

# ECONOMIC AND SOCIAL RESEARCH COUNCIL END OF AWARD REPORT



## For awards ending on or after 1 November 2009

This End of Award Report should be completed and submitted using the **grant reference** as the email subject, to **reportsofficer@esrc.ac.uk** on or before the due date.

The final instalment of the grant will not be paid until an End of Award Report is completed in full and accepted by ESRC.

Grant holders whose End of Award Report is overdue or incomplete will not be eligible for further ESRC funding until the Report is accepted. ESRC reserves the right to recover a sum of the expenditure incurred on the grant if the End of Award Report is overdue. (Please see Section 5 of the ESRC Research Funding Guide for details.)

Please refer to the Guidance notes when completing this End of Award Report.

Grant Reference	RES-062-23-1163		
Grant Title	The legal representation of children in care proceedings: Problems and Strategies		
Grant Start Date	1.6.08	Total Amount	£ 244,007.16
Grant End Date	31.5.10	Expended:	
Grant holding Institution	University of Bristol		
Grant Holder	Julia Pearce. PI changed from 31.5.10 to Professor Judith Masson		
Grant Holder's Contact Details	Address	Email	
	School of Law, Wills Memorial Building Bristol BS8 1RJ	judith.masson@bristol.ac.uk	
		Telephone	
		0117 954 5304	
Co-Investigators (as per project application):		Institution	
Professor Judith Masson		University of Bristol	
Kay Bader		University of Bristol	

## 1. NON-TECHNICAL SUMMARY

Please provide below a project summary written in non-technical language. The summary may be used by ESRC to publicise your work and should explain the aims and findings of the project.  
[Max 250 words]

This research aimed both to contribute to the literature on professional roles within the family justice system, and also to provide in-depth understandings of the nature and quality of parental legal representation for use by policy makers and practitioners. Underlying the issues for the legal representation of parents are issues of access to justice for one of the most vulnerable and needy groups in our society. This study sought to explore the experience and difficulties of practitioners in the context of ongoing changes in procedure and funding in the care proceedings system, and the topic continued to be of great public interest and scrutiny throughout the period of the research. The project built on quantitative data arising from an earlier study, using qualitative methods in an investigation of live and recently conducted cases.

Parents chaotic lives make representing them challenging. Solicitors in care proceedings are committed to ensuring these clients have the best opportunity to retain or regain care through understanding the court's focus of the welfare of the child. They value and give realistic advice, encourage co-operation with children's services and use their expertise to expand clients' options. They repeatedly negotiate with other lawyers for assessments, placements or contact to further their client's case, reserving court contests for arguable matters. Final hearings are an exception; legal professionals accept parents' right to fight to keep their children whilst encouraging parents to accept inevitable outcomes. Use of barristers is varied; solicitors maintain income by advocacy and/or high caseloads.

## 2. PROJECT OVERVIEW

### a) Objectives

Please state the aims and objectives of your project as outlined in your proposal to the ESRC.  
[Max 200 words]

The research aimed to explore the task of legal representation and client management, focusing on the experience of lawyers representing parents of children subject to care proceedings. By examining the handling of these cases we sought to explore how lawyers adapt to the special needs of their clients. Parents have to be helped to new understandings that their best chances of success will be by co-operation rather than outright opposition, involving significant 'translation' of their disputes. At the same time, the lawyer's role is to test the Local Authority's case, potentially running counter to the ethos of constructive co-operation. We aimed to explore how the work of parents' lawyers contributes to the operation of the litigation process overall, how the representatives themselves conceive their role and also the expectations of other players in the process.

In a period of major review and development, we sought to assess the extent to which newly introduced procedures would succeed in creating changes in the culture of child protection litigation. Finally, we sought to examine the impact of recent restructuring of legal aid remuneration, particularly whether specialist practitioners might be replaced by others with less experience and understanding of how this work is handled.

### b) Project Changes

Please describe any changes made to the original aims and objectives, and confirm that these were agreed with the ESRC. Please also detail any changes to the grant holder's institutional affiliation, project staffing or funding. [Max 200 words]

No changes were made to the original aims and objectives.

