Coming to conclusions: social workers’ perceptions of the decision-making process in care proceedings

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ABSTRACT
This study reports on an analysis of the transcripts of four focus groups involving social workers from four English social work teams working with children and families. In the groups, social workers discussed the process of coming to a decision in care proceedings (where decisions are made about the future care of a child where there are concerns about the care provided in the family of origin). It explores how social workers described themselves coming to conclusions about cases, and how they perceive the courts as doing so. Noting the need in such important proceedings both for thoroughness and for speed (for delay is likely to be harmful to children in need of a secure home), the authors consider ways in which decision-making might be distorted or delayed and discuss the perception of the social workers that some kinds of evidence are under- or overvalued by the courts. The authors conclude that, while it may seem that there is a trade-off between thoroughness and speed, this is not always the case and that factors that cause poor decision-making can also cause delay.

INTRODUCTION
This paper is based on four focus groups involving social workers from two local authorities discussing the decision-making process in care proceedings. Care proceedings typically involve decisions as to whether children will grow up in, and what kind of contact they will have with, their family of origin. It is obviously important that a process that has lifelong implications is thorough and balanced, but it is also important that it should be as quick as possible (Beckett 2001) because delay itself reduces the likelihood of satisfactory outcomes (see, e.g. Borland et al. 1991; Fratter et al. 1991; Thoburn et al. 2000 on the way that placement breakdown rates increase with the age of the child) and because of the emotional harm that can be done by prolonged uncertainty:

Generally speaking, the more continuity is disrupted, be it through multiple moves or though being left too long in limbo while ... future plans are being contested, the greater the risk of severe and lasting personality damage. (Steinhauer 1991, p. 82)

Procedural and substantive decisions should never exceed the time that the child-to-be-placed can endure loss and uncertainty. (Goldstein et al. 1980, p. 42)

What makes things difficult is that the need for thoroughness often seems to pull in a different direction to the need for speed. Two trends that have occurred since the implementation of the 1989 Children Act in 1991 have been, first, following a large initial drop, a steadily increasing number of care orders being made. In 1992, the first year during which the Act was in operation, the number of orders made was 2263 (see Fig. 1), as against 6200 under previous legislation in the year ending 31 March 1991 (Department of Health/Welsh Office 1993: the figure of 6200 is, however, inflated by the inclusion of some interim orders), but by 2004 the figure was 7796. Second, there has been a steady increase in the average length of care proceedings (Thomas et al. 1993; Lord Chancellor’s Department 2002, 2003; McKeigue & Beckett 2004). Children and parents were waiting 47 weeks in 2002 (see Fig. 2), compared with 24 weeks in 1993 (McKeigue & Beckett 2004). (The mean duration of
There is at first sight something contradictory about a system that seems to take longer and longer to come to a conclusion that a care order should be made, yet does in fact make more care orders than ever before. However, the two phenomena are probably linked. For one thing, the increasing numbers of care cases, unless matched by increases in available court time, will cause delay simply by blocking up court timetables. A different kind of link, we suspect, is that the same kinds of professional anxieties about risk-taking that may result in increasing numbers of cases being brought to court and (ultimately) orders made may also feed a reluctance, once proceedings are under way, to end the process of deliberation and take the risk that is entailed in coming to a final conclusion (Beckett 2001; Beckett & McKeigue 2003). None of the participants in this process possess a formula that will translate evidence into an unambiguous conclusion. The evidence itself is often contested and inexact. How do people come to conclusions under these circumstances? How do they decide when they know enough? How do they avoid leaving children at risk of harm in their own families while ensuring that they do not remove children unnecessarily from their own families?

The present study reports on an attempt to explore questions of these kinds with a key group of participants in the process.

**CARE PROCEEDINGS IN ENGLAND AND WALES**

In England and Wales, under the 1989 Children Act, care proceedings may be initiated by local-authority social work agencies when they have reason to believe a child in their area is suffering ‘significant harm’ attributable to the care he/she is receiving from his/her parent or carer. During care proceedings, a court is considering whether or not it should make a ‘care order’, some other order or no order at all, with the interests of the child being the paramount consideration. A care order gives the local authority parental responsibility for a child as long as the order is in force (which is until the child is 18 years old, unless the order is discharged), and allows the local authority to,
for example, place a child in a long-term foster home. While care proceedings are under way, temporary orders are used until a final decision is reached, such as an emergency protection order (in the event of acute risk to the child) or an interim care order, which must then be renewed at regular intervals until the final decision is made. In some cases, the making of a care order is followed by adoption, although this is a separate legal process.

