may make an Article 8 order. This can occur either where a person entitled to do so makes an application, or where the court gives that person leave, or if the court itself considers that such an order is necessary. There are four types of Article 8 orders. These may determine with whom a child is to **reside** or have **contact**, may **prohibit particular steps** being taken concerning the child without the consent of the court or any other directions regarding **specific issues** concerning the child.

A family assistance order is available in exceptional cases and is the only order where the consent of all parties is required. The order offers short-term support and advice to a family, perhaps following a divorce or separation and usually where one or more Article 8 orders have also been made.

The Courts

The Children (Northern Ireland) Order 1995 confers concurrent jurisdiction on the High Court, county courts and magistrates' courts. It provides for two specialist classes of courts to hear any proceedings under the Order. At the county court level, these are Family Care Centres and at the magistrates' court level they are Family Proceedings Courts.

Family Care Centres – these courts are presided over by county court judges. Their function is to hear cases transferred to them and appeals from the family proceedings court. There are three family care centres, situated in Belfast, Londonderry and Craigavon.

Family Proceedings Courts – these courts are constituted as juvenile courts presided over by a resident magistrate who sits with two lay panel members of the juvenile court. There are seven family proceedings courts – one for each county court division and they exercise jurisdiction throughout the division in which they are situated.

The concurrent jurisdiction referred to above, is regulated to ensure that children's cases are heard at the appropriate level of court and that proceedings regarding the same child are heard in the same court. Subject to the overriding principle that delay is likely to prejudice the welfare of the child, Children Order cases may be transferred upwards to the higher courts when specific criteria have been established. These criteria can include where the matter is exceptionally grave, complex or important, or to consolidate with other family proceedings.

The general rule is that all Public Law proceedings are to be commenced in the family proceedings court. This is also the case with freestanding Private Law applications, i.e. those applications made when there are no other ongoing family proceedings. As regards connected Private Law applications, e.g. where there are divorce proceedings pending in the county court or High Court such applications are required to be made to that court.

The Committee

In recognition of the importance of the Children (Northern Ireland) Order 1995 to children and their families, COAC was established to:

- Advise Ministers on the progress of Children Order cases through the court system with a view to identifying special difficulties and reducing avoidable delay; and
- To promote through Family Court Business Committees commonality of administrative practice and procedure in family proceedings courts and county courts and to advise on the impact on Children Order work of other family initiatives.

COAC is chaired by the Judge of the Family Division of the High Court of Justice in Northern Ireland and its membership reflects a broad spectrum of disciplines and professions engaged in working with children, both in the courts and in other spheres. The membership of the Committee during the currency of the report is set out at Appendix 1.

ADOPTION SUB-COMMITTEE

As noted in the previous annual report the adoption sub-committee was suspended pending a review of adoption legislation in Northern Ireland. In its report entitled “Adopting Best Care” the Social Services Inspectorate (SSI) identified the need for a radical change to adoption legislation in Northern Ireland to achieve alignment of adoption law with the requirements of the Children (Northern Ireland) Order 1995.

The report noted that adoption services in Northern Ireland were being negatively impacted by the absence of a departmental policy or strategic framework. The report identified a lack of consistent principles, standards and expectations in relation to adoption services. Trusts in their role as adoption agencies were developing their own responses to adoption issues. The report concluded that a regional strategy would offer a more effective and efficient response to such core issues.

DHSSPS has now commissioned the Children’s Social Services Strategy. Adoption was one of the central issues considered in the production of the strategy and it is envisaged that a dedicated regional adoption service will follow on the implementation of this programme.

COAC will address the impact of the proposed changes on the operation of the Children (Northern Ireland) Order 1995 through its adoption sub-committee when the strategy is circulated for consultation.

BEST PRACTICE SUB-COMMITTEE

COAC has drawn up a Best Practice Guidance for use throughout the family justice system. These guidelines do not carry the weight of a legal pronouncement but they do enjoy the imprimatur of the wide-ranging membership of the Committee, having been drawn up after much travail in consultation with representatives from the judiciary, the Bar, the Law Society, the Trusts and NIGALA. The guidelines are not prescriptive rules but rather are to be seen as valuable guidelines that may require to be tailored to individual circumstances and particular cases. They purport to provide a definitive statement of good practice on major aspects of proceedings under the Children (Northern Ireland) Order 1995 and the Hague Convention.

Since their introduction in January 2004, they have become a much-visited friend throughout the court system. They are referred to virtually every day in direction hearings and are frequently relied on in skeleton arguments

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presented in court. They appear to be becoming ingrained in the legal lexicon and are clearly part of the family law fabric. It is the aim that every practitioner and family law professional should not only have a copy of them but should be making frequent reference to the contents before applications are made to court to ensure compliance wherever possible.

Their aim is to provide a salutary corrective to certain unacceptable practices that have grown up and to promote those that have achieved proven success. A new start should not be burdened with a sombre legacy. Accordingly we have tried to imaginatively combine principle and pragmatism avoiding merely restating the questions that have hitherto bedevilled us. We must be conscious of the danger of being trapped by things that once worked but are now relics of the past. These guidelines are prophylactic in nature, intended to prevent problems arising. The focus is on early identification of issues and the principle of getting it right from the beginning. By defining issues at an early stage, it means that no one need continue to devote resources to those issues that are not central to the case. If lawyers and the judge can identify the key management issues at an early stage with appropriate early case management directions, then thereafter the lamp will be lit on the path to be followed. Hopefully, the need to come back to court for constant direction is eliminated and delay and wasteful expense reduced.

The guidelines are essentially to be regarded like the European Convention on Human Rights (ECHR) as a living instrument which should be revised and revisited in light of experience probably on an annual basis or at least on a two yearly basis. Accordingly the Committee has set up a standing committee that will continue to monitor developments and receive complaints, advices, suggestions and admonitions as to the future. Already that committee has received informed and helpful proposals for refinement and addition to the guidelines. Family law is almost uniquely a multi-disciplinary area of law and accordingly input to these guidelines is now being afforded on the departmental websites¹ to all engaged in the childcare system and contributions are invited right across the family law board.

These guidelines had been issued virtually at the same time that the Committee issued a report into the causes of delay in the system. The causes for delay that have surfaced in the course of that report have been to some extent broadly addressed in general terms in the Best Practice Guidance and these guidelines are therefore part of a general development of the family law system. There have been several seminars held in Belfast and Londonderry to proselytise the whole concept of these guidelines to the profession in general. It is proposed that these developments will continue. Already there is strong demand for copies of the guidelines and we have had to increase the volume originally printed.

¹www.courtsni.gov.uk and www.dhsspsni.gov.uk

COURT WELFARE OFFICERS SUB-COMMITTEE

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The sub-committee on court welfare officers was established at the request of COAC at its June 2003 meeting. It had its inaugural meeting in October 2003 and has met on four occasions between then and the end of April 2004. The need for the establishment of the sub-committee arose from the Family Court Business Committees where the varying approaches, which different Trusts had employed to provide Article 4 reports to the courts, had been noted. The Committee, therefore, decided to establish a sub-committee to compile a report on the issue.

The terms of reference are:

- To establish the legal basis for courts requesting court welfare reports in Private Law cases, highlighting where appropriate any operational difficulties experienced by the courts and Trusts,
- To establish the current level of demand for court welfare reports in Private Law proceedings and the timescale for the provision of such reports, noting any variation across Northern Ireland. Also to consider the historical and legislative context of the provision in Private Law cases,
- To consider existing arrangements within Trusts for providing courts with reports in Private Law proceedings and to consider the structure of information provided to the courts and the current and future role of court welfare officers; and
- To report to the Committee on its findings, including making recommendations on how to structure services efficiently to ensure a timely response to courts' requests for such reports while taking into account the priorities, the staffing and financial resources available within Trusts.

The Committee approved the terms of reference and the proposed work plan of the sub-committee at its November 2003 meeting.

The sub-committee has undertaken the following work to date:

- Acquisition from the Northern Ireland Court Service of information on the number of Private Law cases coming before the courts over the past three years,
- Meetings with court welfare officers to develop a survey tool to collate information on the number of referrals and the nature of their input to these over a three month period,
- Meetings with the judiciary to ascertain their expectations as to the role of a court welfare officer; and
- Meetings with Trusts to ascertain how they were currently providing a service to courts in respect of Private Law cases, how their arrangements met both the needs of the courts and the Trust, and to consider future structures for delivering this service to the courts.

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Initial findings indicate:

- There is a wide variation in the way Trusts have made arrangements to provide Article 4 reports to the courts, resulting in a lack of consistency
- A number of Trusts have to cover more than one court area, this means that collaborative, and at times consortia arrangements have been developed between Trusts to share a court welfare officer,
- Where Trusts have a court welfare officer in place, this has reduced the number of requests for full reports from the courts and has also reduced the level of demand for Article 4 reports received by family and childcare teams,
- Where a court welfare officer is in place, good working relationships have been reported and a better understanding has developed regarding the respective roles and expectations of the courts and the Trusts,
- Where a court welfare officer is in place, the court tends to be more specific about what work it wishes carried out in a particular case,
- Court welfare officers' role in some Trusts' areas is developing to include membership of Domestic Violence Forums, or providing training in anger management courses; Trusts are keen to enhance their role to ensure the role continues to attract and retain high quality staff,
- Court welfare officers generally ensure that reports are available to the courts in a timely fashion. They also see their role as ascertaining the wishes and feelings of children,
- Trusts and the courts are reporting general satisfaction with court welfare officer arrangements,
- Trusts are in the main keen to continue to manage court welfare officer services but note that existing arrangements are generally funded by the Trust diverting monies from its family and childcare programme of care. This means that the development of a court welfare service has occurred as funding has permitted rather than in a strategic manner,
- Resident magistrates use court welfare officers differently and have different expectations of them. For example, some wish the court welfare officer to be present in court during hearings, while others request their presence in court for particular cases only. There is, therefore, a lack of consistency about the court welfare officer's role; and
- There are issues relating to the availability of facilities within courts for court welfare officers to enable them to undertake the interview of parents to resolve disputes.

The survey of court welfare officers' work commenced in March 2004 and it is intended that this time-limited information will provide a more comprehensive assessment of their work which can then complement the statistics provided by the Northern Ireland Court Service.

Initial findings suggest that both the courts and Trusts are committed to developing the court welfare officer's role with a view to meeting in an effective way the needs of children and families in Private Law matters. It is

anticipated that the final report of the sub-committee will be available for presentation to the Committee in Autumn 2004.

DELAY SUB-COMMITTEE

COAC has now completed its study into the investigation of and recommendations for delay in the court process in cases heard pursuant to the Children (Northern Ireland) Order 1995. In essence this has been a consultation paper that hopefully will promote discussion on and provoke reaction to the topic of delay leading to more detailed consideration of the issues involved. It is part of the overall approach feeding into the review of best practice which already has been carried out and which is now regularly in operation.

The terms of reference of the delay sub-committee were to identify possible causes for delay, to consider if those causes were purposeful and to assess the steps necessary to reduce delay in the child's best interests in the future. The advent of the Human Rights Act 1998 has served to incorporate the majority of ECHR into the domestic law. These underline the concept of a right to a hearing within a reasonable time and thus underline the need to prevent procedural delays. We have recognised that delay can have a traumatic impact on the welfare of children, engendering alarm and trepidation causing long-term effects. We consider it imperative therefore that the search for procedural improvement, coupled with creative initiatives to ameliorate the problem of delay, is an ongoing process in which we must play an important part. Needless to say we are conscious of the need to address the increasing time now spent on disposing of cases throughout the entire court system whilst at the same time recognising that delay is often purposeful and an integral part of case resolution.

We have now published our report and hard copies have been distributed widely throughout the system. We have also set up a website and it is gratifying to note that a very considerable number of visits to that website have already been initiated. The hard copy has been attractively presented; reaction to date has been both welcome and favourable.

We have established a consultation period for this document fixed at the end of May 2004. COAC regards the consultation period as an important part of the process allowing criticisms and suggestions to surface arising out of the issues we have raised. Following our multi-disciplinary ethos we are seeking this comment from as wide a range of participants in the family justice system as possible. To date it has been gratifying to note that criticism of our conclusions and proposals has been muted but perhaps it is early days.

Thereafter, it is the intention of the sub-committee to consider any responses and if necessary supplement our existing report with the benefit of that consultation. This sub-committee is absolutely certain that the wider we

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consult, the more beneficial we will be to the process as a whole. It is hoped that this report will be the starting pistol for a well-informed broadly based assault on the whole issue of delay throughout the court process in Northern Ireland.

DOMESTIC VIOLENCE SUB-COMMITTEE

This reformed sub-committee has met five times during the course of the last year to consider issues relating to the impact of domestic violence upon children and young people. The sub-committee recognises the importance of interagency co-operation with groups and organisations involved, indeed some exclusively, with domestic violence issues, inter alia:

- The Northern Ireland Regional Forum on Domestic Violence and its three subgroups – Domestic Violence and Law, Information and Children's Issues,
- Raising The Standards (Intergovernmental Departments),
- Victims and Vulnerable and Intimidated Witnesses Steering Group,
- Special Measures Group,
- Women's Aid,
- Barnardo's,
- Police Service for Northern Ireland (PSNI),
- Probation Board for NI (PBNI); and
- Public Prosecution Services (PPS).

