

CSP LONDON SEMINAR – 19 FEBRUARY 2015

UNACCOMPANIED MIGRANT CHILDREN AND THE COURTS

FOLLOW-UP DISCUSSION PAPER BY ARRAN POYSER (CSP FELLOW)

MARCH 2015

1. Introduction

1.1 This paper is offered for initial discussion in the light of some of the issues raised at the Centre for Social Policy (CSP) London Seminar on 19 February 2015 '*Unaccompanied Migrant Children and the Courts*'. It suggests a possible way of addressing, through a staged approach, estimated cost savings that might accrue from future changes to the present arrangements for dealing with unaccompanied migrant children who may seek to use the courts or find themselves subject to court or various tribunal proceedings.

1.2 The paper attempts to build on thinking that may have already been addressed to some degree by the recently established Children's Court Steering Group (CCSG) and other linked initiatives as well as examples which may have certain similarities such as the Family Drug and Alcohol Court (FDAC) being rolled out nationally.

1.3 Also available at the CSP seminar was a report¹ whose author, Nadine Finch, gave a presentation. CONNECT has the strap-line 'Identifying good practice in, and improving the connections between actors involved in the reception, protection and integration of unaccompanied children in Europe.'

1.4 One product of this ongoing work is the UK Tool on *Standards to Ensure that Unaccompanied Migrant Children are able to Fully Participate: A Tool to Assist Actors in Legal and Judicial Proceedings*²

1.5 The Author abstract states:

These standards are designed to alert different actors in legal and judicial proceedings to relevant obligations which arise from the UN Convention on the Rights of the Child and EU law and to ensure that unaccompanied migrant children benefit from the rights which derive from these legal instruments. They also provide examples and practical suggestions as to how agencies and professionals can work together collectively to meet their obligations. The standards cover each phase and aspect of the legal and judicial proceedings, including: appointment of independent

¹ Always Migrants **Sometimes Children**: Nadine Finch Barrister and Consultant: Connect , Garden Court Chambers, Coram Children's Legal Centre (August 2014)

² <http://www.childrenslegalcentre.com/userfiles/CONNECT-UKtool-print.pdf>

legal guardians; appointment of lawyers; provision of interpreters; provision of cultural mediators; social workers; the police and the prosecution services; the immigration service; the interviewing of a child; information sharing; expert evidence; and professional training, accreditation and supervision. The document also sets out the three overarching principles which underpin the standards. These are: the best interests of each unaccompanied migrant child should be a primary consideration at each stage of legal and judicial proceedings; an unaccompanied migrant child should be provided with the necessary information, representation and assistance to be able to participate in any legal and/or judicial proceedings in a meaningful way; and no actor should discriminate against an unaccompanied migrant child in any legal or judicial proceedings on the basis of race, nationality, gender, sexual orientation, disability or on account of any special educational needs.

1.6 Potential cost savings are only one of many aspects of the total picture touched on at the CSP Seminar. That this topic has been chosen for further exploration via this paper in no way implies that it is the most important matter to be considered or that it should be addressed before others are developed further.

1.7 The remainder of this paper has three sections:-

(a) towards a model of cost calculation for current arrangements that builds up a theoretical, estimated description of current expenditure where an average child might be involved in several kinds of court or tribunal proceedings;

(b) possible next steps towards costing a future ideal model that might demonstrate the potential economic rationale for reform; and

(c) concluding thoughts.

1.8 Because some aspects of the current system are devolved respectively to the Northern Ireland Assembly, the Wales Assembly Government and the Scottish Parliament, the suggested model offered to encourage further discussion is limited to the English court and tribunal jurisdictions.