The Principle Investigator, Julia Pearce, left the University at the end of the project on 31.5.10. Further contact relating to this project should be addressed to Professor Judith Masson. (Judith.Masson@Bristol.ac.uk)

### c) Methodology

Please describe the methodology that you employed in the project. Please also note any ethical issues that arose during the course of the work, the effects of this and any action taken. [Max. 500 words]

This qualitative research combined interview and observation methods. Quantitative data from an earlier study (*The Care Profiling Study*, 2008) formed a backdrop and informed purposive selections of samples representing the full range of cases and practitioners.

Fieldwork was conducted over 18 months from September 2008. The project was based around County Courts and Family Proceedings Courts in two major metropolitan conurbations and two smaller city locations with surrounding rural areas in England and Wales.

Our method comprised 3 limbs:

1. Observations of court hearings at all stages of the proceedings. These took the form of 'shadowing' parent's lawyers in court during extensive pre-hearing discussions, then accompanying cases into the courtroom. Researchers took full notes to include a record of all parties and legal representatives present, a chronological log, the subject matter of discussions, ideas and impressions. We observed 109 hearings, the majority of which (81) were from the 16 case studies (see below). Of the remaining observations from other cases, 12 were with judges, legal advisers and Local Authority lawyers from each area, to obtain their perspectives.
2. A set of 16 case studies tracking current cases through the court process. Cases selected as examples of categories identified from our earlier study were recruited from observations at early stage hearings and tracked to their conclusion. They were handled by a variety of solicitors in terms of experience and expertise and included representatives of both mothers and fathers, and of parents who were the main focus of concern but also of some more peripherally involved, to ensure that the sample reflected the full diversity of a solicitor's caseload.
3. Interviews with lawyers representing parents, and other legal personnel involved in care proceedings. Interviewees selected to represent a range of specialisation and experience included solicitors involved in the case studies, others identified from the Law Society website, and barristers from each area – a total of 41 solicitors and 8 barristers. Interviews were case and topic based, using a semi-structured schedule to ensure that key research questions were addressed, while leaving scope for unforeseen themes and issues to emerge. Interviews with case study practitioners included discussion of that case – allowing for clarification and exploration of the practitioner's strategies. Other practitioners discussed their most recently completed case on an anonymous basis. The remainder of the interview focused on child care work more generally and practitioners' responses to current issues. Interviews and/or focus groups were conducted with other key players in these proceedings: judges, in-house local authority solicitors, and magistrates' legal advisers.

Ethical considerations centred on the fact that care proceedings are held in private. While official approval for the research was granted in principle, personal consent from the parents involved was also required. Parents were approached on our behalf, by their solicitors beforehand, in order to avoid distraction from their full concentration on the case at this distressing time. Consent was checked personally at each observation. The identities of all participants, professional and private, remains confidential and anonymised on all records and reports.

## d) Project Findings

Please summarise the findings of the project, referring where appropriate to outputs recorded on *ESRC Society Today*. Any future research plans should also be identified. *[Max 500 words]*

### Parents

- Were able to access committed and able legal representatives.
- The court environment creates an alien and lonely experience for parents who were experiencing clusters of other legal and social problems.
- Parents generally did not appreciate why they were expected to spend so long at court for directions hearings.
- Nevertheless most parents who were involved remained engaged in the legal process.

### Practitioners

- Legal aid reform was a matter of concern and impacting on practice but most solicitors expected to continue care work. (conference paper on *ESRC Society Today*)
- Practitioners routinely accepted every client seeking representation but were very wary of those wanting to transfer from other solicitors
- Very heavy workloads were sustained through deep interest and commitment but there were signs of demands from rising case numbers overwhelming solicitors towards the end of the study.
- A small group of specialists in each area regularly worked on the same cases. Not all were Panel members or intended to join.
- Most Panel solicitors thought a caseload with both parents and children aided their understanding.

