Nuffield Family Justice Observatory

Report focus

The first in a series of reports that aims to build a profile of families in private law proceedings, and their pathways and outcomes in England and Wales . The current report develops a demographic profile of the families involved in Wales, including levels of deprivation, the patterns of orders applied for, and the proportion of repeat applications.

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Uncovering private family law: Who's coming to court in Wales?

About this report

This is the first in a series of reports on private law children cases in England and Wales. It uses population-level data to examine trends in demand, developing a demographic profile of the families involved and the patterns of orders applied for. It also provides new evidence on the proportion of repeat applications by exploring the gendered pattern of this phenomenon for the first time.

The report was researched and written by the Family Justice Data Partnership—a collaboration between Lancaster University and Swansea University, funded by the Nuffield Family Justice Observatory—in conjunction with Professor Liz Trinder, University of Exeter.

A Welsh language version of this report is available from www.nuffieldfjo.org

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The data used in this study is available from the Secure Anonymised Information Linkage (SAIL) Databank at Swansea University, Swansea, UK, which is part of the national e-health records research infrastructure for Wales. All proposals to use this data are subject to review and approval by the SAIL Information Governance Review Panel (IGRP). When access has been granted, it is gained through a privacy-protecting safe-haven and remote access system, referred to as the SAIL Gateway. Anyone wishing to access data should follow the application process guidelines available at: www.saildatabank.com/application-process.

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About the Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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Foreword

We often say that we are operating in the dark in the family justice system because of the lack of data to inform decision-making. Nowhere is this more apparent than in relation to private law cases. Twice as many private applications are started in England and Wales each year as public family law applications, and yet we know even less about the families involved in these cases than we do about the families involved in public law proceedings.

Nuffield Family Justice Observatory is committed to addressing this gap in knowledge. This report is the first in the Uncovering Private Family Law series—a set of studies that will help us to better understand the characteristics and circumstances of families in private law proceedings. It provides the first-ever profile of families who are involved in private law proceedings in Wales.

We know this work is urgently needed. In the coming months decisions will have to be taken to address the unprecedented pressures on the family justice system. Any new course of action will need to be informed by a better understanding of the families involved in private law proceedings to help them resolve their disputes as quickly and as fairly as possible. If we continue to operate in the dark the actions taken may be ineffective and could lead to costly mistakes.

Nuffield Family Justice Observatory is dedicated to improving life for children and families by putting data and evidence at the heart of the family justice system. We have started on the journey towards building a much better evidence base relating to private law. I am very grateful to the authors for their ground-breaking data analysis and clear overview of the key findings. The insights will provide a very important foundation for future decision-making.

Lisa Harker
Director, Nuffield Family Justice Observatory

Executive summary

This report is the first of its kind to use population-level data in private family law in Wales, and to link this to demographic data. It is the first in the Uncovering Private Family Law series, which aims to build a profile of families in private law proceedings, and their pathways and outcomes in England and Wales. Currently, the evidence base to inform policy and practice in England and Wales is much less developed for private than public family law, even though there are more than twice as many private law cases each year. There has been no major research on private law cases in Wales.

What are 'private law children cases' or 'proceedings'?

Where parents (or other carers) cannot agree arrangements for their children, one or both may make an application to the court for an order under the Children Act 1989. There are a range of orders available for different circumstances. The most common is a child arrangements order (CAO), which is to regulate arrangements relating to where a child should live and/or who they should see.

Where did the data come from?

This study uses anonymised administrative data from Cafcass Cymru, which is linked to demographic and deprivation data using the highly secure systems for linkage and anonymisation established by the SAIL Databank.

The study includes all private law applications made to the family court in Wales between 2007 and 2018. Information about the legal orders applied for—and the applicants, respondents, and subjects involved—were included for applications issued between 2011 and 2018.

Key research findings

Our analysis has confirmed for Wales what we already know for England from the existing research— the majority of Welsh private law cases are: between two parents; usually brought by the non-resident parent, most often the father; and concern a single child, aged predominantly between one and nine years old. The adults involved in private law proceedings are mainly in their late-twenties and thirties.