2. Towards an estimated model of cost calculation for current arrangements

2.1 What may be already accepted is that the availability of reliable financial data for the services and agencies potentially involved in current court and tribunal related provision will vary widely and may in some instances not be routinely collected or published. Some may only exist in global budgetary terms as a service cost per year. For the purpose of this paper, a cost *per hour* may be the most helpful unit. This possible approach draws on but one example from an extensive body of relevant literature (details footnoted)³

2.2 The arguments adduced in the Introduction to Beecham's work although written fifteen years ago, remain of contemporary importance regardless of the outcome of the General Election set for May 2015. For that reason, an extract is reproduced below:

³ Jennifer Beecham: Unit Costs – not exactly child's play – a guide to estimating unit costs for children's social care. Department of Health, PSSRU, Dartington Social Research Unit (2000)

“This short guide tries to make a complicated, some would say alien, accounting procedure accessible and comprehensive to a wide readership... The main aim has been to produce a tool kit versatile enough to cater for the multiplicity of local authority arrangements and cost demands... There are a number of good reasons for the attempt. For example, unit costs are a necessary aspect of the Government’s performance assessment framework for public sector services and prerequisite of best value initiatives. At a local level, they are part of the commissioning process for health and social care services.

Unit cost estimation is therefore becoming quite an industry, particularly as different groups of professionals are likely to need the information it generates for different purposes. The figures may be wanted for a year or a week; perhaps only staff costs are to be examined, or the costs that fall to just one agency. Whatever the calculation, the necessary data must be carefully specified and the method for deriving a figure from it clearly understood. We need to know what staff, buildings and equipment are used to produce a service, what is spent in the process, what the service does, and how it is used. A generic model for estimating, versatile to meet most requirements is described in Part 2.

In the light of so many varying demands, how to ensure costs can be sensibly compared for example between services, provider sectors, or local authorities becomes a key issue....It means little to know that service **a** is cheaper than service **b** if they are essentially different, or to know that one works more efficiently in one authority than another if they are resourced differently. The need for consistency has given this Guide its shape.”

2.3 The purpose of this part of the discussion paper is to make early suggestions about:

- (a) what financial information might be collected;
- (b) how this data might be estimated for illustrative purposes only;
- (c) how such financial information might relate to one recently completed case of at least ‘moderate complexity’;
- (d) how lower and higher costs might also be estimated for, respectively, one example each of the ‘low’ and ‘the most complex’ cases;

and

(e) how an estimated total figure for all cases arising within a specified period of years might be calculated, spanning as examples, 'low', 'moderate complexity' and 'the most complex' cases and their respective estimated frequencies and incidence⁴.

2.4 Whilst in general for budgetary purposes agencies may normally wish to calculate costs *per year*, the migrant child's journey through more than one court and tribunal system may span several years. This suggests that when estimating costs, the more preferable unit initially may be the cost *per case*. Even so, if eventually it proves possible to estimate the costs per year of all cases in the entire system over a defined number of years, this might at least be attempted.

2.5 Any discussion on costs is complex although highly relevant given possible duplication in the service and the need to economise. Simplistically, the average cost of a service may be calculated by dividing the running costs (including maintaining premises) by the number of service users. But such a figure may often exclude the capital costs covering the mortgage to build premises which may double the average costs. Further, typically no money is saved or expended if one fewer or one more person uses the service because the overhead costs remain the same. A further complication may arise if the infrastructure used is hired from an external agency. A calculation using per hour per child, (i.e. the average cost) may be satisfactory at one level but if the service requires permanent staff and offices, the question is more about the efficient use of those resources as fewer cases will not reduce overall costs and will raise the average cost. This may also reflect the economic attraction to government of privatisation as the fees per case may seem high but enduring overhead costs do not have to be covered.

2.6 Perhaps a step-by-step approach might:

(a) establish an initial list of likely expenditure headings under the names of the service providing bodies to whom such expenditure might normally fall for an average case (see paragraph 1.7 (a) above). This might be achieved by first circulating a case scenario, whether real, imagined or a composite of several cases. Alternatively, such expenditure headings might be 'brainstormed' at a specially convened meeting.

(b) request recipients to add their own indications to this initial listing from the perspective of their own professional experience about:

(i) what agencies might be involved; and

(ii) which staff within such agencies (ie grade titles) might play key roles.

The inevitable resultant overlaps thrown up should also highlight certain differences. The former where significant can be eliminated and the latter, as relevant, included.