Issues that the sub-committee has discussed include:

- Barnardo's 'Domestic Violence Risk Assessment Model' pilot scheme,
- PBNI: Men Overcoming Domestic Violence,
- Protocol for applications for exclusion requirements in interim care orders,
- Court direction for confidential statements,
- Multi-disciplinary training needs,
- Effectiveness of Re L Hearings,
- Impact upon children who witness domestic violence; and
- Domestic Violence, Crime and Victims Bill.

The sub-committee has also considered:

- Tackling Violence at Home (October 2003),
- Summary of Responses to that Consultation Paper (March 2004),
- Review of The Family Homes and Domestic Violence (NI) Order 1998 (October 2003),
- PSNI Domestic Violence Strategy (November 2003),
- COAC Best Practice Guidance - case management and domestic violence; and
- Co-operating to Safeguard Children (May 2003).

Article 57A Occupation Order: Protocol for applications for exclusion requirements in interim care orders

PSNI note the court's expectation for police to serve non-molestation orders and occupation orders including Article 57A orders on alleged perpetrators, although the Family Homes and Domestic Violence (NI) Order 1998 did not stipulate this.

PSNI do not always have access to the applicant's statement of concern. It would be helpful if the applicant would consent to the police receiving a copy of this document at the time of service. This would inform PSNI of any security issues, such as the presence of firearms in the home and enable the police to make safe arrangements for staff during service. Disclosure of this document to them would help inform the police of possible crimes and aid the investigation process.

If the applicant refuses to disclose this statement to the police, then a court direction for disclosure to the police may alleviate Data Protection Act concerns but may raise human rights and confidentiality issues.

Re L Hearings

Sub-committee members raised concerns that Re L Hearings are not always taking place in domestic violence cases. Women's Aid felt that, if this is so, victims will be left feeling very vulnerable and arguably put children at a greater risk. Family Court Business Committees and court user groups must monitor the use and effectiveness of Re L Hearings in Private Law proceedings and early determination of threshold criteria facts in Public Law cases. Schedules of Incidents of alleged domestic violence should be directed in all domestic violence cases so that disputed facts can be determined by the court and a finding made.

Review of the Family Homes and Domestic Violence (NI) Order 1998

The sub-committee would welcome reform to enable Trusts to make 'stand alone' occupation order applications, other than by virtue of Article 57A and Article 63A of the Children (NI) Order 1995. In addition, Trusts would welcome the introduction of occupation orders in full care orders, interim and full supervision orders.

The sub-committee would welcome information on the effectiveness of occupation orders in protecting children from harm, especially those associated with domestic violence. Comment as to the effectiveness of police

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arrest and conviction for breach of orders, particularly if the alleged victim will not make a statement to the police, would also be welcomed.

The sub-committee also believes that the service of orders requires clarification.

Tackling Violence at Home

This initiative was welcomed by the sub-committee who noted there is no legislative proposal to introduce a new offence of ‘domestic abuse’ into Northern Ireland at this time. Currently the range of criminal offences includes:

- Common assault, assault with intent,
- Harassment, and putting people in fear of violence; and
- Breach of non-molestation orders and occupation orders.

The response to the consultation paper is impressive and encapsulates many of the issues relating to domestic violence, such as:

- The definition of domestic violence,
- Prevention measures including raising awareness,
- Improving the prosecution of domestic violence cases ensuring that sentences reflect the crime,
- Protection for vulnerable witnesses; and
- Safe arrangements for child contact in domestic violence cases.

It is noted that the responses will be considered in greater detail at a series of workshops with voluntary and statutory agencies. The Office of Law Reform (OLR) will also monitor the proposed strategy developed from the Tackling Violence at Home consultation.

PSNI Domestic Violence Strategy

The sub-committee welcomed this initiative. The changing role of domestic violence officers – away from victim support, towards an investigative role did cause concern, though initiatives to support victims and vulnerable witnesses are commended.

Information Sharing

The sub-committee was anxious to ensure that child protection was not inhibited through wariness or lack of understanding in relation to the Data Protection Act 1998 and the Human Rights Act 1998 and will welcome the PSNI’s response to disclosures following the **Huntley** prosecution. It is noted that the Assistant Information Commissioner has agreed to attend a

forthcoming meeting to address child protection information sharing and confidentiality issues. Guidance issued as a result of this meeting will be published in the next Annual Report.

Multi-disciplinary training needs

There is a high demand for training for all professional disciplines involved in domestic violence. Multi-disciplinary training may be useful. The sub-committee is to explore what training initiatives have been arranged on domestic violence issues and this will be considered at forthcoming meetings.

The sub-committee will also be monitoring developments of the Domestic Violence, Crime and Victims Bill as it progresses through Parliament.

The sub-committee has had a busy year and will continue to monitor regional multi-disciplinary initiatives in respect of domestic violence.

MEDIATION SUB-COMMITTEE

As previously reported a pilot mediation project is now in place in two family proceedings courts with Relate NI as the service provider and sponsored by the Northern Ireland Court Service and a number of the HSS Trusts. This project had originally an implementation period of eighteen months but we are given to understand (although we have not been officially informed) that an extension of six months has now been agreed between the relevant parties to it.

During our deliberations we have considered the Recommendation of the Committee of Ministers to Member States on Family Mediation of and adopted on the 21 January 1998 as well as looking at the use of mediation processes in other jurisdictions. At our last meeting a presentation on behalf of Family Mediation (an independent service for separating and divorcing families) was made to members. This was both interesting and informative.

Whilst mediation in the form used under the pilot project has an undoubted place within the resolution of disputes concerning children we also recognise that the pre-court mediation scheme presently in place in the Republic of Ireland and some other jurisdictions has considerable merit.

It is the view of the sub-committee that there is nothing we can do at this stage to progress this matter further as the pilot scheme will not be completed until early in 2005 when an independent evaluation of it will be produced by OLR.

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MULTI-DISCIPLINARY LITERATURE SUB-COMMITTEE

At the inaugural meeting of the sub-committee it was agreed that it would meet on an ad-hoc basis as dictated by the volume of academic literature and other relevant publications to be considered by the various disciplines represented i.e. the judiciary and legal profession, health and social services, medicine and social work.

The first list of articles was compiled on schedule and circulated to members. Since November 2003 a portal has been operational on the Northern Ireland Court Service website at **www.courtsni.gov.uk** to facilitate access to a selection of summaries of articles, books and literature within the variety of disciplines in family justice and childcare and to raise awareness of this literature on an interdisciplinary basis. The portal will be updated regularly in the form of a newsletter containing the titles and summaries of articles and literature submitted by the members of the sub-committee.

A review is currently being undertaken as to the way in which material is presented on the portal. This is to encourage visitors to the site to avail of the free subscription facility whereby when articles are regularly added to or amended on it, an email will automatically be sent to registered subscribers to alert them to the addition of the new material. To use this website subscription service, the link “Login/Register” on the Court Service Home Page should be followed in the first instance to “Create a New Account” and thereafter through the various links to the selection of “Subscription Services” where currently “Family Law & Childcare Literature” should be chosen.

Since the portal was established there have been some 1,895 “hits” or visits to the site, which is accessible via the website, following the links to “Publications” and “Family Law & Childcare Literature”.

RULE 21 SUB-COMMITTEE

A sub-committee, whose membership included resident magistrates, academics and solicitors was set up with the specific task of examining Rule 21 of the Magistrates Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 and to suggest amendments to the current wording.

The Rule, broadly, deals with the hearing of a case in the family proceedings courts in Northern Ireland and with, pertinently, the making of decisions in such cases, the recording in writing of such decisions and any findings of fact, and the ultimate dissemination of such decisions. The principal points of contention, to our understanding, related mainly to the requirement to give

written reasons in all cases. The main reasons advanced as to why the Rule may need to be changed with regard to written reasons and findings of fact were:

- That parties and children affected by proceedings must always be made aware, as clearly and as promptly as possible, of the reasons for any decision of the court; and
- On appeal, it would be important that the appellate court be made aware of the findings of fact and reasons for the decision of the lower court. It would also enable appeals to be handled consistently across the court tiers having the beneficial effect of speeding up the process and ultimately resulting in less delay for the children involved.

After a wide-ranging discussion, it was concluded that:

- Article 6 (ECHR) considerations make it important that the parties – and children – are fully and clearly informed of the factual basis for decisions made in their cases and they should be able to have access to fully reasoned decisions; and
- As the legislation in relation to appeals stands at present from family proceedings courts to family care centres - these are dealt with by way of de novo hearings. There is therefore no discernable basis for this to be used as a justification for the recording of facts or of reasons in the family proceedings courts.

After due consideration the following re-draft of Rule 21 (with suggested amendments in bold type) was proposed:

‘Hearing

- 21 (1) Before the hearing the resident magistrate and any members of the **juvenile** court panel who will be dealing with the case shall read any documents, which have been filed under Rule 18.
- (2) Unless the court otherwise directs at the hearing of, or directions appointment in, relevant proceedings the parties and the Guardian ad Litem shall adduce their evidence in the following order –
- (a) the applicant,
 - (b) any party with parental responsibility for the child,
 - (c) other respondents,
 - (d) the Guardian ad Litem,
 - (e) the child if he is a party to the proceedings and there is no Guardian ad Litem.
- (3) After the final hearing of relevant proceedings, the court shall make its decision as soon as practicable.

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- (4) Before the court makes an order or refuses an application **after a contested hearing, whether interim or final**, the resident magistrate shall record –
 - (a) the names of any members of the **juvenile** panel who heard the case with him;
 - (b) the reasons for the court's decision and any findings of fact. **Such record shall, at the choice of the presiding resident magistrate, be made either in writing or orally through a sound-recording device.**
- (5) When making an order or when refusing an application the resident magistrate shall –
 - (a) where the court has made a finding of fact state such finding and complete Form C19; and –
 - (b) state the reasons for the court's decision.
- (6) After the court announces its decision, the clerk of petty sessions shall, subject to Rule 5 (2) (b), as soon as practicable serve a copy of the order in the prescribed form in Schedule 1 to these rules on the parties to the proceedings and or any person with whom the child is living **and shall, upon request, furnish to the parties and their legal advisors a transcription of the reasons for the court's decision and any findings of fact.'**

It was also felt, as a consequence of this proposed re-drafting of the Rule:

- That if sound-recording devices were introduced for the purpose of recording these matters as an alternative to written decisions, it will be necessary to train court clerks and magistrates in their use; and
- Consideration will have to be given to a study of the effect on court clerks' and transcript services in transcribing such factual bases and reasons for decisions where these are requested.

SECURE ACCOMMODATION SUB-COMMITTEE

Live Link Facility

During the last 12 months the sub-committee has explored the viability of a television live link facility between the Secure Unit at Lakewood and the family courts, primarily the family proceedings courts. This would enable a child whose liberty is restricted pursuant to Article 44 of the Children (NI) Order 1995 to participate in court appearances via live link, from the safety of the Secure Unit, thus alleviating the concerns regarding safe transportation of children placed in secure accommodation to and from court. It must be stressed that the child's fundamental right to be in attendance at court in person, as enshrined in the Children (NI) Order 1995 and Article 6 of the European Convention of Human Rights is always presumed to be the preferred option. Strong grounds must be presented to the court to seek its permission to use live link as a substitute for the child's

actual attendance at court. The sub-committee's task has therefore been twofold:

- To consider the rights of the child, and ensure there is a robust procedure in place to scrutinise any application for the use of live link as a substitute for the preferred option – the child's actual attendance at court; and
- To explore how best to provide a live link facility.

The sub-committee completed a study during 2002/03 and concluded that legislative change will be required in order to introduce live link procedures.

A number of organisations were written to, to elicit their views in regard to the use of live link as an alternative to the child attending court. The responses raised a number of issues including:

- When is it in a child's **best interests** for live link to be used rather than the child's attendance at court. This is particularly pertinent when the child expresses a wish to attend at court,
- Who carries out the **risk assessment** in relation to absconding/self harm during transportation,
- What will be the procedure to enable the court to scrutinise this risk assessment and to make a decision regarding the child's attendance or use of live link,
- If live link is used, should the Guardian ad Litem and the child's solicitor be with the child or in court?

The responses and issues relating to a live link facility, including a **protocol** for the procedure, were discussed at a full COAC meeting in September 2003, and at subsequent sub-committee meetings. The following issues were identified:

- The child has a right to attend court in person. The need for further consultation on this fundamental issue was recognised,
- Cost – The NI Court Service already has live link facilities for remand hearings in youth and magistrates courts. These were installed by the NI Prison Service. The scheduling of live link applications will require prompt liaison with court administrators to ensure appropriate courtroom availability. The cost of introducing and managing the system in the Secure Unit, including call charges and recurring maintenance charges would have to be addressed,
- Family courts should strive to be user friendly especially for children and their families,
- Availability of a live link facility within the present Secure Unit at Lakewood, rather than the child having to be escorted to the adjoining youth justice unit on the Rathgael site,
- Explore arrangements in England both for transportation of children from secure accommodation to court and use of live link; and
- It was noted that PSNI no longer transport children to youth courts and this is now contracted out to Maybin. It may be that in the future the police

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will be less able or willing to assist Social Services with transportation of children from the Secure Unit to court, even in cases where risk of absconding and associated significant harm is perceived to be high.

In February 2004 the Director of Family and Child Care, Ulster Community & Hospitals Trust attended a full COAC meeting and confirmed the Trust's commitment to make provision for live link, both in the existing secure facility and in the new Regional Care Facility which is due to open in October 2005.