Care proceedings are dealt with at three different levels of court: two presided over by judges, one presided over by a panel of magistrates. The local authority (i.e. the department of the local authority that provides social work services to children and families) is one party to the proceedings; other parties include the parents, the child and the ‘children’s guardian’, who is an independent social worker appointed by the court to represent the interests of the child. Others too (such as grandparents) can become parties. Each party is normally legally represented, and may call evidence and cross-examine witnesses. Expert witnesses, such as psychiatrists, may be called to give opinions, either by individual parties or by agreement of all the parties.

In addition to bringing cases to court in the first place, local authorities are responsible for implementing plans both at the conclusion of proceedings and while proceedings are under way. This simplified account should not be taken as definitive. For more detail, see, for example, White et al. (2002).

**METHODOLOGY AND LIMITATIONS OF THE STUDY**

Four focus groups were run in children and families social work teams from four towns in two local authority areas which we will call ‘Hillshire’ and ‘Daleshire’. We attended team meetings and invited qualified social workers with some experience of care proceedings to participate. The composition of the resulting groups varied (see Table 1), but each group consisted of social workers from a single team, who already knew each other.

Focus groups lasted 1.5 hours and took place in venues away from the social workers’ offices. Hilary Taylor facilitated all four of the groups, with the other two authors each participating in one Daleshire and one Hillshire group. The discussion was loosely structured around the following questions:

1. What are the problems involved in arriving at a final care plan in care proceedings?
2. How do you reach a decision about what a child’s needs are and whether they are being met?
3. (a) What do you need to know about a parent in order to decide whether their parenting is ‘good enough’? (Or to identify the areas in which it is not good enough.)
   (b) How do you obtain this information?
4. (a) What do you need to know about a parent in order to decide whether or not they will be able to change the way they parent in the near future?
   (b) How do you obtain this information?
5. (a) How do you interpret information you gather from different sources?
   (b) How do you weight information of different kinds?
   (c) How do you weight information from the past against information from the present?
6. (a) How does professional collaboration on these sorts of cases actually work at ground level?
   (b) What gets in the way of effective collaboration?
7. How does it feel to be involved in (a) care proceedings (b) any kind of assessment of parenting?

Discussions were recorded and transcripts were used as the basis for ‘qualitative thematic analysis’ (Seale 2004, p. 314). QSR NVivo software was used to

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**Table 1 Focus groups**

<table>
<thead>
<tr>
<th>Team (and local authority)</th>
<th>Numbers in group</th>
<th>Mix</th>
<th>Date of focus group</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Hilltown’ ('Hillshire')</td>
<td>5</td>
<td>All from same geographical team that has specialist function of providing long-term support</td>
<td>4 February</td>
</tr>
<tr>
<td>‘Hillville’ ('Hillshire')</td>
<td>6</td>
<td>Ditto</td>
<td>4 February</td>
</tr>
<tr>
<td>‘Daletown’ ('Daleshire')</td>
<td>8</td>
<td>Members of the same team but coming from different specialist subunits within the team (intake, long term, etc.)</td>
<td>4 June</td>
</tr>
<tr>
<td>‘Daleville’ ('Daleshire')</td>
<td>3</td>
<td>Ditto</td>
<td>4 September</td>
</tr>
</tbody>
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generate lists of all the passages in the transcripts that dealt with topics that interested us. We then identified themes that emerged, noting variations and counter-instances where these occurred.

What people choose to articulate in a focus group may of course differ from the views they express in other contexts or apply in practice. Other methods, such as questionnaires and individual interviews, raise similar problems, but the strength and weakness of focus groups as a method hinge on the particular group dynamics that come into play. Kitzinger (1994, p. 110) notes that the dynamics of a group ‘may censor any deviation from group standards – inhibiting people from talking about certain things’. On the other hand, they can ‘actually facilitate the discussion of otherwise “taboo” topics because the less inhibited members of the group “break the ice”’ (Kitzinger 1994, p. 111). We agree with Tonkiss (2004, p. 199) that focus groups ‘are a means of generating qualitative data so as to explore different perspectives on it, rather than to access representative or generalizable views about it’.