⁴ For the purpose of this paper the term 'frequency' is defined as the number of times an event occurs within a given period. The term 'incidence' is defined as the fact, manner or rate of occurrence.

2.7 An example of an initial listing but with only nominal costs at this stage, is set out in **Annex A**.

2.8 Taking into account the relevant experience of FDAC and presentations at the CSP seminar may suggest that a better alerting communication system between all potential agencies undertaking work with unaccompanied migrant children would have benefits, including avoidance of wasteful overlaps and associated costs.

2.9 Where any such children became involved in one or more court or tribunal, any necessary pre-hearing preparations carried out by agencies, courts or tribunals should also benefit from improved communication which in turn should reduce unnecessary, inappropriate or duplicated tasks with a reduction in respective and overall costs *per case* .

2.10 Improved pre-hearing processes should in turn assist hearings to operate more efficiently, albeit within their current governing legal powers and duties. For example, recent developments in family law care proceedings include setting out timetables and clear expectations of the necessary documentation required at all hearings. This suggests there may be potential cost savings *per case* within the system dealing with unaccompanied migrant children as it operates at present (but also see paragraph 2.16 below).

2.10 Similar arguments may be applied to any post-proceedings services provided by one or more agencies (but also see paragraph 2.16 below).

2.11 Taking the totality of the current systems and the use of an average case (1.7 (a) above), might suggest that different agencies would typically be involved:

(a) before any court or tribunal hearing(s) (ie relevant preparation, assessment and administration);

(b) on the day(s) of any court or tribunal hearing(s); and

(c) in providing follow-up services for the unaccompanied migrant child (perhaps for the purpose of this exercise being limited to up to twelve months).

2.12 The information derived could be collated in a relatively straight-forward manner on a spreadsheet. For notional purposes (and putting aside for the time being some of the issues discussed above at paragraph 2.5) a single agency's costs would be calculated as:

Number of hours on case(a) X agency cost per hour(b) = estimated costs (£)

2.13 Any additional agencies' costs (and those of those of courts and tribunals) would also be added in as illustrated at **Annex A**. For the sake of simplicity, these costs have been rounded and do not equate to 'facts on the ground'. Further, in this illustration, estimated costs might, when updated, possibly be sub-divided into:

(a) notional costs (NC) - ie where little more than an informed guess is the best estimate available;

and

(b) known estimated costs (KEC) – ie where some real and reasonable estimated costs can be identified for use in this exercise.

2.14 This might also begin to highlight gaps in data collection and possible priorities for improvement in current collections.

2.15 The use of FDAC developments as a definitive comparison to aid reforms affecting unaccompanied migrant children should be avoided. For example, FDAC principally addressed the needs of younger children. As the 2014 research report noted at page 56:

“A feature of both samples was the young age of the children at the start of proceedings. Over a third of each sample was under a year. The FDAC sample was relatively younger overall, with 65% under five years, as opposed to 59% in the comparison sample.”

It has been suggested that most unaccompanied migrant children (where their ages can be accurately determined) are usually much older ie sixteen plus.

2.16. This factor introduces a separate topic for consideration that falls outside the scope of this paper, namely ‘transitions’. Transitions cover not only the age-related cut-off point between diverse agency provision of children’s services and those services for adults but also the different operation of civil, criminal and relevant tribunals from child to adulthood at ages that are variously defined.

3. Possible next steps towards costing a future ideal model

3.1 A potential spin-off if this project is developed may be a persuasive argument for an enhanced system of financial data collection which is proportionate and of real practical use to key agencies.

3.2 Another ambition might be the possibility of gaining funding for a credible scoping study that would examine currently available data and associated costs in respect of:

- (a) a small tranche of recent, completed cases of varied complexity; and
- (b) example cases if handled within an improved unified court and tribunal system.

3.3 Possible models for future reform of the current court and tribunal system would need to be outlined in as much detail as possible. The principal aim should be that of demonstrating the strength of the hypothesis that court and tribunal reform and associated practice improvements across the totality of the system, regardless of many other advantages accruing to the child, will result in significantly more cost-efficient arrangements.