### Representation

- Parents presented representatives with particular difficulties in terms of maintaining contact and obtaining adequate instructions because of their chaotic life-styles.
- Representing parents effectively entailed enabling them to understand the court's focus on the child's welfare.
- Representatives both stressed the importance of parental cooperation with the local authority and respected their client's right to contest.
- Whilst some solicitors provided extra support to clients perceived to be in crisis others focused more narrowly on legal issues.

### In court

- Much client solicitor interaction took place at court, some solicitors rarely saw clients away from court.
- Parents' legal representatives negotiated both with the other parties and with their own clients about assessments, contact, interim orders.
- The wording of threshold statements was frequently a matter for hard negotiation both with the local authority and with client.
- Many solicitors enjoyed advocacy. They were constrained from handling hearings of more than a day by office workload pressures, fee structures and concerns about advocacy skills.
- In contrast, some solicitors, particularly those working part-time, routinely instructed counsel throughout.
- Continuity of representation was highly valued but difficult to achieve because of the number of hearings and caseloads. A few cases were marked by a continually changing cast of professionals.
- Advocates were frequently engaged in two hearings in the same session for reasons of cost efficiency. Although this rarely caused significant delays it contributed to the hectic nature arrangements for pre-hearing discussions and hearings.

### Court process

- PLO did not appear to have changed legal culture in care proceedings.
- Parties' legal representatives work co-operatively to progress cases to resolution.
- Strong case management could displace legal representatives' co-operative approach.
- The use of assessments was discussed largely in terms of selection of the experts and allocation of costs.
- Jessiman et al's (2009) early findings were reflected in this later study.

#### e) Contributions to wider ESRC initiatives (eg Research Programmes or Networks)

If your project was part of a wider ESRC initiative, please describe your contributions to the initiative's objectives and activities and note any effect on your project resulting from participation. *[Max. 200 words]*

N/A

### 3. EARLY AND ANTICIPATED IMPACTS

#### a) Summary of Impacts to date

Please summarise any impacts of the project to date, referring where appropriate to associated outputs recorded on *ESRC Society Today*. This should include both scientific impacts (relevant to the academic community) and economic and societal impacts (relevant to broader society). The impact can be relevant to any organisation, community or individual. *[Max. 400 words]*

##### Scientific Impacts

The Study has provided data on solicitor's views and practice in relation to pre-proceedings meetings which has been used in the development of research instruments for RES -062-23-2226 Families on the edge of care proceedings: the operation and impact of pre-proceedings processes in children's social Care.

##### Social and economic Impacts

Discussion with the Legal Services Commission which is concerned to have a better understanding of the legal work they pay for have taken place as the research progressed. Care proceedings account for 40% of the family legal aid budget. The study provides the only independent, fine-grained evidence of lawyer's practices in care proceedings previously the only information came from the profession whose interest is seen as maintaining fee levels. This information will be particularly relevant. It also provides evidence of solicitors' response to and views about the changes to the legal aid fee structure, particularly the implications of these for client service.

A paper, *Responding to the challenges of fixed fees: solicitors in care proceedings*, was presented at the 8th International Legal Services Research Conference in Cambridge on June 30<sup>th</sup> 2010 and has been uploaded on the *ESRC Society Today Website*. This has resulted in an approach for assistance from the Northern Ireland Legal Services Commission which is currently planning fee reform.

The Justice Select Committee is undertaking an Inquiry into the Family Courts, including the impact of the 2007 and 2010 Legal Aid changes. A memorandum of Evidence based on the analysis of the research has been provided to the Committee and will be on the Parliament website in due course.

A Review of the Family Justice system was announced in December 2009. The terms of reference of this Review include care proceedings. Discussions with the Review Team and their secretariat have established a need for information on 'case journeys' and on time expenditure in and waiting for court hearings. The Parent's Representation Study is only source of this information. It is being provided to the Review and discussions are underway about possible further analysis of the data to add to the detail provided in the report. In addition, the research supplements Jessiman et al, *Early valuation of the PLO* (MoJ 2009) indicating the limited effect on practice of the reforms to care proceedings procedure introduced in 2008.