A major limitation of this study is that it looked only at local-authority social workers. Other participants in the process will have had very different views, as is evident, for example, in the work of Dickens (2005, 2006) on the different perspectives of social workers and lawyers. Problems caused by social work agencies have been identified elsewhere, including ‘Variations in social workers’ actual or perceived performance and experience’ and ‘The confidence that courts have in social workers’ actual or perceived performance and experience’ and ‘The confidence that courts have in social workers’ actual or perceived performance and experience’ (Department for Constitutional Affairs/Department for Education and Skills 2005, p. 5). However, the social workers in this study showed the normal tendency to focus more on the shortcomings of others than on their own (a tendency that some might argue is exacerbated by the adversarial nature of the Anglo-Saxon legal system; Cooper et al. 1995).

The observations of the social workers are partial and partisan, but we suggest that their observations about the shortcomings of others and about the constraints that they themselves work under are nevertheless likely to be useful and well founded. We do, however, need to bear in mind that their accounts will be less helpful on the constraints that others work under, or on their own shortcomings.

**ANALYSIS**

This paper looks at the care proceedings process as a series of decisions reached by various participants based on a variety of kinds of information. Each professional participant has to draw conclusions from a miscellany of first-hand and second-hand information, current observations and historical material.

Under the heading ‘Different kinds of evidence’, we explore the social workers’ views on how they and other participants weight evidence of different kinds. Under ‘Weighting of evidence in court’, we then move on to look at their views on how the courts carry out this same weighing-up process. Finally, under ‘Delay and the protocol’, we discuss the social workers’ impressions of the impact of the government’s protocol on reducing delay (Lord Chancellor’s Department 2003).

**Different kinds of evidence**

**Evidence of acute harm vs. evidence of chronic harm**

Participants alluded on a number of occasions to the difficulty, discussed by Beckett & McKeigue (2003), of ‘drawing the line’ in cases where the main concerns related to chronic problems of neglect rather than specific abusive incidents:

Daleville A: ’It’s the drip, drip, drip effect of neglect . . . we need some kind of professional measurement in the cases of neglect to measure that drip, drip and when you need to act, because it gets so woolly.’

They also referred to the way in which agency politics and the politics of the court process could lead to delay in bringing chronic cases to court:

Daleville C: ’It had to be a quite a serious level of neglect [to be seen as] neglectful by a senior manager [who would otherwise say] “Oh no, keep it under the child in need umbrella, you know, work under the child in need umbrella, put all those services in, do this, do that. Keep it out of the child protection arena, keep it out of the court arena”’.

Hilville C: ’Sometimes they [children’s guardians] say “We can’t believe it took you this long to get this case to court, the chronology’s been so bad”. And you think, if I came in two years ago when the chronology wasn’t so long you’d have said “Why are you here now? You haven’t given the parent a chance”’.

**Evidence from the past vs. evidence from the present**

Beckett & McKeigue (2003) noted that some assessments seemed to be unnecessarily repetitive, seeking further evidence about matters that seemed to be well evidenced already. But how much should one rely on
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Evidence from the past when people can change? Out of 40 odd passages in our transcripts that referred to the balance between evidence from the past and the present, only one (from Daletown H) was to the effect that too much emphasis was placed on the past. In general, social workers emphasized the importance of the past as a means of understanding the present:

Daleville A: ‘This is not my phrase but it is what I work by, “in the absence of change the best predictor of the future is the past”.’

Hilltown E: ‘How do you know if [parents] can or can’t change? Well obviously there is some of these experts that will say yes or no and you get psychological assessments and all this kind of thing done, but for me I think it’s something much more basic really. It’s kind of talking to them about their understanding about why that child came into care in the first place. Can they acknowledge any kind of responsibility?’