3.4 What might, for the purpose of this paper, be termed a ‘unified court and tribunal service’ should not only demonstrate savings for some specified agencies but also may need to show that other bodies within the wider system might actually incur increased expenditure.

3.5 For example, the FDAC model may show examples of this given that one of the four aims of the Brunel research funded by the Nuffield Foundation was ‘to make comparisons

with standard court proceedings involving parental substance misuse, including a comparison of costs'. The full evaluation report published in May 2014 is footnoted below⁵ and an extract from the section dealing with the costs of FDAC is reproduced at **Annex B**.

3.6 Even so, the unequivocal goal should be a demonstration that, taken together, the overall expenditure of a fully reformed system shows significant savings when compared to the current systems.

3.7 However, as was pointed out at the CSP seminar, there is a difference between the numbers of unaccompanied migrant children involved in the current court and tribunal system and those that perhaps should be involved but who, for various reasons, remain hidden. A well publicised reformed court and tribunal service may be more attractive to some of those who, where they are able to exercise a choice, at present choose to remain hidden and so numbers using a reformed system may rise and therefore costs also may increase. Similarly, since future trends regarding the number of unaccompanied migrant children entering the UK cannot be predicted with certainty and may increase, so future costs may also increase for this reason alone.

3.8 These kinds of arguments give further weight to the case for being able to demonstrate that a reformed court and tribunal service is not only likely to be more efficient than the current system but also that the *unit cost per case* may overall be significantly lower when all the relevant associated costs are taken into account.

3.9 In the light of the above discussion, it might hopefully be possible to develop a well argued case for a credible cost analysis for future reforms of the court and tribunal system and, if possible, suggest ways of identifying and funding one or more persons with appropriate expertise to undertake this kind of exercise.

4. Concluding thoughts

4.1 Judgements and perspectives as to whether a reformed court and tribunal system for unaccompanied migrant children can deliver improvements – and for whom – will vary. There is a powerful case that a more effective service, whether or not reformed, would better serve the diverse needs of this group of children. These are important discussions that need to continue elsewhere as is the need for greater clarity as to what preferred model might eventually constitute a reformed system out of perhaps several options.

4.2 This paper's focus is mainly on how it might be possible to demonstrate the economic argument that a reformed system would be able to deliver relevant services in a more cost-effective manner – that is, the unit costs per case would be lower even if, for other reasons, the overall volume of cases and associated expenditure might rise in future years.

4.3 In most ways, this paper is no more than 'blue sky thinking'. But hopefully it will be of some use to those more actively engaged in pressing for improvements in the present

⁵ http://www.brunel.ac.uk/__data/assets/pdf_file/0007/366370/FDAC_May2014_FinalReport_V2.pdf

March 2015

arrangements that govern the operation of courts and tribunals when dealing with unaccompanied migrant children.

4.4 Comments on this discussion paper are welcome. They should please be sent to:

Arran.Poyser@btinternet.com

Arran Poyser

March 2015

Acknowledgements

The author is very grateful for comments from some of those who attended the CSP seminar on 19 February which allowed an earlier draft of this discussion paper to be updated.

Annex A: Based on a pre-circulated case scenario, examples of possible types of court and tribunal involvement in an average unaccompanied child migrant case within the current system and some indicative costs [notional costs (NC); known estimated costs (KEC)]

Pre-proceedings	Proceedings	Post-proceedings
Court A	Court B	Court C
Youth court	Family court	Other civil court
NC £1500	NC £1500	NC£1500
KEC	KEC	KEC
NC£1500	NC£1500	NC£1500
KEC	KEC	KEC
Named agency/ service (1)	Named agency/ service(1)	Named agency/service (1)
NC £1500	£1500	£1500
KEC		
Named agency/ service (2)	Named agency/ service (2)	Named agency/ service (2)
NC£1500	NC£1500	NC£1500
KEC	KEC	KEC
Named agency/ service (3)	Named agency/ service (3)	Named agency/ service (3)
NC£1500	NC£1500	NC£1500
KEC	KEC	KE
Named agency/ service (4)	Named agency/ service (4)	Named agency/ service (4)
NC£1500	NC£1500	NC£1500
KEC	KEC	KEC
Total £9,000	Total £9,000	Total £9,000

Note: For illustrative purposes only, the notional costs (£1500) of **court** pre-proceedings, proceedings and post- proceedings are the same and the number of agencies involved at each stage is also the same.