In March 2003 a draft **Live Link: Risk Assessment Criteria** was prepared by the General Manager of the Lakewood Centre. This was circulated for consultation. The responses were considered at a subsequent sub-committee meeting. Issues raised in the responses included:

- Implications of Article 44 (7) of the Children (NI) Order 1995, and the child's right to attend at court,
- Live link should only be used with the child's consent. In the absence of consent the child should be permitted to exercise his/her right to appear in court,
- Arrangements for the child's legal representative so as not to prejudice a child who opts to use live link,
- Consultation with children or young persons who have had the experience of a secure accommodation placement regarding the use of live link, or other alternatives, such as a special court convened in the Lakewood Centre; and
- Additional resources to provide for safe transportation of children from secure accommodation to court.

All responses have been considered in detail and the following recommendations made:

- Draft 'Live Link: Risk Assessment Criteria' appears to be fair, though it may be difficult to complete this assessment during the 72 hours prior to the first court appearance,
- Use of live link in appropriate Article 44 hearings is a way of overcoming the problem of safe transportation of children at risk of absconding to and from court,
- Any legislative change must be sensitive to a child's right to a fair trial, balanced with what is deemed to be a child's best interests,
- Consider protocol and procedures for use of live link in youth courts and in adult bail applications, if any,
- Consider provision for live link in family proceedings in other jurisdictions; and
- The need for a **consultation process** to further consider when live link will be used; review the draft risk assessment and proposed protocol. This consultation process must be representative of all relevant interest groups.

New Initiative

The sub-committee noted the initiative in at least one Community Trust to provide a small specialist residential unit as a 'half way house' between a children's home and secure accommodation. Consequently, it would welcome any evaluation regarding the success of this unit in terms of providing a successful 'step up' and/or 'step down' facility for children as an alternative to a secure accommodation placement.

Review

In addition to its commitment to the introduction of live link with proper legislative amendment, the sub-committee will continue to monitor and review the following:

- Alternatives to secure accommodation,
- The work of the Children Matter Task Force in terms of secure accommodation provision,
- The opening of the new Regional Secure Care Facility at Rathgael, scheduled for October 2005,
- Adherence to COAC Best Practice Guidance; Secure Accommodation 3.1.27 page 22-24,
- Proposal for a court report template for Article 44 applications; and
- Interim arrangements for transportation of children to/from secure accommodation, especially when first placed.

Conclusion

Concerns in respect of safe transportation of children continue and the extent of social services' responsibilities is likely to give rise to a legal challenge at some stage.

Draft TV Live Link Risk Assessment Criteria

Introduction

The management team at Lakewood Centre welcome the consideration of the use of 'live TV links' between secure accommodation and the courts in specific circumstances.

It is of utmost importance that the process for identifying when the TV Link should be used is carefully considered and debated and we offer the following proposals as a contribution to the COAC's deliberations.

It is our view that the decision to use a TV link rather than facilitate a young person's attendance at the court should be carefully considered in each instance and should be based on the following principles.

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Principles

- *The young person should attend the court in person unless there is sufficient reason indicating it would be unsafe for the young person to do so,*
- *The welfare of the young person is the paramount consideration and the use of TV link should only be considered if there is an assessed risk to the welfare of the young person in question; and*
- *Each situation should be individually considered and a formal risk assessment undertaken for each court appearance.*

Risk Assessment

The following factors should be considered:

- *Risk behaviours prior to admission to secure accommodation (level of absconding, degree of harm to self or others),*
- *Specific risks to the young person, staff accompanying the young person and to the public,*
- *Young person's behaviour, attitude and degree of cooperation since admission to secure accommodation,*
- *Length of time since admission,*
- *Level of cooperation and agreement with care plan (to include young person and their family),*
- *Environmental factors i.e. any specific risks in returning the young person to a geographical area/community where risks were previously evident; and*
- *Risk management strategy – can the risks be managed sufficiently to facilitate attendance at court?*

Decision Making Process

The risk assessment should be undertaken by the Applicant Trust, in conjunction with Lakewood staff and in consultation with the young person, their parents, legal representative and Guardian ad Litem.

A recommendation, supported by the risk assessment, should be made to the court prior to the hearing. The resident magistrate can then decide if the use of the TV link is appropriate.

For initial hearings, within the 72 hour period, there may not be sufficient time to consult with the court beforehand. In these circumstances it may be necessary to proceed with arrangements for use of the TV link, if recommended, with the contingency in place to have the young person presented to the court if directed.

SEPARATE REPRESENTATION SUB-COMMITTEE

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As recorded in our previous annual report, COAC established a sub-committee to review the provision of separate representation for children in Private Law proceedings. The report reviewed the existing mechanisms whereby children can avail of separate representation and considered various models for the provision of such representation. The most common models were identified as:

- The lawyer as advocate for the child,
- The social worker as advocate for the child; and
- The tandem model combining the services of both lawyer and social worker.

The tandem model of representation will be familiar to all those involved in Public Law applications under the Children Order. In such cases children enjoy the benefit of representation by a solicitor and a Guardian ad Litem. There was an established view among those surveyed during the preparation of the report that there should be a similar model available to children involved in Private Law proceedings.

The sub-committee noted the widespread consensus in support of the view that in contrast with Public Law proceedings it was not necessary to provide separate representation for children in all Private Law cases. The report then considered the scope and nature of appropriate criteria to be applied by courts when confronted with an application for separate representation and identified a helpful template generated by the High Court of Australia.

The draft report was presented to the Committee and was the subject of substantive and insightful comment and review by DHSSPS and SSI. The report was then circulated beyond the Committee to a shortlist of persons and organizations involved in Private Law cases.

The final chapter of the report was revised in light of the comments by consultees. The sub-committee did not resile from its recommendation regarding the establishment of a Family Advocate system in Northern Ireland similar to the model operative in South Africa. The sub-committee was very conscious however of the lack of research in Northern Ireland on the operation of the court welfare system and the experience of children and parents in families engaged in divorce proceedings before the courts.

COAC has identified discrete issues arising from the report such as the role and function of the court welfare officer and the need for empirical data to be generated to allow realistic costing of the provision of representation.

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These issues have been assigned to working groups for time-limited investigation and report to the Committee.

The provision of representation for children has strategic, operational and financial implications for courts, the legal profession and social services. The provision of such representation does not lie within the gift of COAC but the Committee will continue to promote and inform this debate through this report and the working groups.

Work of Family Court Business Committees during 2003/04

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BELFAST

At the four meetings held between 10 June 2003 and 9 March 2004 there were a number of recurring topics, namely:

- Secure Accommodation,
- The Guardian ad Litem waiting list,
- The time scale for Article 4 Reports; and
- The Mediation Project

Also discussed were costs in care cases, the shortage of social workers and waiting times at court. The minutes of these discussions were forwarded to COAC.

Secure Accommodation

This has been a recurring theme and problem since the inception of the committee. Despite some increase in staff and resources, the need cannot always be met promptly when it becomes manifest. At times there is still a queuing system for a candidate in a very vulnerable state with no place available.

The conduct of hearings on television live link was favoured by most members. However, Human Rights concerns were raised as to the child's right to appear in court. The committee was informed that the Association of Family Solicitors were to consult with the Children's Commissioner on the matter.

Delay in appointing Guardians ad Litem

In December 2003, it was reported that two additional guardians were being appointed and it was hoped that this would address the shortage of guardians and consequent delay in proceedings experienced at the family proceedings court.

Article 4 Reports

Article 4 welfare reports were being provided in Belfast within ten weeks and it was hoped that this could be reduced to eight weeks. However it was

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noted that difficulties in the recruitment and retention of social workers for child protection work would impact on this.

Reports illustrated a 17% turnover of social workers with only one team being fully staffed. A recruitment drive was ongoing but social workers appeared to be looking for opportunities other than fieldwork and successful applicants would be liable to rigorous vetting. An example of this was that a position for a hospital social worker attracted twenty applicants but only five applied for fieldwork positions.

Other Trusts were reportedly having similar problems in the retention of experienced staff. The committee was informed that members of the NI Youth and Family Court Association (NIYFCA) had, during a visit to a children's home met social workers who while not yet fully qualified were receiving job-specific training. A representative of one of the Trusts on the committee also confirmed that newly qualified social workers were responsible for cases that they should not be taking because of their complexity. It was also stated that appearing in court had an effect on social workers. The Chairman agreed that this could be a difficult experience, but he would be pleased to speak to trainee social workers. However, he felt that there was no substitute for attending court. Newly qualified social workers should attend court to observe, as long as the Bench was notified beforehand and the parties involved in a case consented. It was confirmed by the resident magistrates' representative that this was happening in the family proceedings court. An invitation was also extended by NIYFCA to meet with social workers and discuss any problems they might have. The 'mock court' held in Londonderry was also considered as a possible way to alleviate the fear factor of appearing in court.

Mediation Project

There appeared to be difficulty in finding suitable cases to refer to the project and it was felt that by the time a case reached court, it was often too late for mediation to work.

LONDONDERRY

In the last year Londonderry Family Court Business Committee continued its interdisciplinary approach to improving both legal and social work practice and information in relation to evidencing facts at issue.

A joint seminar was held at Altnagelvin Hospital organised by the Bar Council of Northern Ireland and NIGALA under the auspices of the Family Courts Business Committee. The seminar focused on what was required to establish neglect and addressed how long social workers should wait before considering significant intervention as opposed to giving continued assistance to act as a safety net to ensure children retain minimum care. After

an initial address from a practicing barrister and a member of NIGALA, those attending broke up into six interdisciplinary groups including representatives from the Education Board, health visitors, doctors as well as lawyers and social workers. The rapporteur for each syndicate was a social work student from Magee Campus, University of Ulster.

The committee continued to consider how cases could be listed in order to best utilise the available court time. This year, an increase in the number of family trial dates being vacated because expert reports were not provided in time was also noted.

The thorny problem of when experts are really required was again discussed.

In March 2004 Mr Justice Gillen came to Magee Campus to launch the COAC Best Practice Guidance. This included a question and answer session involving members of the interdisciplinary audience.

The committee provided loose leaf copies of the Guidance made up for the local solicitors practising in the family proceedings court and care centre. Specimen copies were also provided for the local HSS Trusts so that they could disseminate copies to their social workers.

The Chair would like to thank committee members and court staff who play an invaluable role in the organisation of committee events and also Altnagelvin Hospital and Magee Campus for making their premises available for events.

CRAIGAVON

This committee met eight times during the period 1 April 2003 to 31 March 2004. The deputy Chair of the committee changed in September 2003 when the outgoing resident magistrate was transferred to Belfast.

The committee itself had a busy year organising three major training events. The first event was an open forum at Craigavon Courthouse in May 2003, entitled “Putting Children at the centre of Family Proceedings Courts”. This involved presentations by the local Trust and NIGALA on the work of their respective organisations. The resident magistrate also spoke on the aims of family proceedings courts in general and the purpose of directions hearings in particular.

The success of this event prompted a similar event at Newry Courthouse that took place in September 2003 entitled “Putting Children First”. On this occasion presentations were made by representatives from the same disciplines. A large attendance was recorded at both of the events.

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A seminar entitled “Recognising and Evidencing Emotional Abuse and Neglect” was held in March 2004 at the Upper Bann Institute in Portadown. Over 70 delegates attended from a wide range of disciplines involved in the child protection, education, legal and medical professions. The main speaker was a consultant child and adolescent psychiatrist who spoke on the diagnosis and the effects of emotional abuse. It also included a series of workshops in which participants were invited to consider three case studies. The event was also used as an opportunity to introduce those attending to the COAC Best Practice Guidance. Feedback from these events revealed that not only were obvious benefits gained from the content of each programme but they also gave local professionals an opportunity to meet and discuss problems of mutual interest. It is hoped that similar events will be organised in the forthcoming year.

At the February 2004 meeting a short presentation was given by Barnardo’s on a Domestic Violence Risk Assessment model, which is presently being piloted in the Southern Health and Social Services Board area.

Perhaps amongst the most important issues regularly considered by the committee has been the provision of a full time court welfare officer at Craigavon family proceedings court. Both local resident magistrates have emphasised the benefits gained from the attendance of an experienced social worker in that role at Lisburn family proceedings court. This was particularly noticeable in the number of cases resolved without the need for a full social welfare report. In Craigavon, where there is no such provision, more reports are required and because of a shortage of social workers in that area, take longer to obtain. The representative of Craigavon and Banbridge HSS Trust on the committee has agreed to seek funding from his Trust for such a post.

Continuing consideration was given to the problem identified in last year’s report, as to the frequency of court sittings in Lisburn and Craigavon. This regularly led to interim care orders having to be made for two weeks rather than four and on occasions, having to be adjourned from one of the venues to the other. While additional court sittings have been arranged from time to time, the answer at least in Craigavon, may be the re-scheduling of the court calendar. The problem is not so easily resolved in Lisburn, but further consideration will be given to the problem during the forthcoming year.

Children Order statistics and the reports of the other Family Court Business Committees are standing items on the committee’s agenda. It is believed that the statistics reveal that work in the family proceedings courts in the area is being conducted efficiently. However, it has been noted that recent family proceedings courts have been large, and we wait to see if this is evidence of an increase in business. Further, the difficulties with social workers in the Craigavon area may have led to some delay in obtaining reports and in the disposal of cases.

Finally, the committee would wish to acknowledge the support of all its members who gave of their time so generously in attending its meetings and in particular, in organising and participating in the training events described.