These comments seem consistent with current psychological and psychiatric opinion. In a review of the theoretical and research literature, Peter Reder comments, ‘The ability to undergo transitions in personal functioning and move on from adverse experience seems to be crucially linked to a capacity to reflect on the past’ (Reder 2003, p. 238, his emphasis).

A criticism of expert witnesses and children’s guardians was that they discounted the past too much:

Hillville C: ‘It’s almost like proceedings is the start of involvement. They [children’s guardians] don’t see involvement as being you’ve tried for years to make a difference with this family. You can give them a load of history . . . and it seems to just be wiped away.’

But social workers themselves sometimes could not access historical material as a result of either poor recording or lack of time. (Hilltown D: ‘You haven’t got the time to sit down and physically go through everything anymore.’) In a separate interview-based study in Daleshire in which two of the authors are currently engaged, some social workers have talked of pressure of work, saying they are being given new care proceedings cases even when their recording on existing care cases was months behind.

‘Field’ or ‘laboratory’

Related to the past–present balance is the weighting of evidence that comes from observations ‘in the field’ as against evidence that comes from observations in more artificial – one might say ‘laboratory’ – conditions (such as at a contact session at a family centre, or in a psychiatrist’s office). Social workers felt that the evidence of expert witnesses and children’s guardians was often based too much on the second kind of evidence:

Hilltown A: ‘There are situations when you get an expert or a specialist going in and doing a couple of contact sessions. The parents can be really ready for that and you end up with a report that is actually very positive for the parents. But it may be in total contrast to what you’ve been seeing or your family care worker [unqualified member of staff] has been seeing.’

Hillville C: ‘It’s a controlled environment and you haven’t got all the pressures of outside, and you haven’t got all day every day, and that can often mean that things are very different.’

However, social workers were also concerned about their own limited contact with children and its impact on their ability to form a balanced view. ‘I mean how can you possibly write a care plan on children that you don’t know?’ asked Hilltown E, adding: ‘But we do it all the time’.

Discounting the past too much and giving too much weight to ‘laboratory’ observations perhaps reflects a tendency on the part of experts and guardians to rely more on what they have seen for themselves than on second-hand information. If so, it is a tendency that the social workers themselves shared:

Researcher: ‘How do you deal with information that comes from a source that is just on paper, with no personal experience of it. How do you weight that?’

Daleville A: ‘It’s very hard for me. I tend to go out and do my own assessments.’

Strengths vs. deficits

The following exchange in the Hilltown group was interesting:

Researcher: ‘It obviously looms quite large with all of you the idea that you might go into work and find . . . that someone has been very badly injured or that you’ve not done all that you can to protect . . . Do you find that you worry in the other direction, do you find yourself lying awake thinking about the children that you’ve taken away from home and do you think perhaps you shouldn’t have done?’

Several speakers: ‘No, no, no.’

Researcher: ‘You don’t?’

A: ‘No, never.’

D: ‘How hard are we!’

(Laughter)

This group went on to qualify its initial reaction and assert its commitment to supporting families. However, that first ‘gut reaction’ seemed to us significant. Here is a comment from another team:
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Daletown C: ‘I think both Lauren Wright and Victoria Climbie bring out that you should always err on the side of caution. It should be the social worker who’s erring on the side of caution . . . and it’s up to other people to say “yeah that’s not true” and back it up with evidence for it.’

One social worker did, however, note that an emphasis on deficits could be destructive and that there was a need to recognize and encourage strengths:

Daleville A: ‘You know, we’re very good at telling these people how rubbish they are, and it is to kind of give them that praise and raise their self-esteem that they probably haven’t had. That is what you’re trying for the whole time.’

Weighting of evidence in court

The court process

Social workers in our four groups showed considerable ambivalence about their own influence in the court process, and about the process itself. On the one hand, there were many complaints about lack of respect for social workers’ knowledge and expertise:

Hilltown D: ‘And at the end of the day we’re the ones who know the children that we’re working with. And we should be able to say what is in the best interests of the children and what the final care plan should be.’

On the other hand, many comments welcomed both the specialist expertise of others and the fact that the decision-making process was shared:

Daleville A: ‘These are judgements of Solomon at times, you know, and we do make them, and that is so scary. That is the rest of that child’s life in your responsibility. That’s awesome, I think. And we shouldn’t do that in isolation, should we?’