Pre-proceedings	Proceedings	Post-proceedings
Tribunal A (insert type)	Tribunal B (Insert type)	Tribunal C (Insert type)
NC £1500 KEC	NC £1500 KEC	NC£1500 KEC
NC£1500 KEC	NC£1500 KEC	NC£1500 KEC
Named agency/ service (1)	Named agency/ service(1)	Named agency/service (1)
NC £1500 KEC	£1500	£1500
Named agency/ service (2)	Named agency/ service (2)	Named agency/ service (2)
NC£1500 KEC	NC£1500 KEC	NC£1500 KEC
Named agency/ service (3)	Named agency/ service (3)	Named agency/ service (3)
NC£1500 KEC	NC£1500 KEC	NC£1500 KE
Named agency/ service (4)	Named agency/ service (4)	Named agency/ service (4)
NC£1500 KEC	NC£1500 KEC	NC£1500 KEC
Total £9,000	Total £9,000	Total £9,000

Note: For illustrative purposes only , the notional costs (£1500) of **tribunal** pre-proceedings, proceedings and post- proceedings are the same and the number of agencies involved at each stage is also the same.

Annex B: Extract from FDAC Evaluation Report (pages 133/134 : NB footnotes not included) - The costs of FDAC

“The costs of FDAC Local authorities that have the option of using the current FDAC, or contributing to its development in other areas, will have to decide whether the costs of the team are justified. In 2011 the cost was calculated at £8,700 per family, and is now (2014) just over £12,000, a figure that is in line with other multi-disciplinary teams offering assessment in court cases or offering a specialist, intensive treatment programme for vulnerable families with complex needs.

A main message from the costs exercise in our report at the end of Stage 1 was about the savings for FDAC cases through less use of experts, shorter hearings, and fewer hearings with lawyers present. There were savings, too, in the cost of foster care placements during proceedings and family reunification at the end. All these savings would need to be revisited in the light of shorter care proceedings generally (under the new legislation), the reduced fee levels for experts, less use of expert assessments overall, and the current cost of local authority placements and services.

The costs of the FDAC team need to be weighed against the potential longer-term savings to local authorities, adult treatment services and the courts that arise from the greater treatment efficacy of FDAC. The costs of repeat proceedings for a mother, with the same and/or a new child, the consequences of taking more children into care, and the potential savings on family reunification all need to be factored into the equation of whether investment in FDAC is likely to give a good return.

At times of intense financial austerity and an increasing demand on services it is particularly important to spend money wisely, and the evidence of FDAC’s success in achieving outcomes relating to substance misuse cessation and reunification should help inform decisions about future commissioning of FDAC. The specialist team is now commissioned exclusively by Children’s Services although good arguments can be made for contributions from the Legal Aid Agency, because it provides expert assessments for care proceedings; from Public Health, because it provides substance misuse interventions; and from Clinical Commissioning Groups, because they provide psychiatric and psychotherapeutic services to children and families.

Furthermore, it will be a noticeable gap if the extent of parental substance misuse, and information about its impact, is not included in relevant local needs assessments, particularly Joint Strategic Needs Assessments (JSNAs). The benefit of Children’s Services commissioners pursuing this as an issue is that it would help acknowledge clearly how parental substance misuse can exert a negative impact on people’s lives and this, in turn, might increase commitment to tackle the short- and longer-term consequences for children and families.

Finally, the robust methodology used to cost the FDAC specialist team remains relevant. It gives a breakdown of the cost of the different components of the input from the FDAC team. The costing generated a model for calculating cost variations per case, based on features such as the length of the case and the number of children, and this should be particularly useful. This approach could be used by commissioners and service providers if they wished to develop a costing mechanism that offers more flexibility than the current flat-fee arrangement.”