Issues Considered/Addressed by the Committee during 2003/04

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LATERAL TRANSFER

This report was commissioned by the Committee in response to a query raised by a resident magistrate who highlighted concern at the absence of any power to affect the lateral transfer of Children Order cases between family proceedings courts. The lack of such a power had caused difficulties in cases where the parties had relocated to another part of Northern Ireland outside the territorial jurisdiction of the family proceedings court in which the original application was issued.

The difficulties included inconvenience to the parties who were required to travel to the original court and to social services in the conduct of assessments and the preparation of reports. Such difficulties could prove a source of delay in the resolution of cases. Although comparatively rare the situation did recur and COAC was asked to address the issue of lateral transfer between family proceedings courts.

The report reviewed the provision for lateral transfer in England & Wales and the transfer mechanisms implemented by the Children (Scotland) Act 1995. The level of use of the lateral transfer systems in these jurisdictions was also considered.

The English provisions allowed lateral transfers between family proceedings courts when such transfer is deemed to be in the best interests of the child. The court must have regard first to the principle of avoiding delay. Transfer is in the best interests of the child when it will accelerate the determination of proceedings or will enable the matter to be heard with other family proceedings or for some other reason.

The Children Act Advisory Committee (CAAC) scrutinized the transfer mechanisms provided in the legislation until that Committee was dissolved. In its report for 1992/93 the Committee highlighted lateral transfer as an area of concern. The particular concern was the limited use being made of the facility to transfer cases laterally. The Committee's survey revealed that lateral transfer between family proceedings courts was generally confined to the need to consolidate proceedings or because one or more of the parties was resident within the receiving court's jurisdiction. The Committee's subsequent reports for the years 1993 to 1995 revealed that the numbers of lateral transfers remained minimal.

For the purposes of this report the most significant provision of the Children (Scotland) Act 1995 is found in Section 48 which allows a children's hearing

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(the Scottish equivalent of the family proceedings court) to transfer a case to another children's hearing which is better placed to consider the matter.

The Scottish approach of vesting full discretion in the particular children's hearing to determine whether to effect a lateral transfer of a case to a different area was contrasted with the power conferred on the Lord Chancellor by Paragraph 2 of Schedule 7 of the Children (Northern Ireland) Order 1995 to make an order governing the transfer of proceedings within the concurrent jurisdiction. This power was given effect in the Children (Allocation of Proceedings) Order (Northern Ireland) 1996. It is not clear whether the absence of any mechanism within the rules for lateral transfer of cases between family proceedings courts was a deliberate omission or an accidental oversight.

Such evidence as is available from England & Wales and Scotland indicates that the incidence of lateral transfers at family proceedings court level is very low. This fact is not sufficient to justify the current lack of a lateral transfer mechanism between family proceedings courts in Northern Ireland.

Conclusions

- There should be a mechanism for lateral transfer between family proceedings courts in Northern Ireland,
- Such a mechanism should be implemented by way of amendment to the Children (Allocation of Proceedings) Order (Northern Ireland) 1996; and
- The form of such an amendment, subject to the advice of the legislative draftsman should be modelled on Article 6(1) of the Children (Allocation of Proceedings) Order 1991.

COAC is now liaising with the Northern Ireland Court Service to devise an appropriate amendment to the Rules.

CONCURRENT PROCEEDINGS

In nearly every case in Northern Ireland where a care order has been made and the care plan is for adoption, the application to have a child freed for adoption is made to the High Court.

This is not the practice in England & Wales where if the family care centre makes the care order, the freeing application is usually made in the same court.

Any county court judge can hear an application to free a child for adoption and ultimately make the adoption order. However, the Trusts almost inevitably, after the care order is made, issue their freeing applications in the

High Court. They in effect, choose the forum where the case is to be heard. The fact that almost all freeing applications in care proceedings are heard in the High Court is neither necessary nor desirable.

The reasons given for the freeing decisions to be taken by the High Court are as follows:

- **Different considerations of law apply.** That is correct but care centre judges apply these considerations to family adoption cases where on occasions the issues are not as clear or well defined as they are in Public Law cases,
- **The importance of the decision breaking all links with the birth parents.** The real decision that leads to the severing of the link with the birth parent is in reality nearly always taken once the care order is made, as 94% of freeing applications are successful. The judge who has heard direct evidence of the attachment issues concerning the birth parents' link with the child is arguably best placed to deal with those issues when a birth parent is arguing they are not unreasonably withholding their consent,
- It has been argued as a reason for transferring freeing proceedings to the High Court that **it is not desirable to have the same judge who hears the care case hear the freeing application.** This reasoning does not seem to be applied to the High Court,
- **The question of appeals from the care centres if freeing orders were granted at the care centre level.** While there may be an issue about the number of appeals initially, provided care centre judges apply the correct criteria in reaching their decisions this should not be a problem. It should also be noted that there is not a huge number of appeals from the care centre judges when they grant a care order where the care plan is adoption. In any event it should be possible to list appeal hearings on the papers more expeditiously than it is to hear the original applications; and
- It has also been argued that **care centre office support could not deal with freeing applications.** Surely this is simply a matter of putting whatever additional procedures that are necessary in place, particularly since the county court offices deal with family adoptions.

The advantages of having freeing applications heard before the care centre are as follows:

- Any transfer from one court jurisdiction to another has the potential for delay,
- It would allow the care centre judge to timetable the freeing application immediately after the care order is made and thus avoid delay,
- Often courts are assured that adoptive parents are available and it later transpires that they are not. Contact with the natural parent is often drastically reduced or stopped and if the child cannot be adopted this may not be in its best interest. It may help the Trust examine how realistic the care plan is – see **Re McD. Londonderry Care Centre April 2002**; and

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- The demands on the High Court even with an additional judge are ever increasing and therefore freeing applications may not, in all cases, be dealt with as quickly as they would if the care centre judge dealt with the appropriate freeing applications.

The rules allow for care centre judges to hear these applications. It would appear to have become a matter of practice that they are nearly always transferred to the High Court.

It seems that those representing the Trusts would be more inclined to have freeing applications heard in the High Court than those representing the prospective adoptive parents. However it is not appropriate that one of the parties to the proceedings should have the right to select the venue.

It would be helpful to see:

- How long it takes freeing applications to be lodged after the care centre judge has made a care order,
- How many cases there are where the court has been told a freeing application will be made, where it is not ultimately done,
- How long in total it takes for a child to be adopted; and
- The number of cases where a freeing order is made and no adoption takes place because adoptive parents are not available.

Conclusion

Depending on the objective findings it may well be that cases where the ultimate care plan is adoption, which have been heard in the care centre, should also have the freeing application heard in the same jurisdiction. The advantage of such a course would lead to:

- More effective planning with all the difficulties surrounding freeing being fully addressed at the care plan stage,
- The avoidance of delay by ensuring that the issue of a freeing application is timetabled by the care centre judge; and
- Reduction of the workload of the High Court, when the care centres are capable of dealing with the issues.

This would result in the High Court hearing freeing applications in their own care cases. There should also be the power for care centre judges to transfer freeing applications to the High Court if they consider the case requires the attention of the High Court for legal reasons or because there are complex factual issues.

CHILD PROTECTION AND CONFIDENTIALITY

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The representative of Children in NI raised the issue of the need for the development of a child protection and confidentiality policy in respect of solicitors who represent children and young people in Northern Ireland at a meeting of COAC in June 2003.

Child protection procedures for most professionals working with children and young people including the medical profession are now well documented in the form of the recently revised “Co-operating To Protect Children” (Volume 6 Children (Northern Ireland) Order 1995) entitled “Co-operating to Safeguard Children” (DHSSPS May 2003) and in the detailed Area Child Protection Procedure (ACPC) procedures which are available in respect of each health board area in Northern Ireland.

The memorandum “Joint Protocol Procedures and Achieving Best Evidence” clearly set out the investigative procedures followed by police and social services where an allegation of abuse of children has been made. However, there is no specific guidance in Northern Ireland for solicitors and barristers who meet with and represent children and young people under 18. It can be a daunting experience for any solicitor to be in a situation where a child has disclosed allegations of abuse directly to them or indeed where an adult has made allegations of abuse in relation to a particular child. The representation of children and young people includes not only accredited solicitors acting in specified proceedings under the Children (Northern Ireland) Order 1995, but also solicitors who represent children and young people in other areas such as youth justice and education cases.

It was indicated that a sub group of the Family Law Committee of the Law Society of NI has been established to research the case law and existing precedents in other jurisdictions in this area, with a view to developing a draft child protection and confidentiality policy for solicitors who represent children, which could be circulated for consultation in Northern Ireland. The sub group consists of a representative of the Family Law Committee, two private practice solicitors who represent children, a recently nominated representative from NIGALA and a representative from the Children’s Law Centre.

A discussion paper outlining examples of existing child protection guidance in other professions and providing a framework for the development of policy guidelines in Northern Ireland has been circulated to members of this sub group. In addition key cases in this area have been collated for consideration.

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The representative of Children in NI has agreed to apprise COAC of further developments with this work during the forthcoming year.

LEGAL AID AS A DELAYING ELEMENT

The granting of legal aid, particularly in cases involving the appointment of medical experts, has in some instances proved to be a source of delay. It has been the experience of those on the Bench that disputes about fees have often been the key to the problem especially in the lower tiers of the court system. With that in mind the Committee invited the Head of Operations Division within the Legal Aid Department ('the Department') to address the Committee in May 2003 and again in June 2003 to update it on developments. She indicated that the Department's administrative staff had delegated authority within strict criteria to process claims from those lower tiers. Where claims exceeded those boundaries and/or solicitors provided scant detail, further information or referral to the Legal Aid Committee was often required. However rates of payment were also identified as a contentious issue.

It was drawn to the Divisional Head's attention that a system was in operation in the Family Division of the High Court whereby there was a direct point of contact between the office in the Family Division and the Department that had proved invaluable in resolving disputes expeditiously and efficiently. The Divisional Head agreed to this system being replicated in the family care centres. At the subsequent meeting in June she undertook to contact all the family resident magistrates and judges to provide a name and telephone number of the contact point within the Department to whom any queries with reference to specific cases could be addressed. Only time will tell whether this helpful development bears fruit but this Committee will revisit the issue in the future.

A fundamental problem however still remains as to the appropriate rates to be paid from the public fund to experts. A number of underlying problems lie herein:

- Are too many experts being sought,
- Are the instructions to choose experts too vague and unclear,
- Are the time estimates by those experts unrealistic and insufficiently sensitive to the cost involved; and
- Has the Department a realistic grip on the market value of these services?

In any event, too many cases are delayed by the problem remaining unresolved. This is perhaps a task that requires consideration by the Committee in order to assess the scale of the problem and the nature of a mutually agreeable resolution. It is therefore an issue that will command our attention in the forthcoming year. The Department has proved receptive to communication with this Committee. Our Chairman has already met with

Sir Anthony Holland, Chairman of the Northern Ireland Legal Services Commission to discuss this problem amongst others and Sir Anthony is to attend some hearings in the High Court to see at first hand the system in operation.



Other Issues of Concern to the Committee

MULTI-DISCIPLINARY TRAINING

Lord Justice Thorpe, speaking of the need for a multi-disciplinary structure within the family justice system recently said,

“The creation of an inter-disciplinary structure for the family justice system has been high on my wish list for several years. The delivery of a high quality service to all those who enter the family justice system, whether as applicants or as respondents, must depend on informed collaboration. No one contributor can contribute more than his own best effort. But that best effort can be swiftly nullified by the shortcomings of any one of the many other crucial contributors to outcome. Whilst this applies equally to all our system of justice it is more acutely true of the family justice system where the judge holds an inquisitorial duty and where the diversity of other professional contributions is so extensive.”

This is a philosophy to which COAC is completely wedded. To that end we have expended a great deal of time and energy considering a multi-disciplinary approach to our remit and our tasks.

We have set up a multi-disciplinary sub-committee dealing with family law and childcare literature. Our aim has been to facilitate access to a selection of summaries of articles, books and literature within the various disciplines of the family justice and childcare system and to raise awareness of this literature on an interdisciplinary basis. We have established a portal that is updated regularly with the titles and summaries of articles and literature submitted.

Members of the Committee have participated in a scheme whereby a training programme has been set up for medical trainees to spend some days in court and with a family law judge. This should aim not only to encourage the participation of such experts in the family justice system but also stimulate an exchange of expertise and ideas between the various professions involved therein.

In both Belfast and Londonderry this programme has been very successful to date and this Committee is extremely grateful for the help that has been given by a consultant psychiatrist in the child and adolescent field who has been instrumental in setting up the programme. The Director of the Institute of Professional Legal Studies has also made an invaluable contribution towards the institution and success of this programme. The Lord Chief Justice has approved of the scheme and appropriate precaution has been taken to protect the confidentiality and privacy of such cases.

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It is the belief of the Committee that this experiment can be expanded to include visits from trainee social workers accompanying both the Bar and judges and perhaps reciprocal facilities being provided for members of the legal profession to attend with social workers.

It is only by an exchange of views, a sharing of mutual experiences and a realisation of the problems facing the disparate branches of the family justice system that we can all benefit from our shared experience.

Herein lies one of the real values of COAC. We are one of the few bodies that have representation right across the whole system and it is this multi-disciplinary representation that allows our input to be so diverse and hopefully so comprehensive. The question arises as to whether or not in addition to this, the creation of a unified structure throughout the jurisdiction is needed. This would have a much wider remit than that currently enjoyed by COAC and might lend itself to rather more “blue skies” thinking, than the detailed practical analysis which is so necessarily a part of our present restricted remit.

NIGALA WAITING LIST

NIGALA was introduced in November 1996 to safeguard the interests of children who are the subjects of specified Public Law proceedings and adoption proceedings.