### **b) Anticipated/Potential Future Impacts**

Please outline any anticipated or potential impacts (scientific or economic and societal) that you believe your project might have in future. *[Max. 200 words]*

#### **Scientific**

A paper on the use of expert evidence to be given at the European Legal Research Network Conference on *Experts in the Judicial Process* in October 2010 will disseminate the findings relating to the difficulties in controlling the use of experts and the method of researching legal practice. The method of lawyer/court observation developed is expected to inform the future research by socio-legal scholars.

#### **Social and economic**

The work will contribute to the better understanding of the role of lawyers and the courts in care proceedings which will be crucial at a time when resources for justice services are under pressure. Dissemination to practitioners via *Family Law* and the email service *Family Law Week* will ensure that it reaches lawyers who practice in this area.

Understanding of use of expert evidence importance re financial control.

The research will also contribute to the better understanding of the work of lawyers by other professionals involved in child protection and compulsory care. A paper has been commissioned for inclusion in a special issue of *Child and Family Social work* and conference presentations are planned for autumn and spring with Sussex local family Justice Council, Essex County Council.

You will be asked to complete an ESRC Impact Report 12 months after the end date of your award. The Impact Report will ask for details of any impacts that have arisen since the completion of the End of Award Report.

## 4. DECLARATIONS

Please ensure that sections A, B and C below are completed and signed by the appropriate individuals. The End of Award Report will not be accepted unless all sections are signed.

Please note hard copies are NOT required; electronic signatures are accepted and should be used.

### A: To be completed by Grant Holder

*Please read the following statements. Tick ONE statement under ii) and iii), then sign with an electronic signature at the end of the section.*

#### i) The Project

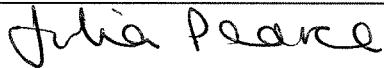
This Report is an accurate overview of the project, its findings and impacts. All co-investigators named in the proposal to ESRC or appointed subsequently have seen and approved the Report.	<input checked="" type="checkbox"/>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------

#### ii) Submissions to *ESRC Society Today*

Output and impact information has been submitted to <i>ESRC Society Today</i> . Details of any future outputs and impacts will be submitted as soon as they become available.	<input checked="" type="checkbox"/>
<b>OR</b>	
This grant has not yet produced any outputs or impacts. Details of any future outputs and impacts will be submitted to <i>ESRC Society Today</i> as soon as they become available.	<input type="checkbox"/>
<b>OR</b>	
This grant is not listed on <i>ESRC Society Today</i> .	<input type="checkbox"/>

#### iii) Submission of Datasets

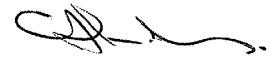
Datasets arising from this grant have been offered for deposit with the Economic and Social Data Service.	<input checked="" type="checkbox"/>
<b>OR</b>	
Datasets that were anticipated in the grant proposal have not been produced and the Economic and Social Data Service has been notified.	<input type="checkbox"/>
<b>OR</b>	
No datasets were proposed or produced from this grant.	<input type="checkbox"/>

SIGNATURE:   
NAME: JULIA PEARCE DATE: 3-8-2010

**B: To be completed by Head of Department, School or Faculty**

*Please read the statement below then sign with an electronic signature to confirm your agreement.*


This Report is an accurate overview of the project, its findings and impacts.

SIGNATURE:   
NAME: CAROLINE ANDREWS  
POSITION: School Manager DATE: 3.8.10.

**C: To be completed by Finance Officer of Grant-Holding Institution**

*Please read the statement below then sign with an electronic signature to confirm your agreement.*

This Report is an accurate overview of the project, its findings and impacts. All co-investigators named in the proposal to ESRC or appointed subsequently have seen and approved the Report.

SIGNATURE:   
NAME: VINCE BOYLE  
POSITION: FACULTY ACCOUNTANT  
UNIVERSITY OF BRISTOL DATE: 20/08/10