Hilltown C: ‘Collaboration always helps. If you’ve got one person telling a story and somebody else tells you a sort of similar story it always kind of helps.’

Then again there were many frustrations with a process that, it was widely felt, could easily become a ‘game’ (Hilltown B, Daletown H) in which the child’s interests became lost as various players jockeyed for influence:

Hilltown E: ‘It sometimes becomes too adversarial and they lose sight of the child in court. It becomes kind of, “well if we just did this then they would agree to this”, you know, it’s kind of selling one off to get a better deal . . .’

Hillville D: ‘The solicitors and barristers and what have you, it’s a contest between themselves, they don’t really look at realistic things that can be managed. It’s a case of winning a case so suggesting things that really aren’t going to work.

They’re working on behalf of their clients and suggest unreasonable things.’

But some at least of the social workers clearly enjoyed the game-like aspects of the process:

Hilltown E: ‘I like the fight.’
(Agreement)
A: ‘I actually like it because it is so . . .’
B: ‘Structured?’
A: ‘Thank you, that’s the word.’
Daleville A: ‘It is very satisfying . . . and you can’t get a better high than coming out of there and saying “result”’

Parents, family and children

Child protection social workers are in a difficult position in relation to parents – some would say an untenable one – as they expected to try and work ‘in partnership’, while at the same time ‘they must simultaneously function as limit setters, enforcers and, if the case comes to court, witnesses “for the prosecution”’ (Steinhauer 1991, p. 119).

The social workers’ awareness of these contradictions was evidenced by a concern that parents might not be adequately represented in the process. In two teams it was suggested that, because the job of child and family social workers was to secure the best outcome for children, other professionals should act as advocates for vulnerable adults:

Hilltown E: ‘You’ve got a parent with a mental health problem, so you have a mental health worker for that parent. They are coming from the parent’s perspective . . . And they don’t consider the needs of the child within that and so it causes [tensions]. And I guess it’s good that there are tensions because maybe it makes you sort of re-examine the process.’

Daleville C: ‘We know our limitations and, you know, our focus is the children. But the parents who have got the learning difficulties should be getting a service from the [learning disabilities] team.’

But others challenged the right of other professionals to pursue a separate agenda:

Daletown E: ‘That drug and alcohol worker that we’ve got . . . tends to sort of block information-sharing by saying she hasn’t got permission to share from the service user, where in fact you know that information might be quite vital in terms of the care of the children.’

There were also a number of negative comments about delays caused by manoeuvres by parents or their legal representatives:

Daletown C: ‘Sometimes [parents’] barristers just go all out just to say “well I’m giving you a run for your money” really.
Sometimes, yeah, the issue of what’s best for the child gets lost within proceedings because people are fighting for adults.’

In fact, the words ‘lose’ or ‘lost’ appeared in connection with words denoting a child or children a total of 10 times and in all four focus groups (Hillville F: ‘the child is the one who loses out’; Daleville C: ‘the fifteen-year-old got lost’). There were also many references to the child’s needs as the proper focus of assessment (Hillville B: ‘I guess the child gives us our greatest weight of information’). However, there was comparatively little discussion about children’s views, although Daletown F did assert that the child’s views, when obtainable, needed to be given primacy, while Hillville F worried about the capacity of social workers to actually do this:

Hillville F: ‘I find it very frustrating under the caseloads we have now, of not truly knowing our children.’

**Weighting of evidence**

A number of statements expressed the view that courts gave too much weight to the views of expert witnesses and children’s guardians. In the case of expert witnesses, several arguments were put that it might be mistaken to value paper qualifications above personal knowledge:

Hillville E: ‘Some of the workers at our family centre are very skilled . . . but aren’t qualified. And [a report produced by them] is not seen as an expert enough report. Where, basically, the psychological report that we had done, apart from having IQ tests and things like that, was saying exactly the same thing.’

Children’s guardians actually have similar qualifications to local-authority social workers and were a particular target of complaint (out of 24 passages referring to guardians, 15 were on balance negative). Prominent among the social workers’ complaints was their perception that courts gave more weight to guardians’ views than theirs, even if based on more limited evidence:

Daletown C: ‘If the [children’s guardian] has a totally different view point than you, it’s nine times out of ten guaranteed that they have far more status within the court proceedings than a Social Worker who has far more contact with the child and the family.’