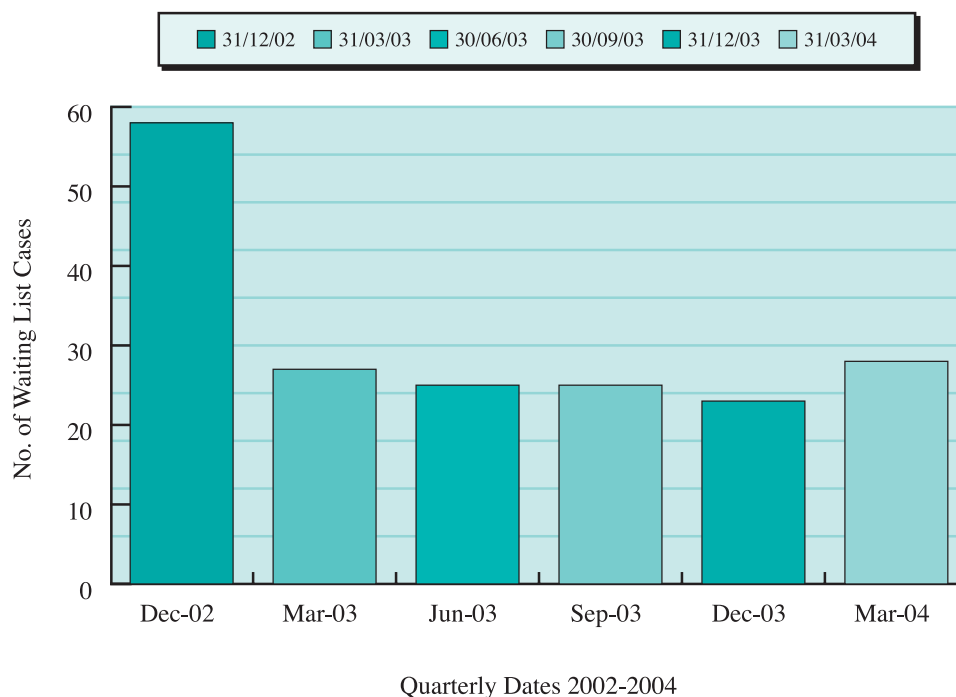
It has Special Agency status under the auspices of DHSSPS. It is generally acknowledged that both health and social services have suffered from a legacy of under funding in recent years and NIGALA has certainly not been exempt from the financial stringency of the Health and Personal Social Services. This has manifested itself in terms of a waiting list of appointments of Guardians ad Litem by the courts that require allocation.

Demand in terms of new appointments of Guardians ad Litem from the courts has outstretched the supply of guardians to undertake the work since early 2001. The Guardian ad Litem staff worked strenuously to cope with the workload during the financial year 2001/02, when new appointments rose by 21% over the previous year. However, the establishment of a waiting list for new appointments was made inevitable in April 2002 when NIGALA learnt that additional recurrent funding was not being made available for the forthcoming financial year.

A waiting list has now been in place for over two years and is a major source of concern for all involved in Public Law and adoption proceedings. Arguably, in certain cases, it represents a breach of the child’s right to representation and a fair hearing.

The number of cases on the waiting list fluctuates daily depending on the number of notifications of new appointments received and the number of allocations being achieved. In December 2002 it reached a peak of 58 but fell back during 2003 and into 2004 to 20+ at any one time (see Diagram 1). In February 2004, the number actually fell below 20 on certain dates but surged again in March with an influx of notifications of new appointments.

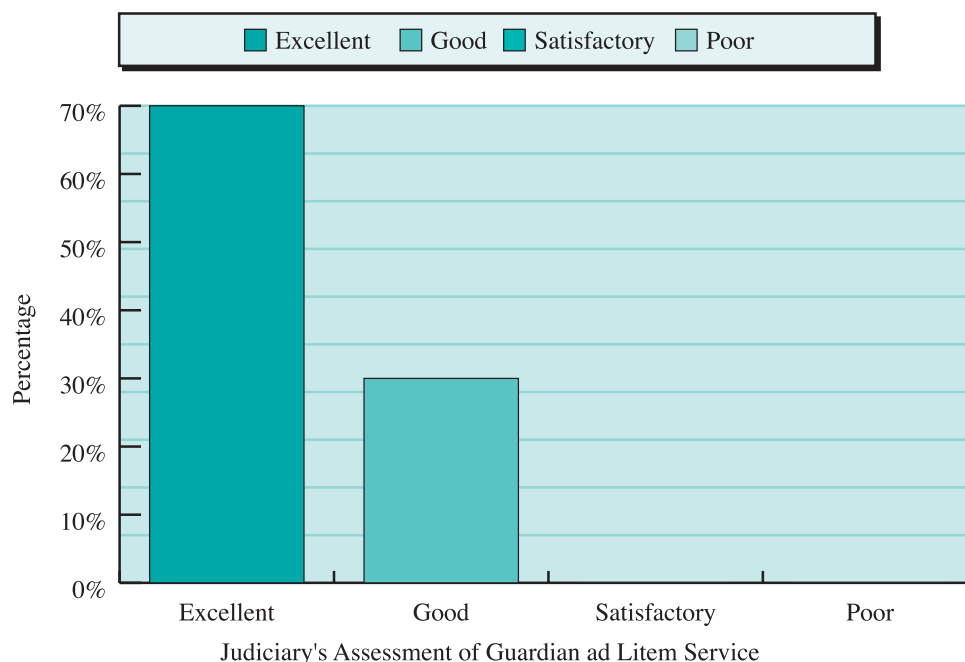
Diagram 1



The lower figures achieved during 2003/04 reflect a 9% decrease in the number of new appointments made in that period compared with the previous year, combined with a determination on behalf of NIGALA to return to a position where all children may expect the same level of service. However, no additional resource had been made available to the Agency.

It should be noted that despite the deep sense of frustration expressed by all members of the judiciary involved in family proceedings at the existence of a NIGALA waiting list, there is widespread agreement that the service delivered is of a high standard once a guardian is allocated a case (see Diagram 2, taken from 2003 judicial survey).

Diagram 2



All involved in Public Law and adoption proceedings are agreed that the guardian is pivotal to the process, hence the late allocation of a guardian to a case creates immense problems for the courts, the parties, the child and not least the Guardian ad Litem. It is hoped therefore that the eradication of the NIGALA waiting list will become a reality in 2004/05.

THE PROTOCOL FOR JUDICIAL MANAGEMENT IN PUBLIC LAW CHILDREN ACT CASES IN ENGLAND & WALES

The Committee has considered the current and new English protocol that essentially provides a step-by-step procedure through Public Law cases in England & Wales. We considered the applicability of such an approach in our jurisdiction and whilst we concluded that the procedure to be adopted in England & Wales is a great advance on that previously operated, it may not be appropriate for use in Northern Ireland for a number of reasons.

Firstly, it is clear that the delay in processing of cases in England & Wales is much greater than in Northern Ireland. The aim of the new protocol is to bring about a situation whereby cases are completed within 40 weeks. The fact of the matter is that in Northern Ireland, in most courts, cases are completed in considerably less than 40 weeks. The nature of the delay in the system in Northern Ireland is therefore less than encountered in England & Wales.

Secondly, it was felt that the English system is too much of a time driven process without the necessary built-in flexibility which perhaps cases involving children demand and which we in Northern Ireland have traditionally been wedded to. By focusing too much on time sequences rather than on the overall process, there is a danger of ‘not seeing the wood for the trees’.

Our focus is on early identification of issues and the principle of getting it right from the very beginning. Effective case management depends not so much on fixed periods for fixed steps, but rather an in-depth analysis of the particular case in hand, consideration of an individualised timetable and a close scrutiny of the particular circumstances in each case, without imposing an objective timekeeping standard in every case that comes before the court.

In a smaller jurisdiction such as Northern Ireland, it is somewhat easier to give more personal and individual attention to each case, whilst at the same time strictly adhering to standards of early determination and rigorous eradication of general delaying practices. Coincidentally, the two separate approaches are starting from a similar position and only time will tell whether each jurisdiction can borrow from the other.

We welcomed the assistance given by the authors of the English protocol who have willingly come to Northern Ireland in order to apprise us of its inception. There has been a true measure of co-operation between the jurisdictions in looking at the approaches. COAC is completely committed to the notion of a shared approach throughout the jurisdictions in the United Kingdom if we are all to mutually benefit from each other’s approach.

ADDITIONAL FAMILY CARE CENTRES: DUNGANNON FAMILY CARE CENTRE

Initially when discussions took place as to how the Children Order was to be implemented in Northern Ireland it was decided that there would be three care centres: one in Belfast to cover cases originating in the divisions of Belfast, Antrim and Ards; the second in Londonderry dealing with cases from the county court divisions of Londonderry and Fermanagh & Tyrone. The third care centre was based at Craigavon to deal with business originating in Craigavon and Armagh & South Down.

The reason for having such centres was that they could be regarded as Centres of Excellence with appropriate court accommodation and waiting areas to deal with Public Law and Private Law children’s cases.

At the outset when it was decided that Londonderry Recorder’s Court would be the site for Londonderry Family Care Centre, the legal practitioners in Fermanagh & Tyrone did raise concerns about the travelling distance

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involved for members of the public and their legal representatives. More than half of the Public Law cases in that care centre originated in Fermanagh & Tyrone.

It was the view of the Londonderry Family Courts Business Committee which included representatives from Foyle Trust and Sperrin & Lakeland Trust that the amount of family cases coming from Fermanagh & Tyrone warranted a care centre being set up for that division at Dungannon. A fourth care centre based in that location would have a number of advantages. Firstly it would reduce the workload of Londonderry Family Care Centre where it was becoming increasingly difficult to deal expeditiously with the business when care centre work had to compete with other work for court time. To have an additional care centre in Dungannon would mean that both legal practitioners and social workers could introduce the type of interdisciplinary training that occurred in Londonderry, without always having to travel some distance to the events.

Social workers would similarly benefit in reducing their travel times to and from court. This would be an advantage in a jurisdiction where there was a shortage of social workers and their time was of the essence.

All these issues were aired at the County Court Family Law Committee that duly recommended a fourth family care centre in Dungannon. This was supported by COAC who has drawn this issue to the attention of the Minister in order to obtain the necessary legislative change to permit the establishment of the family care centre, with effect from September 2004. There is no doubt that this will be of benefit to the public, legal practitioners and social workers involved in family proceedings. It should also reduce the workload in Londonderry in the future and by default enable a more efficient listing of business in that area.

MINISTERIAL MEETING WITH LORD FILKIN

Part of the remit of COAC is to advise Ministers on the progress of Children Order cases through the court system with a view to identifying special difficulties and reducing avoidable delay. The Committee therefore welcomes the opportunity to converse directly with Ministers who deal first hand with the work of the Committee.

In February of this year the Chairman of COAC, in the company of other judicial members of the Family Division, met with Lord Filkin, Parliamentary Under-Secretary of State at the Department of Constitutional Affairs. It was gratifying to note the interest in and knowledge of the Committee that the Minister exhibited.

Views were exchanged about the role of COAC, and in particular the publication of the Best Practice Guidance and the Committee's report on delay.

It was clear that the multi-disciplinary approach to family law by COAC met with full ministerial approval and reflected the current attitude of Government to the important work we do. The discussion covered the remit of COAC and in particular as to whether there is a necessity for an overarching Family Justice Council similar to that being contemplated in England & Wales. The need for such a council in order to trigger “blue skies” thinking in this area, given the existence of COAC, is obviously something that requires further thought and consideration and the concept is to be reviewed at a later date.

The concept of a new family justice system linking criminal and family law in relation to children and young people and invoking joined up structures for all matters involving the family was a further matter raised. The justification for such an approach is the need for earlier intervention into dysfunctional families and perhaps the creation of a one-stop court system. The potential implications of such a new concept are obviously something that requires further thought and consideration. The Minister certainly expressed an interest in utilising current links more effectively to provide corridors between the criminal and family law systems. Herein lies an area that perhaps may be explored by COAC in the future.

This year saw the culmination of a great deal of work undertaken by this Committee. In particular we have seen the launch of the Best Practice Guidance, which is now firmly entrenched in the childcare system, and we await the developing impact. Similarly we have published a report on delay and this Committee looks forward to initiatives that will flow from this. With further reports now having been completed on mediation, child contact centres and transfers within the court system, the time has come when we must now seek to address new and equally pressing issues. This year will see the completion of our reports on separate representation, secure accommodation and further contributions towards the issue of domestic violence. We retain standing committees to monitor and revise the practice guidelines and developments arising out of our delay report.

The multi-disciplinary ethos that underlines all of our work is gathering momentum with each passing year and has been well illustrated in the work of the Committee to date. A number of important strategies are unfolding before us and will require our attention. There is pending a strategy document dealing with adoption in Northern Ireland that will have an impact on the effect of the Children Order. A sub-committee has already been set up and awaits development in this area. The Government is developing a new strategy towards children and young people with possible changes to legislation. We shall closely observe and monitor this development and our input will hopefully be comprehensive. Interdepartmental work on domestic violence, which will include references to contact centres, is ongoing and will be reviewed by the sub-committee on domestic violence within the confines of our remit.