Use of the court remains low, although overall the trend in the volume of private law applications has been modestly upwards over the last decade

- In 2007, there were 2,440 private law applications. This rose to 3,800 in 2013, then fell significantly following the legal aid changes introduced that year. The number of applications has now virtually recovered to previous levels, with 3,390 applications made in 2018.
- The removal of legal aid entitlement (except for certain cases involving domestic abuse) appears to have mainly delayed or paused applications, rather than reducing the levels of need for assistance over the longer term.
- Fewer than 1% of all family households in Wales (including intact and separated families) make a private law application each year.

About a third of applications are returns to court

- Between 31% and 34% of private law applications between 2014 and 2018 were made by an applicant who had been involved in a previous application within the last three years.
- Mothers are somewhat more likely to be involved in a return to court.

- Fathers are more likely to be repeat applicants, whilst mothers are more likely to be subject to repeat applications, or to issue their own applications after being subject to a previous application.

There is a clear link between deprivation and private law applications, which indicates that the economic vulnerability of private law parents has been previously overlooked

- In 2018, 29% of fathers and 33% of mothers making a private law application lived in the most deprived quintile, with 51% of fathers and 56% of mothers living in the two most deprived quintiles.

- As with public law cases, levels of need and trends vary by geographic area, with the highest rates of private family law applications seen in Swansea and South West Wales.

There is some evidence of a 'justice gap' following legal aid changes

- There was a reduction in the proportion of applications brought by fathers, by younger applicants, and by fathers living in the most deprived areas from 2013 onwards. This is consistent with the emergence of a 'justice gap' following the removal of legal aid from most private law cases in 2013.

While the overall private law population is broadly stable, there are some changes in what is being applied for

- The majority of private law applications continue to be for child arrangements orders (CAOs).

- There have been proportional increases in applications for 'other' private law orders over the last few years. Applications for enforcement, prohibited steps and specific issues orders increased from 15% of all parental applications in 2011 to 30% in 2018.

- These 'other' orders represent quite a significant shift in the workload for the family justice system towards what may be more challenging or contentious cases.

Recommendations

While this programme of work is still in its very early stages, the following four policy and practice implications seem clear at this point.

- This research has established that private law cases disproportionately involve people living in more deprived areas. It is critical that policymakers now give due consideration to the role of deprivation as a factor in private law cases and its interaction with other factors such as conflict, domestic abuse and other child protection issues. This will be a critical step in informing—and possibly reshaping—the response to private law need in both court and out-of-court contexts.

- The research has highlighted some reductions in private law applications from fathers, from younger applicants, and from those living in the most deprived areas following the legal aid reforms in 2013. We recommend that the Ministry of Justice reviews this

evidence, alongside other analyses it may have, to reflect on whether access to justice is being inhibited and what might be done to address that.

- The majority of private law proceedings involve a single child or two siblings. Sibling support is a well-documented resilience factor for children, that will be missing in large numbers of private law cases. In addition to addressing the dispute between adults, the research highlights the importance of making support available for children.

- We recommend that Cafcass Cymru, ideally in concert with Cafcass England, continues to test and implement a process to record in its database: whether there are allegations of domestic abuse and other safeguarding concerns; each adult's relationship to the child and other adult(s); and, ideally, the child's living arrangements at the time of application. It would also be of benefit if CAOs were recorded as 'spend time with' or 'live with'.

Data gaps and future priorities

Our next research priorities include the following.

- A comparison between private law cases in England and Wales, including profiles of the individuals involved, application types and returns to court.

- A more in-depth look at the pre-court needs and vulnerabilities of adults and children, including the prevalence of mental health difficulties, domestic abuse and other child protection issues. A key priority will be exploring the overlap between public and private law cases.

- Work to differentiate types of private law cases and pathways of adults and children, including more detailed analysis of returner cases and those where the child is separately represented (known as 'Rule 16.4' cases). The use of large-scale linked data (health, welfare and further demographic) could shed more light on what might distinguish the profiles of single, repeat, and multiple (or chronic) users. This would enable earlier identification and intervention to prevent what would otherwise be chronic cases from becoming entrenched.

- A deeper dive into different case types, particularly the non-standard cases about which there is very little prior research: those with two or more applicants and/or two or more respondents; and those including orders other than those for child arrangements.