Hilltown E: ‘They never know the kids as well as we do. And yet, in court, they will be heard over and above us. Every time . . . Because they are considered the experts. They are, you know, I’ve heard judges say “this is the expert on the child”. And you just sit there and your blood boils.’

B: ‘And when they’ve cut and copied your statement, and you think, you know, who actually knows the child, who’s done the work? But what they say goes. And some of them are good, some of them are really good. But others . . .’

A number of concerns were raised by Hillville social workers about the lack of accountability of self-employed children’s guardians:

Hillville C: ‘. . . I think one of the big things that’s come out for a lot of us recently is that [children’s guardians] act purely independently, on their own, without supervision . . . [We have] processes and procedures, we’ve got a hierarchy of how information is shared and how decisions are made . . . And yet the guardian’s decision is the guardian’s . . . They seem to be able to reach whatever decision suits them. And it could sometimes be personal and sometimes you really think it is.’

This perceived lack of accountability was seen to result in a risk of ‘professional dangerousness’ (Hillville D). Guardians might enter collusive relationships with families as a result of their own ‘personal issues’ (Hillville A and D). They might also blur boundaries by employing one another as expert witnesses (Hillville C). There was also a concern that guardians’ power was out of kilter with their lack of responsibility for actually seeing things through (Hillville B).

**Delay and the protocol**

Social workers in this study were very aware of the harm to children that can be caused by delay, and several stories were told of instances where care proceedings had been drawn out to the detriment of children. There were also some positive comments on the protocol on reducing delay (Lord Chancellor’s Department 2003):

Daletown C: ‘I think . . . we’re generally better at identifying as to whether a fresh assessment is necessary . . . I think the protocol is going to help that even more, that you don’t undertake an assessment unless you can identify the benefits . . .’

However, there were also concerns about the impact of the protocol on the quality of the work done:

Hillville C: ‘If your care plan isn’t for a child to return home you’ve got very little time to actually come up with a proper thorough contact plan for a child, and if you’re talking about adoption it’s incredibly important that you get that right.’

Another concern was that parents can be alienated by the need to start parallel planning at an early stage:

Hillville C: ‘They don’t believe us when we say “It’s a plan, it isn’t the plan” . . . And then when it does end up being the
plan in some cases they think that was your agenda all along and you never gave them a fair hearing . . .

Reducing the length of court proceedings also did not necessarily translate into a reduction in the overall time it takes to secure a child’s future:

Daletown E: ‘That 40 weeks [time limit set by the protocol] doesn’t actually allow you to be placed with the family within that time. That could take forever and a day in terms of finding a suitable family to take on a child.’

DISCUSSION
As we stated earlier, our view is that the comments of the social workers are both valid and partial. They draw attention to important issues, but the reader should bear in mind that different and equally important issues would emerge if a similar exercise were undertaken with other participants.

Quality of decision-making
The following concerns emerged about the way that decisions are reached in the care proceedings process:

- The game-like aspects of the process can lead to compromises that do not truly address the best interests of children. This occurs if influential players are motivated by the desire to score points or by other purely personal needs that (perhaps as a result of lack of supervision) supplant or become confused with the needs of the child. (Compare one of Dickens’ social work manager informants: ‘The child got lost in the process of the legal game’; Dickens 2006, p. 82.)

- Too much weight was given to the opinions of participants whose knowledge of the case and/or recent experience of actually implementing plans was limited.

- There was a lack of time for the social workers themselves to truly ‘get to know’ the children.

- Long-term patterns were too readily discounted in the light of limited evidence from new assessments, sometimes carried out in very artificial conditions.

The latter occurred for a variety of reasons including:

- A tendency on the part of all participants (including social workers themselves) to distrust second-hand information and to want to look at the situation anew themselves.

- The fact that those best placed to observe long-term patterns are often of relatively low status, including unqualified staff and social workers themselves.

- Social workers, particularly in complex cases, may not have time to properly consider the available written evidence – or it may simply be unavailable.