Old chestnuts require new solutions. Delays brought about by an over-use of medical experts or the under-use of expertise available to us within the system is something that surely requires scrutiny. The role of the Legal Services Commission providing expeditious and comprehensive service to appropriate cases, within the reasonable parameters of public expenditure may also demand our attention insofar as assessments are a cause of delay and concern within the system. Any contribution that this Committee can make to speeding up the process would be an invaluable contribution to our remit. Members of the legal profession have expressed concern about the delay in remuneration emanating from the Legal Services Commission and insofar as this may impact on the question of delay in our remit, it may also attract our attention in the future. The continuing delay in the availability of Guardians ad Litem commands a regular place at every COAC meeting and will continue to do so until the difficulty is resolved.

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On a wider plane, arguably the time has come now to consider more conceptual “blue skies” thinking within the family justice system. The role of COAC in such thinking, consonant with the parameters of our remit, is a further matter that may merit informed reflection in the future year. We must ask whether delays and special difficulties within the system can be reduced and scarce resources better deployed by utilising current links to provide more effective corridors between the criminal and family law system or should there be a wider, more far reaching consideration of a broader family justice system, drawing on established international and commonwealth models. One of the benefits of a small jurisdiction is that it is not only feasible to set up a small pilot scheme, but the overall implications for cost and personnel can be moderated because of the size of the concept. Hence, opportunities may lie in our jurisdiction to lead the way in family justice rather than predicating a mindset that reacts belatedly to events that initially happen elsewhere.

This Committee thus provides the opportunity for many minds throughout the family justice system to pool their experience and their knowledge of the process, in order to arrive at widely based and comprehensively appraised solutions to the many problems that confront work on behalf of children in this province. This is the one area of law where a multi-disciplinary ethos is not only manifest, but is self-evidently pivotal in order that children can be appropriately cared for and protected. This Committee will continue to play its part in this endeavour in the forthcoming year.

Appendix 1

The Membership of the Committee (1st April 2003 to 31st March 2004)

Chairman

Mr Justice Gillen	High Court Judge (Family Division) High Court of Justice in Northern Ireland
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Members

His Honour Judge Markey QC	County Court Judge and Family Judge of the Belfast Family Care Centre
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Her Honour Judge Philpott QC	Recorder of Londonderry and Family Judge of the Londonderry Family Care Centre
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His Honour Judge McKay QC	County Court Judge and Family Judge of the Craigavon Family Care Centre
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Mr Robert Alcorn RM (<i>Resigned wef 310304</i>)	Resident Magistrate
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Mr Ronnie Williamson	Executive Director of the Northern Ireland Guardian ad Litem Agency
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Mr Norman Humes	Chairman of the Northern Ireland Youth and Family Courts Association
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Mr Fergal Bradley (<i>Mr Leslie Frew resigned wef 121103</i>)	Head of Child Care Policy Directorate, DHSSPS
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Mr Paul Martin	Chief Inspector, Social Services Inspectorate, DHSSPS
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Mrs Catherine Dixon	Solicitor
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Vacant	Representative of the Directors of Health and Social Services Trusts
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Appendix 1

Mr Hugh Connor <i>(substituting for Professor Dominic Burke)</i>	Director of Social Services, Eastern Health and Social Services Board
Mrs Gillian McGaughey	Barrister at Law
Miss Hilary Wells	Assistant Director, Directorate of Legal Services, Central Services Agency
Miss Brenda Donnelly	Official Solicitor to the Supreme Court
Mrs Jacqui Durkin <i>(Mr Eric Strain resigned wef 040903)</i>	Head of Business Support Group, Northern Ireland Court Service
Ms Tara Caul	Children in Northern Ireland <i>(formerly Childcare (NI))</i>
Mr Michael Williamson <i>(Mrs Eileen Magee resigned wef 040903)</i>	Secretariat, DHSSPS
Mr Austin Harper	Secretariat, Northern Ireland Court Service

Appendix 2: Statistics

Commentary

The statistics, which form the basis of the tables and figures in this appendix, are collected as a census of the Children Order business in all the courts in Northern Ireland. Except where otherwise indicated, all figures and tables cover the financial year 2003/04. With the exception of those figures contained in Tables 3 and 4, which are case based, figures relate to individual applications. There may be more than one application per child and more than one child per case. Where Figures relate to 2000/01 and subsequent years, the period covered extends from April to March whereas previous years cover the period January to December.

Wardship Actions

At the time of the introduction of the Children Order in November 1996, a marked decline in the number of wardship actions made in the High Court was observed reflecting the restrictions placed on such applications by the Children Order. Since the introduction of the Order, wardship actions have remained at a consistently low level with no significant increase observed between 1998 and 2004 (See both Table 1 and Figure 1).

Applications and Disposals

Table 2 shows the number of applications lodged and disposed of in all court tiers for 2003/04. Applications lodged outnumbered disposals causing an increasing number of outstanding applications. Figure 2 shows the number of applications lodged and disposed of each year since 1997.

During 2003/04, 14% of applications lodged concerned Public Law and 86% concerned Private Law. In terms of disposals, 13% of applications disposed of concerned Public Law and 87% concerned Private Law (See Figure 3). Care cases accounted for the majority of Public Law disposals (see Figure 4) where the percentage rose from 60% in 2002/03 to 64% in 2003/04. The most common types of order made in Private Law were contact (50%) and residence (32%) (See Figure 6).

Transfers

Table 3 shows the number of cases transferred and the reasons for transfer quoted. More than one reason may be given for transfer in each case. The most numerous reason given for transfers to the family care centres was complexity (58% in 2002/03 and 57% in 2003/04), while for transfers to the

High Court the main reason was also complexity (54% in 2003/04). During 2003/04 transfers from the family proceeding courts and magistrates' courts to the family care centres made up 2% of all applications entered. In 2002/03, such transfers accounted for 1% of all applications entered.

Disposal Times

Table 4 and Figure 5 shows the relative disposal times for both Public Law and Private Law cases in each court tier for 2003/04. In the family proceedings courts, average disposal times were 23.1 weeks for Public Law and 20.8 weeks for Private Law cases. In the care centres, they were 33.3 weeks for Public Law cases and 25.5 weeks for Private Law cases. Public Law cases in the High Court took 43.0 weeks and Private Law cases took 47.0 weeks. Lodgement to disposal times for Public Law cases have increased between 2002/03 and 2003/04 in all court tiers, whereas Private Law cases have decreased on average across all court tiers. It should be noted that because of the small numbers at the care centres, comparatively few long cases can substantially affect the average time taken to dispose of cases.

Disposal Types

Table 5 shows the distribution of the different types of disposal made for each year. Orders made accounted for 67% of all disposals in 2003/04 (68 % in 2002/03), 11% resulted in an order of 'no order' in 2003/04 as compared with 9% in 2002/03 while 15% of the applications were withdrawn (18% in 2002/03) and 6% were refused (5% in 2002/03).

9,444 interim orders were made during 2002/03, a number that increased by 2% to 9,591 in 2003/04. These were made up primarily of contact, residence and care orders. The number of interim care orders fell by 3% during 2003/04.

Applicants and Respondents

Figure 7 shows the proportions of applicant and respondent types involved in disposed of cases for the period. The mother was the applicant in 30% of cases (father 48%, grandparent 3%). Health Boards accounted for 13% of applicants and others for 2%. The father was the respondent in 30% of cases, the mother in 61% and other family accounted for 1%.

Age of Children

Table 6 shows the distribution of children's ages. Just over one third of children involved in the cases were within the 0-4 years old category (Figure 8).

Annual Comparisons

To provide a broad picture of yearly trends since the commencement of the Children Order, Figures 9.1, 9.2 and 9.3 illustrate the number of applications lodged and disposed in each of the court tiers. Between 2002/03 and 2003/04 the number of applications lodged decreased by 1%. There was less than a 1% increase in the number of disposals between 2002/03 and 2003/04.

Figure 10 presents the number of orders and disposals for 1998 to 2003/04. Parental responsibility disposals increased by 41% between 1998 and 2003/04. Contact (permission) decreased by 17% between 1998 and 2003/04. The number of applications for residence orders disposed of decreased by 28% between 1998 and 2003/04 and care cases disposed of increased by 25% between 1998 and 2003/04.

Table 1
Wardship Actions

Wardship Actions	1995	1996	1997	1998	1999	2000	00/01	01/02	02/03	03/04
Non Emergency	140	135	7	3	1	0	0	4	9	2
Immediate Provision	182	126	1	1	3	0	8	7	13	15
Jurisdiction	85	51	0	6	14	0	16	8	1	0

Table 2
Applications and Disposals

01/04/03 - 31/03/04

Applications	High Court		County Court		Magistrates' Court		Total
	OCP	Matrimonial	Care Centre	Other	FPC	Other	
Public Law	91	0	84	0	754	1	930
Private Law	78	105	186	2	5,233	0	5,604
Total	169	105	270	2	5,987	1	6,534

Disposals	High Court		County Court		Magistrates' Court		Total
	OCP	Matrimonial	Care Centre	Other	FPC	Other	
Public Law	198	0	78	0	530	5	811
Private Law	118	95	178	2	4,950	0	5,343
Total	316	95	256	2	5,480	5	6,154

Table 3
Transfer of Business (Reasons)

01/04/03 - 31/03/04

To	Convenience	Urgency	Gravity	Complexity	Consolidation	Importance	Other	Total Reasons	Number of Cases ^[1] Transferred
<i>High Court</i>	0	2	1	32	16	0	8	59	58
<i>County Ct.</i>									
Belfast	1	0	1	47	9	0	8	66	65
Londonderry	0	4	2	12	1	3	5	27	24
Craigavon	0	0	2	15	2	0	6	25	24
<i>Magistrates Ct.</i>									
Belfast	2	0	0	0	0	0	2	4	4
Londonderry	0	0	0	0	1	1	0	2	2
Ballymena	0	0	0	0	0	0	1	1	1
Omagh	0	0	0	0	0	0	1	1	1
Newry	0	0	0	0	0	0	0	0	0
Ards	0	0	0	0	0	0	0	0	0
Craigavon	0	0	0	0	0	0	1	1	1

^[1] Cases may have more than one application

Table 4
Disposal Times

01/04/03 - 31/03/04

Lodged to final hearing times (in weeks) for cases entered in the designated courts ^[1]				
	High Court	Care Centre	Family Proceedings Court	Total
Public Law	42.95	33.28	23.08	26.97
Private Law	46.95	25.54	20.81	21.95

^[1] All cases include time taken at first court if transferred

Table 5
Orders and Disposals

01/04/03 - 31/03/04

Business	Order Made	No Order	Refused	Withdrawn	Total	Interim Order ^[1]
Parental Responsibility	220	49	46	62	377	70
Contact: Permission	1,620	264	123	275	2,282	3,423
Contact: Refusal	18	13	12	9	52	34
Residence	989	146	69	223	1,427	1,205
Prohibited Steps	53	13	18	63	147	201
Specific Issues	74	6	3	32	115	16
Care	297	73	20	57	447	3,983
Supervision	27	4	2	6	39	142
Education Supervision	18	3	0	2	23	8
Child Assessment	0	0	0	0	0	1
Emergency Protection	33	0	1	1	35	12
Extension of EPO	2	0	0	1	3	5
Appointment of Guardian	70	11	1	3	85	8
Contribution & Other Financial	5	0	0	3	8	1
Secure Accommodation	21	4	1	10	36	89
Article 53 Contact	56	17	16	27	116	244
Family Assistance	1	0	0	0	1	62
Recovery	3	0	0	0	3	24
Non-molestation	6	1	1	0	8	30
Other Orders, Applications	40	2	11	12	65	10
Occupation Articles	3	0	0	0	3	4
Article 56	4	0	0	3	7	19
Exclusion Requirement	0	0	0	0	0	0
Total	3,560	606	324	789	5,279	9,591

^[1] Interim Orders are taken from court sittings returns, application disposals are taken from final disposal forms. The figures do not necessarily refer to the number of cases.

Table 6
Children Subject to Applications

Age and Gender of children involved ^[1] 1st Jan. 98 - 31st Mar. 03					
	Age Range (%)				Number of children in respect of whom orders have been made
Sex	0-4	5-8	9-12	13-16	
Male	34.3	29.5	22.3	13.7	1,883
Female	35.5	29.0	20.1	15.4	1,784
Total ^[2]	36.7	28.4	20.4	14.1	3,781

^[1] Includes children not subject to an application disposed of

^[2] Includes children whose gender is unrecorded

Table 7
Business Volume - Care Centres and Related Courts

Applications - 01/04/03 - 31/03/04

	Public	Private	Total
Belfast			
<i>Care Centre</i>	21	79	100
<i>County Courts</i>	0	0	0
<i>Family Proceedings Courts</i>	416	2,929	3,345
<i>Magistrates' Court</i>	0	0	0
Total	437	3,008	3,445
Londonderry			
<i>Care Centre</i>	51	89	140
<i>County Courts</i>	0	0	0
<i>Family Proceedings Courts</i>	147	1,106	1,253
<i>Magistrates' Court</i>	0	0	0
Total	198	1,195	1,393
Craigavon			
<i>Care Centre</i>	12	18	30
<i>County Courts</i>	0	2	2
<i>Family Proceedings Courts</i>	191	1,198	1,389
<i>Magistrates' Court</i>	1	0	1
Total	204	1,218	1,422

Table 8
Business Volume - Care Centres and Related Courts

Disposals - 01/04/03 - 31/03/04

	Public	Private	Total
Belfast			
<i>Care Centre</i>	43	102	145
<i>County Courts</i>	0	0	0
<i>Family Proceedings Courts</i>	312	3,095	3,407
<i>Magistrates' Court</i>	0	0	0
Total	355	3,197	3,552
Londonderry			
<i>Care Centre</i>	19	51	70
<i>County Courts</i>	0	0	0
<i>Family Proceedings Courts</i>	116	922	1,038
<i>Magistrates' Court</i>	0	0	0
Total	135	973	1,108
Craigavon			
<i>Care Centre</i>	16	25	41
<i>County Courts</i>	0	2	2
<i>Family Proceedings Courts</i>	102	933	1,035
<i>Magistrates' Court</i>	5	0	5
Total	123	960	1,083

Note: Figures for applications to Family Proceedings Courts may include more than one venue within a court division.