1. Introduction

This report is the first in a series on private law children cases in England and Wales for the Nuffield Family Justice Observatory (Nuffield FJO). Private law children cases are disputes, usually between parents after relationship breakdown, about arrangements for a child's upbringing such as where a child should live and/or who they should see.[1]

In England and Wales, there are more than twice as many private law cases started each year than public law (or child protection) cases—in 2019, 54,930 as compared to 18,393 (Ministry of Justice (MoJ) 2020a). Despite this, the evidence base to inform policy and practice is much less developed for private than public law. This series of reports aims to redress that imbalance.

In contrast to public law proceedings that are brought by the local authority, private law applications are triggered by the decisions of private individuals, usually a parent, rather than the state. As a first step, it is therefore essential to develop a good understanding of who these families are, including their characteristics, circumstances and possible vulnerabilities, needs for support and assistance, and motivations for applying to the family court. This report develops a demographic and socio-economic profile of families involved in private law children applications in Wales. Later reports will describe the position in England and will focus on the mental health and other psychosocial profiles of the adults and children involved, as well as on processes and outcomes of engagement with the family justice system.

The challenges facing the family justice system

Why does this matter now? The family justice system is facing a number of major challenges. Whilst the great majority of parents do not involve the courts in making arrangements for parenting post-separation, the number of private law applications has risen over the last few years (MoJ 2020a). From a management perspective, there is concern about how the family courts, the Children and Family Court Advisory and Support Service (Cafcass and Cafcass Cymru), and other services will cope with increased demand. The President of the Family Division recently alluded to a situation where 'we are, in effect, running flat out up a down escalator' (McFarlane 2019a).

The COVID-19 pandemic appears to have added to the existing challenges. It has put many child contact arrangements between separated couples under pressure at a time when access to sources of help, including the family court, is constrained. Whilst numbers of applications to the court appear to have dropped at the start of the crisis, they are likely to increase (as a result of COVID-19 pandemic and increased pressures on families) as lockdown eases just at the time that the court will be dealing with major backlogs from cases that have been postponed.

[1] The legal terms for these issues have changed over time. 'Custody' and 'access' were replaced by 'residence' and 'contact' in the 1989 Children Act, which came into effect in 1991. These terms were subsequently replaced by the wider concept of 'child arrangements' in 2014, although child arrangements can be 'live with' and/or 'spend time with'.

The situation has been compounded by the impact of the 2012 Legal Aid Sentencing and Punishment of Offenders Act (LASPO), which removed legal aid entitlement to all private law cases, except for certain cases involving domestic abuse. Although many private law litigants (the adult parties) have always had to represent themselves in court, the impact of legal aid changes means that the majority are now litigants in person.[2] This raises challenges for litigants, some of whom may experience difficulty in understanding and participating in proceedings due to a variety of personal and circumstantial disadvantages, including communication difficulties (Trinder et al. 2014). It also raises issues for the courts as they are having to deal with lay parties who do not understand the process, which has largely developed on the assumption that litigants would have legal representation.

The final challenge, and perhaps the most difficult of all, is how the family court approaches private law cases where there are allegations of domestic abuse. As we explain below, about half of private law cases involve domestic abuse allegation, but there are longstanding concerns that the legal presumption of parental involvement has been pursued at the expense of safety in domestic abuse cases. These concerns led to a panel of inquiry set up by the Ministry of Justice (MoJ), which reported in June 2020 (MoJ 2020b).[3] The panel found evidence of 'deep-seated and systematic issues that were found to affect how risk to both children and adults is identified and managed' (p. 3). The panel's 'implementation plan' (Ministry of Justice 2020c) calls for major changes in how the family courts approaches domestic abuse cases.

To date, the policy response to private law cases has focused heavily on attempting to reduce demand on the courts. Significant effort has been expended in trying to divert cases from reaching the court, primarily through encouraging the use of mediation and other forms of alternative dispute resolution. For those cases that do reach court, the emphasis has long been on trying to encourage settlement and to avoid further investigation or further hearings. However, attempts to divert cases have been largely unsuccessful. Take-up of mediation has always been relatively low, but has dropped significantly following the introduction of LASPO, which largely removed the role of family lawyers as sign-posters to mediation.[4] Most recently, the Private Law Working Group,[5] established by the President of the Family Division to review the system, proposed trialling a triage and track system with different pathways for non-domestic abuse cases, domestic abuse cases, and returning cases.

The need for a robust evidence base to address challenges

Significant policy and practice responses are required to address the major challenges faced by the family justice system. These responses are developing, but it is essential that both are informed by a rigorous evidence base. There are many important, interconnected

[2] Litigants in person represent themselves in the courts.