Bias towards ‘safety’
We referred earlier to comments suggesting a bias towards removing children as against leaving them in situations where there was some risk. We also noted that going to court has its attractions: it is exciting and has a clear ‘structure’ (Hilltown B). As social workers choosing to resist the court route are also placing themselves in a position where failure could result in public disgrace – UK social workers do tend to see a media lynching as their likely fate if they fail to protect children – we do not find it hard to see why choosing care proceedings could, in borderline situations, be the more attractive option. Perhaps this is a dynamic that helps to account for the increasing numbers of care proceedings being brought to court.

The problem of expertise
We do not have to agree with Hilltown D that social workers alone ‘should be able to say what is in the best interests of the children’ to recognize that distortions and delays will occur in the decision-making process if the expertise of any participant is either over- or undervalued. In the UK, recent miscarriages of justice resulting from excessive weight being placed on the evidence of a paediatrician, Professor Roy Meadow, are examples of expert evidence being over-valued, though, as The Observer newspaper commented:

Meadow’s [case] highlights the enormous difficulties involved in being a witness in highly complex cases where giving your opinion may be treated as cast-iron fact . . . Currently, doctors are all too often trapped by an adversarial system into presenting evidence as black or white when, in truth, it may be grey. (The Observer 2005)

In a discussion on the difficulties for judges and welfare officials in reaching decisions in matrimonial custody cases, Jon Elster refers to a ‘psychological tension in decision makers that many will be unable to tolerate’, resulting from the gravity of the decision taken together with the lack of an incontrovertible way of making it. He suggests that some resolve this ‘by an irrational belief in the possibility of rational preference’ (Elster 1989, p. 124), a belief that, given enough information and expertise, an incontrovertibly ‘right’ answer will emerge. Although care
proceedings are a different process, similar tensions exist, and we suggest that one ‘irrational belief’ that may emerge is an excessive faith by a participant either in the infallibility of some other participant or in the infallibility of him- or herself. Beckett & McK-eigue (2003) describe one striking example of a single expert, on the basis of very limited direct knowledge of a case, being allowed to overturn an established consensus, with disastrous results.

Some observers might be inclined to dismiss the complaints of social workers about the deference shown to the views of experts and guardians as pro-fessional jealousy. But they actually raise important questions about the meaning and limits of expertise in this area. Poor decisions and unnecessary delays will result if courts have an inflated idea of the level of certainty that any professional can reasonably achieve.

Delay

To actually come to a conclusion carries the risk of discovering that one’s conclusion is wrong, and this creates an incentive to delay. However, it would appear that the protocol has had some success in creating a new set of incentives. Social workers did feel under pressure to bring things to a rapid conclusion and they did see at least some evidence that courts are being tougher on known causes of delay such as requests for additional assessments or new parties joining proceedings at a late stage. If this translated into quicker decision-making, this should be good news for children, although, as Daletown E noted, we need to remember that delay in court is not the only obstacle in the way of long-term resolution.

[An American study (Bishop et al. 1992) found that court proceedings were the middle part of a much longer period of uncertainty. A Northern Irish report made the related point that the length of proceedings per se is not necessarily the issue, so much as the length of time that a child spends in temporary care arrangements (McSherry et al. 2004).] And there were concerns that tight deadlines could lead to problems with the quality of the work.

CONCLUSION

It is not easy to design a process that will both deliver the best possible answers to complex and very important questions, and do so quickly. We would be foolish to suggest detailed changes on the basis of the limited and partial view presented here.

However, one important point to make is that it may be mistaken to assume that there is necessarily always a trade-off between the quality of decision-making and its speed. Our findings suggest that there are a number of factors in the present system that may cause both delay and inferior decision-making.

First, the system would be more likely to yield both better and quicker decisions if it were less adversarial, because this would reduce the game-playing aspects of the current process that can intrude on rational consideration of the child’s best interests.

Second, if all participants were well supported rather than acting in isolation, this would also be likely to result both in quicker and in better outcomes, as personal agendas and anxiety-reducing distortions would then be less likely to intrude.

Third, failure to properly utilize information from the past is also likely both to cause delay and to result in inferior decisions being made. To adapt a well-known aphorism: Those who neglect the past may be condemning children and parents to repeat it.

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