Figure 1
Wardship Actions (Jan 1997/Mar 2004)

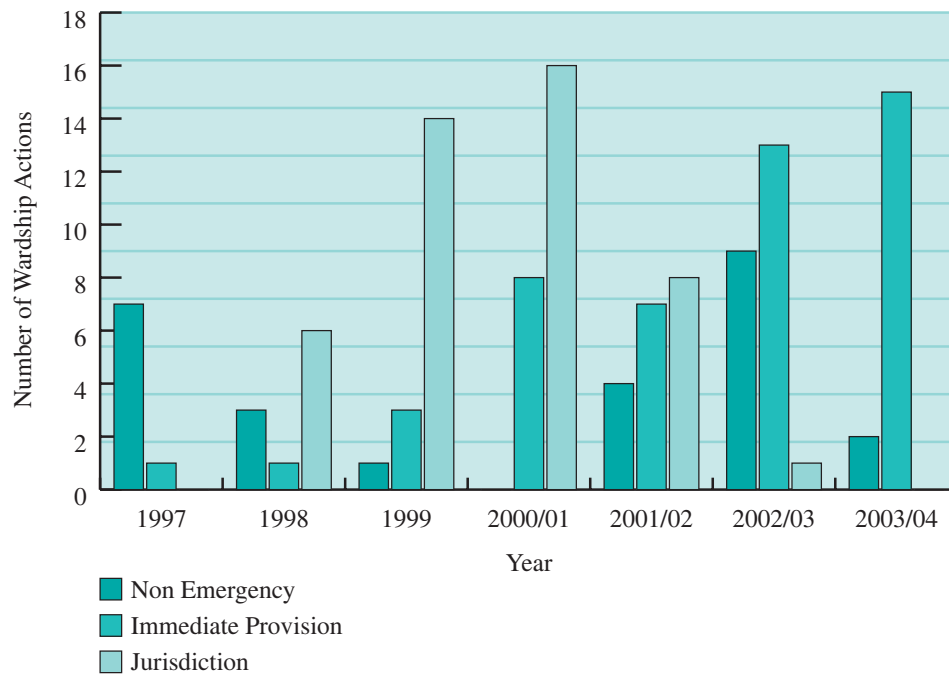


Figure 2
Applications Lodged and Disposed of (Jan 1997/Mar 2004)

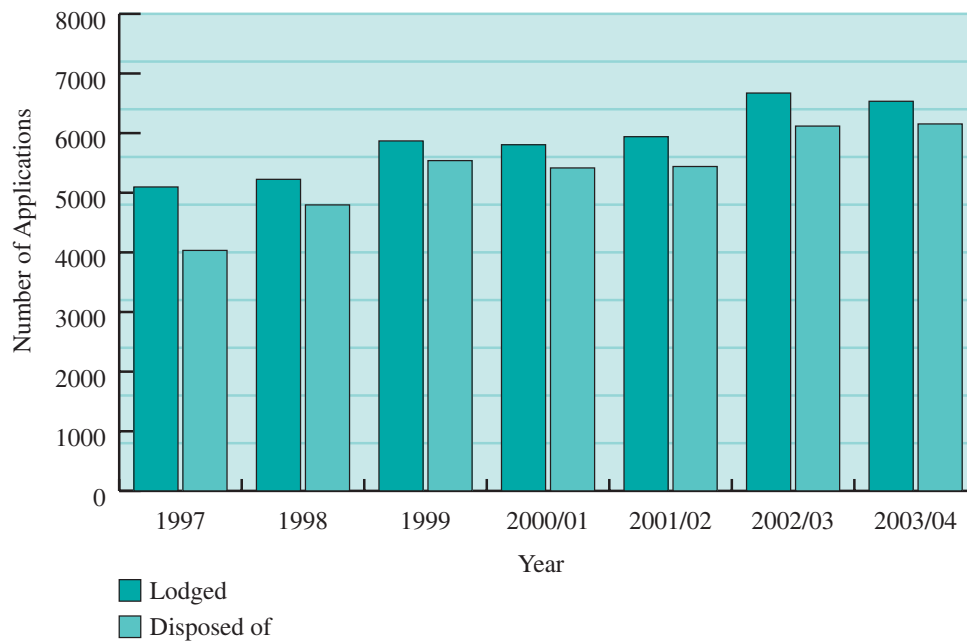


Figure 3 (a)
Applications Lodged (2003/04)

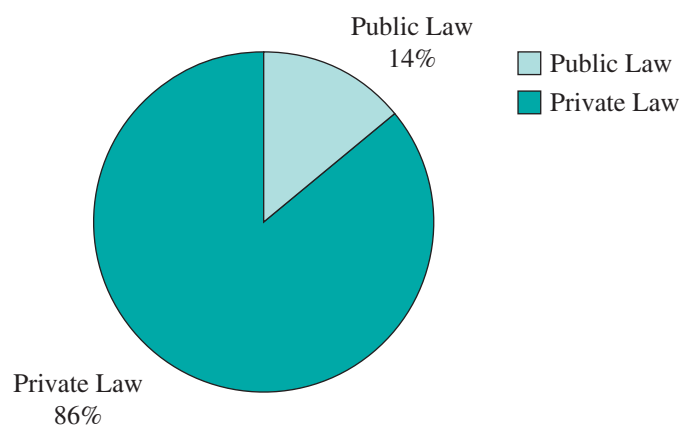


Figure 3 (b)
Applications Disposed of (2003/04)

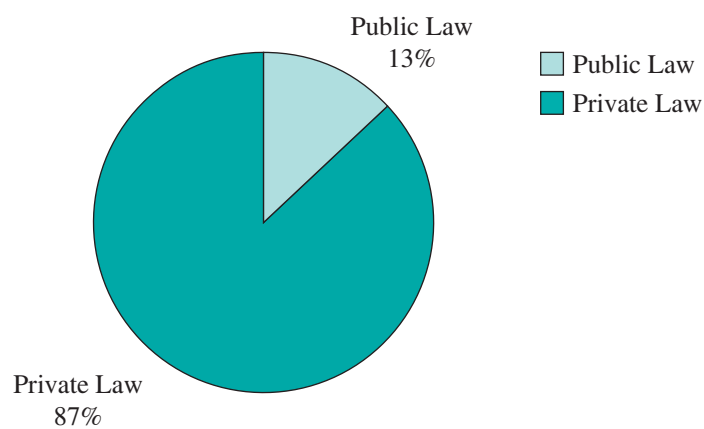


Figure 4
Children Order Public Law Applications Lodged and Disposed of
(Jan 1998/Mar 2004)

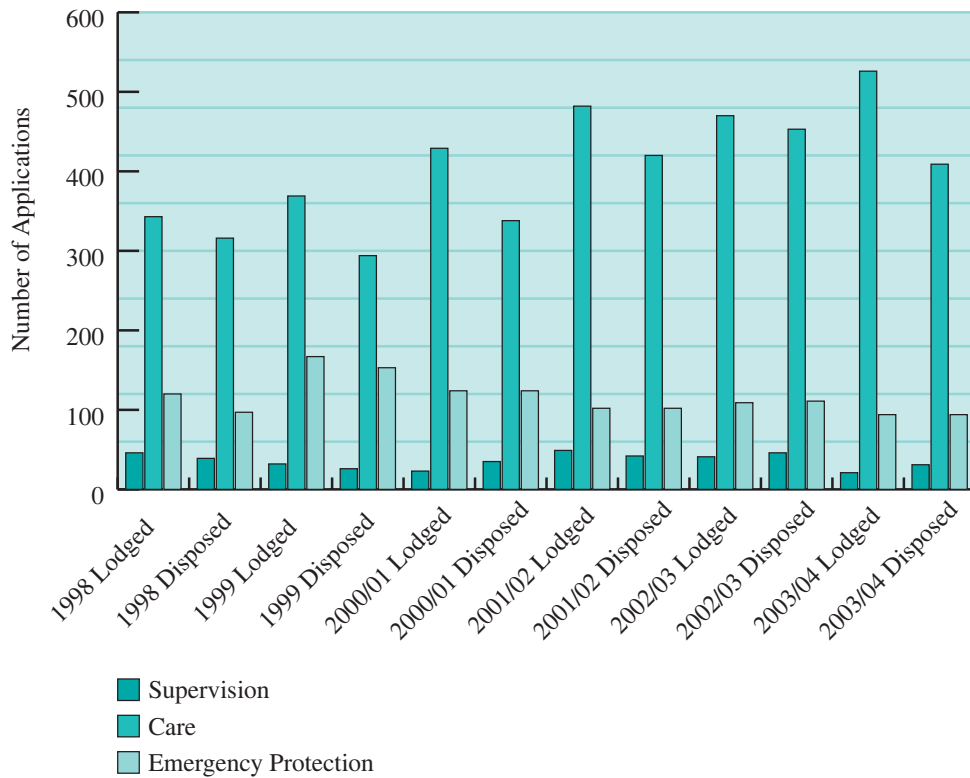


Figure 5
Disposal Time in Weeks (Apr 2003/Mar 2004)

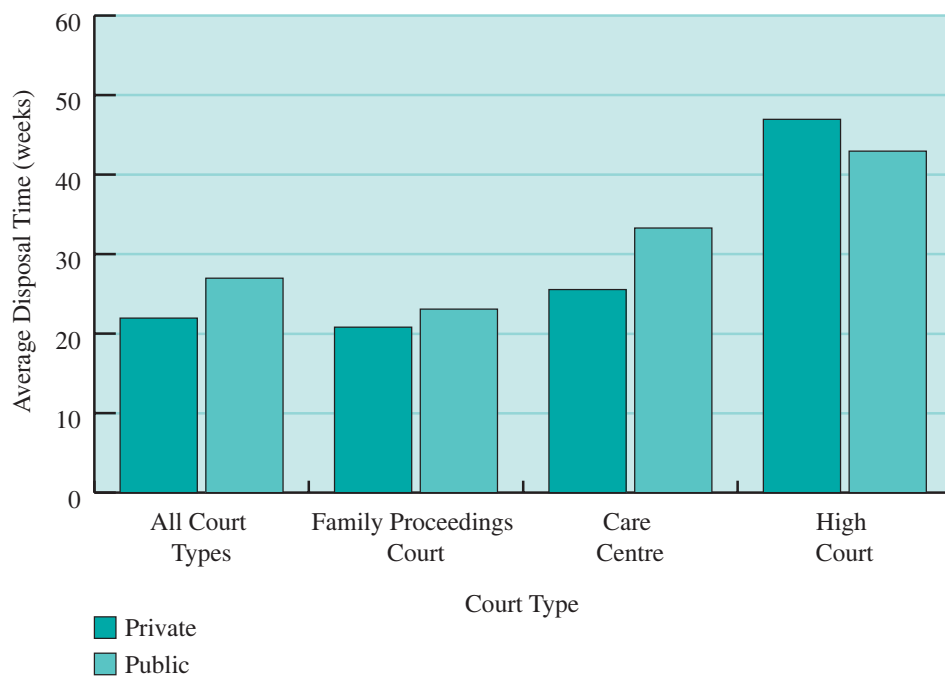


Figure 6 (a)
Public Law Orders Made (2003/04)

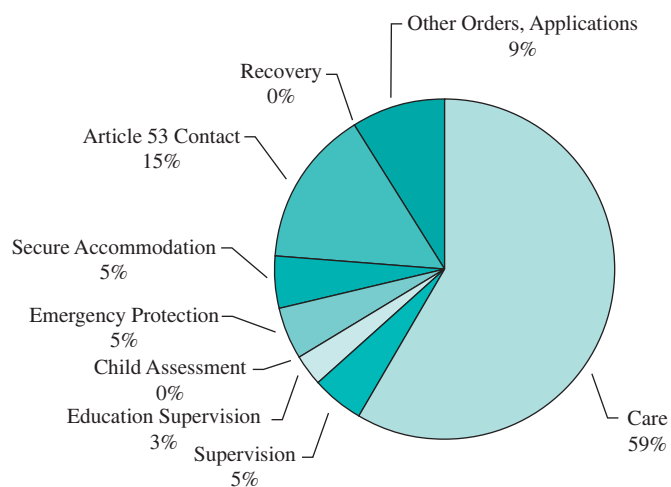


Figure 6 (b)
Private Law Orders Made (2003/04)

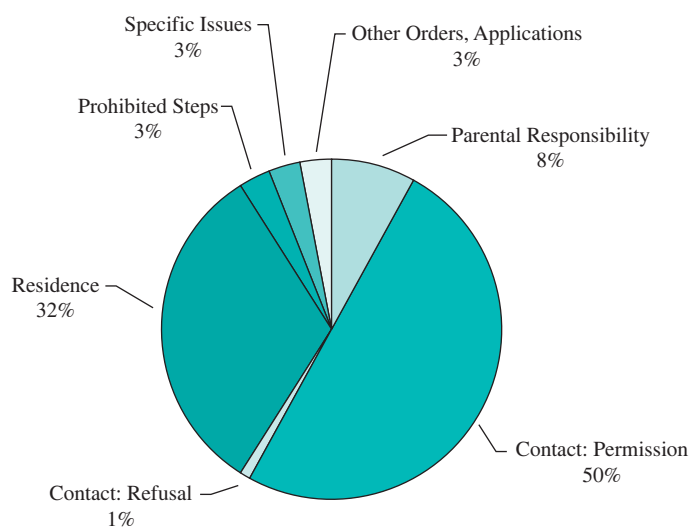


Figure 7 (a)
Applicants (April 2003-Mar 2004)

