

OUT OF HEARING

Representing children in care proceedings

Summary of research and findings

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SUMMARY:

The research

A small but in depth study of the representation provided for 20 children and young people, aged between 9 and 15 involved in 'specified proceedings' under the Children Act 1989 - 9 care proceedings, 4 secure accommodation applications and 4 others including discharge of care orders, residence order applications and contact in the areas covered by 2 guardian ad litem panels. None of the cases resulted in a contested final hearing; guardians negotiated some changes in local authority plans, parent's opposition to plans was not maintained and opposed applications for contact were withdrawn.

The researchers observed 63 Meetings between children/ young people and their representatives (guardians ad litem and solicitors). Interviews were conducted after the completion of the cases with the children/ young people, 12 guardians ad litem and 12 solicitors.

Background

The system for providing representation for children and young people in these cases is currently under review. A joint Department of Health, Home Office and Lord Chancellor's Department consultative document, 'Support Services in Family Proceedings - future organisation of court welfare services', was published in July 1998. A report is due shortly.

The creation of a unified court welfare service, including guardians ad litem will raise questions about how to provide and pay for the necessary legal services.

FINDINGS:

The majority of children and young people were isolated from their families, friends and communities, living in temporary foster homes or residential placements during some or all of the proceedings. Few had good relationships with social workers who knew them well. Consequently many children and young people valued the support of adults who would discuss their concerns and advocate their interests.

Children and young people were very concerned about the day to day arrangements for their care, where they would be living and go to school and when they would move. Contact with relatives or friends was a major issue for more than half of them.

Little written information about the proceedings taken for their protection was given to the children and young people, most had none. This made it more difficult for them to get a clear idea about what would happen and was dis-empowering. The leaflets currently available for children and young people are misleading and current practices amongst guardians, solicitors and the courts are very diverse.

Children and young people understood in general terms what the role of the guardian was. All trusted their guardians. Guardians were skilled at establishing rapport with children and young people, and sensitive to their anxiety.

Solicitors relied on guardians for guidance on their involvement in the case; most guardians had strong views about how they wanted solicitors to act. Guardians usually introduced the solicitor to the child or young person.

Most children and young people had less understanding of the role of their solicitor. Visits by solicitors were enjoyed as social occasions. Half saw their solicitor only once and two who had previously been represented by the same solicitor did not meet their solicitor during the current proceedings. Half only saw their solicitor with the guardian, another 6 saw their solicitor with the guardian and separately.

The young people involved in secure accommodation proceedings related strongly to their solicitor. They attended court, had more dealings with their solicitor and were clear about the solicitor's role. All but one had limited involvement with their guardian ad litem.

Guardians ad litem were reluctant to attend case conferences, where they did so they saw themselves as observers.

Solicitors rarely attended cases conferences when acting for children but did so if they were representing parents.

Most children saw only limited parts of the guardian's report and did not have opportunities to discuss the report with their solicitor. Almost all were dissatisfied with the access they had to the guardian's report. They said they would have liked to have been able to read the report properly for themselves.

Most children and young people accepted the need for the court order but of the 16 children not involved in secure accommodation proceedings, 10 disagreed with major aspects of the local authority's plan for their care, for example where they were to live or the contact arrangements.

For 5 children and young people, the outcome of the case left major issues un-addressed, such as where they would live, when they would move and contact with family. The court has limited powers over these issues that the local authority determines and consequently some representatives gave them less attention. In

contrast, the guardians and solicitors of 2 young people worked proactively to achieve substantial changes in the local authority's approach.

Where a child or young person is both competent to instruct a solicitor and in conflict with the guardian's recommendation court rules require the solicitor to take instructions from the child not the guardian. There were no examples of this although 2 children clearly objected to the guardian's recommendation and 3 others disagreed in part with what was advocated. The guardians and solicitors worked to avoid children and young people instructing the solicitor directly; most had had no more than one experience of this in the past.

Guardians and solicitors were reluctant to talk to children and young people about attending proceedings because of the negative attitudes towards this. Instead, they arranged visits to court buildings. Decisions about children's attendance at court were made early on in the proceedings and were not reviewed later when it became clear that the final hearing would be uncontested.

The children and young people were equally divided between those who wanted opportunities to participate in the proceedings, for example by attending part of the hearing, and those who did not. Except for the young people involved in secure accommodation applications, only one 15 year old attended their final hearing. Cases of discharge appeared to be given less attention than other cases. The involvement of both guardians and solicitors appeared to be more limited and less sharply focused in these cases that were regarded as happy events.

Arrangements to inform children about the outcome of cases were haphazard. Most children had 'goodbye' visits from their guardians but these rarely occurred on the day of the hearing. Some children heard the outcome of the case only from others involved in the proceedings.

Conclusions

The problems identified in this research are not due to bad practice by individual workers but result from the structure of the system itself, attitudes to children and young people and the limitation of substitute care for children and young people who need protection. The uneven distribution of power between courts and local authorities, solicitors and guardians, and guardians and social workers undermines the system's ability to deliver outcomes that are responsive to the concerns of the children and young people involved and make their welfare paramount.

Although all children and young people are parties to these proceedings they rarely receive the service adult clients expect, in practice the 'child's solicitor' acts for the guardian ad litem. A single system of representation covering both babies and young people in their teens cannot meet their diverse needs.

Young people would benefit from a solicitor who engaged with them by explaining the process, helping them to understand it and discussing their participation. Young children cannot use the services of a solicitor but need representation from a guardian

who has access to skilled legal advice; advocacy is not required in the majority of cases.

The researchers recommend the following developments in practice and policy

- All children and young people of school age involved in public law proceedings under the Children Act should be given an age-appropriate information pack to help them to know about and understand the roles of the guardian ad litem, solicitor and the court.
- Older children who wish to attend court hearings should have an opportunity to do so. Decisions to exclude them should not be made until the form of the final hearing is known. Where the proceedings are lengthy time should be set-aside for children and young people to attend, meet and speak to those making decisions about their lives.
- More attention needs to be paid to telling children and young people the outcome of proceedings. At the final hearing a direction should be given to clarify who will inform the child or young person.
- Provision should be made to ensure that a copy of the guardian's report is available after the proceedings when young people want to know more about themselves.
- Parents and other parties should only be represented by specialist lawyers who have the necessary knowledge of these proceedings.
- There should be a specialist panel for barristers; only barristers from this panel should appear in these cases.
- Solicitors should attend case conferences on behalf of their young clients.
- The form and content of the care plan should be regulated. Where matters such as placements or schools remain unconfirmed this should be made explicit.
- Further consideration should be given to extending the court's power in relation to the care plan. Additional power is essential if the interests of children and young people are to get proper consideration.

**Masson, J. and Winn Oakley, M. (1999) *Out of hearing: representing children in care proceedings*. Chichester: Wiley.
ISBN: 0471986429**

**Winn Oakley, M. and Masson, J. (2000) *Official friends and friendly officials: support, advice and advocacy for children and young people in public care*. London: NSPCC.
ISBN: 1842280007**

The full reports are available to purchase from NSPCC Publications and Information Unit, Weston House, 42 Curtain Road, London, EC2A 3NH, tel: 020 7825 2775. They can also be ordered online from NSPCC inform - www.nspcc.org.uk/inform.