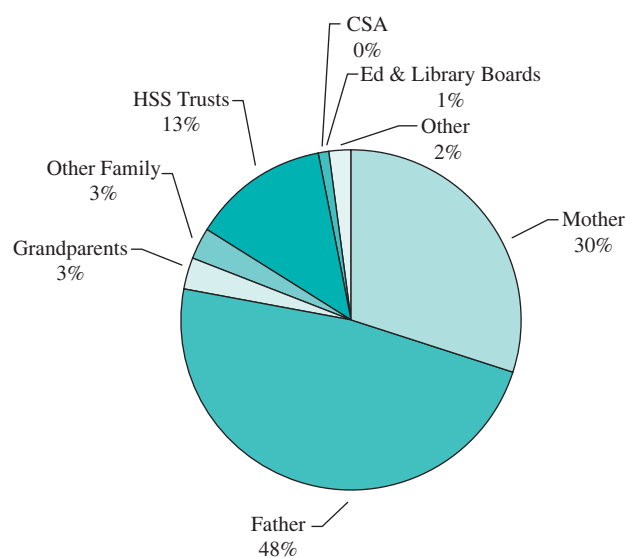
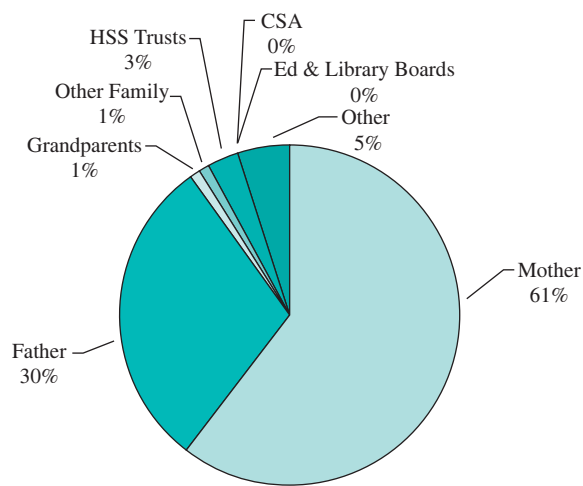


Figure 7 (b)
Respondents (April 2003-Mar 2004)



Note: Percentages may total to greater than 100 due to rounding.

Figure 8
Age and Gender of Children Involved

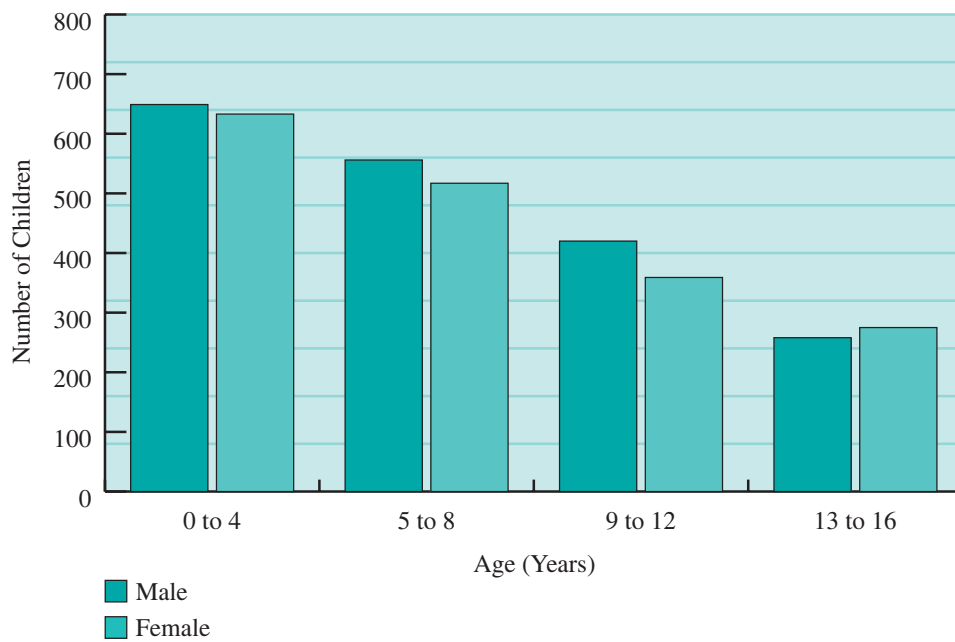


Figure 9.1
Applications Entered & Disposed of in Family Proceedings Courts

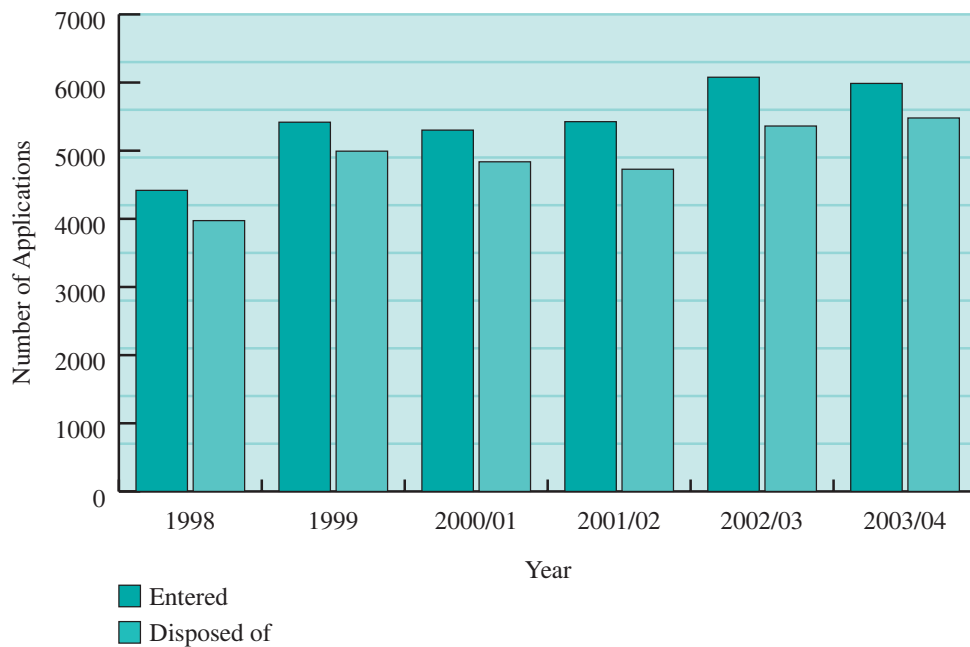


Figure 9.2
Applications Entered & Disposed of in Family Care Centres

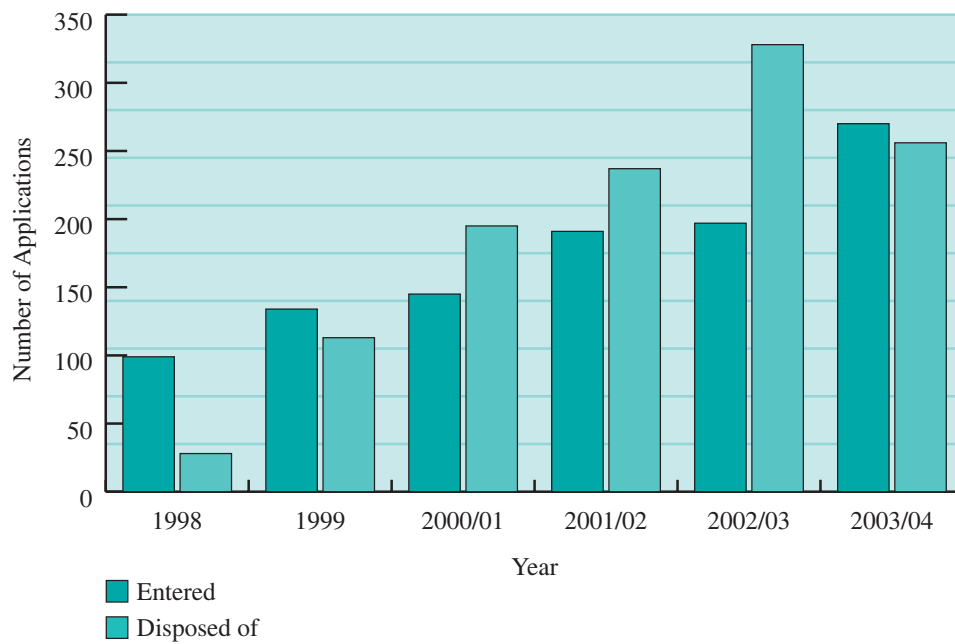


Figure 9.3
Applications Entered & Disposed of in the High Court

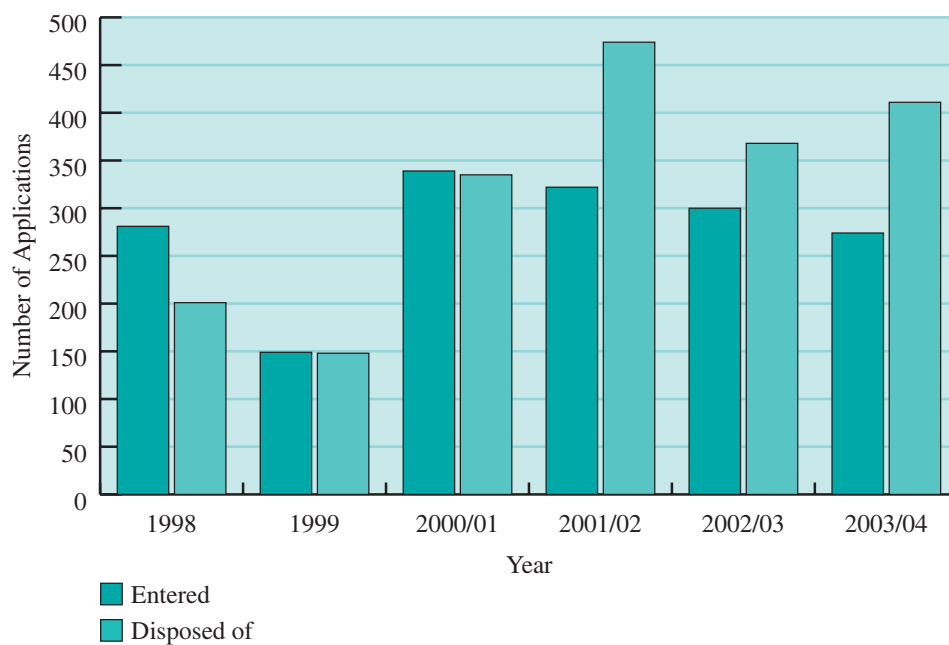
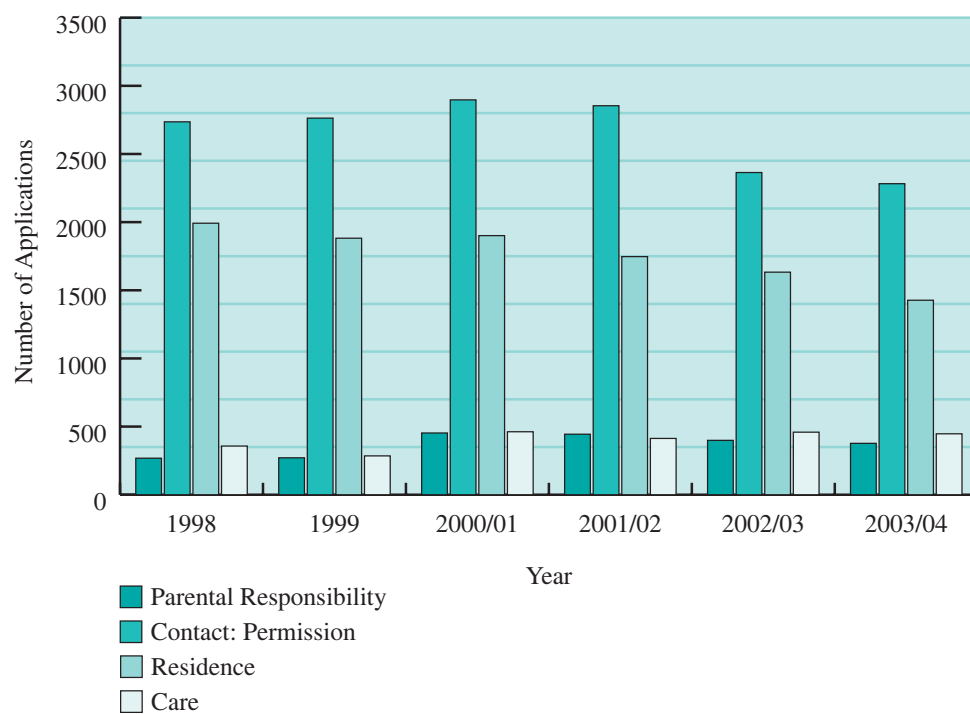


Figure 10
Orders & Disposals



Notes

The Children Order Advisory Committee

Fifth Report



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CHILDREN ORDER