[3] For details, see: www.gov.uk/government/news/spotlight-on-child-protection-in-family-courts

[4] Mediation Information and Assessment Meetings (MIAMs) remain at a third of the pre-LASPO level; mediation starts and outcomes are at about a half (Ministry of Justice/Legal Aid Agency 2020).

[5] The Private Law Working Group was established in 2019. A consultation report was published in June 2019 (Private Law Working Group 2019) with a second report published in March 2020 (Private Law Working Group 2020). A final report will follow the completion of the Ministry of Justice spotlight inquiry on domestic abuse (see Footnote 3).

questions to answer. Are there too many cases coming to court or too few, given access to justice issues after LASPO? How are separated and separating families currently supported outside of the court process, both to promote good outcomes and as a means of diversion from the court where appropriate? Why are people applying, some more than once? What are their needs, circumstances, and vulnerabilities, and how do these differ from those of other separated families? Does court intervention reduce, maintain or exacerbate vulnerability? Is it safe or appropriate to divert cases from court? How well does the planned three-track system map onto the range of cases? What are the outcomes of court involvement? Does the court promote or diminish wellbeing?

This programme of research will not be able to answer all these questions, but we hope to make a significant contribution. Above all, we emphasise the need to generate robust evidence to address such questions. We have chosen to start with trying to develop a better understanding of the adults and children who use the system—the 'customers'—and their characteristics, circumstances and needs, as they can be overlooked in a system where policy development tends to be driven by resource pressures, and viewed through a professional prism. The debates in this area, for example, tend to focus on 'demand' on the family justice systems and professionals, rather than the rights and needs of private law families for help, support, and possibly the protection of the court.

As the Private Law Working Group continues to review the current system and make recommendations for reform, there is a requirement for a stronger evidence base that can help provide an understanding of the drivers of this demand, and the needs and vulnerabilities of users of the family justice system. Framing the question more broadly, to also understand who the customers are, and what they might need and want, will provide a more balanced and effective approach to policy and practice development and avoid mistaken assumptions. It may also result in more carefully targeted interventions, both within and outside the court.

What do we already know about private law?

We already have some clear findings about private law cases that have been replicated in multiple studies covering England and sometimes England and Wales. These are summarised in Box 1, with more detail in the relevant sections below. However, most of what we know is based on a small number of studies, some of which are now quite old and typically have relatively small sample sizes. The existing research studies are also generally snapshots, based on a single point in time, making it hard to identify trends over time.

There are also very significant gaps in the literature. There is little information available about the profile of the parties beyond age and gender, and almost none at all about socio-economic status and disadvantage and psychosocial factors. The lack of longitudinal data also means that no studies have been able to explore the relationship between pre-court well-being and post-court outcomes. We also have very little granular analysis on non-

standard cases—the non-parental cases, or applications for less common orders such as specific issue or prohibited steps orders.[6]

Box 1: What do we already know about private law children cases?

- Only a minority of separated or divorced parents turn to the family court to determine arrangements for their children. The majority agree arrangements informally between themselves.
- Numbers of applications have risen quickly in recent years, after a significant fall in 2014 following the removal of legal aid for most private family law cases.
- The great majority of cases involve two separated parents and their child(ren), with around a tenth involving grandparents or other family members.
- Most children live with their mothers after separation and spend time with their fathers. This gendered pattern is reflected in court users: most court applications are from non-resident fathers to spend time with their children.
- Most cases involve a single, relatively young child, on average about six years old.
- About half of private law cases involve allegations of domestic abuse, with between a fifth and a quarter raising other safeguarding concerns, such as substance abuse and mental health difficulties.
- About a third of private law cases return to court with a second application. Only a very small number are chronic litigants with multiple applications concerning the same child(ren).

What this report contributes—and its limitations

This first report is based on full service, population-level data collected routinely by Cafcass Cymru (the Welsh government organisation that represents children's best interests in family justice proceedings in Wales) and available within the privacy-protecting Secure Anonymised Information Linkage (SAIL) Databank, hosted by Swansea University (Ford et al. 2009; Lyons et al. 2009; Jones et al. 2014; Jones et al. 2019). The strength of research based on administrative data is that it yields large and representative samples avoiding problems of bias, which can limit the generalisations that can be drawn from small or non-representative samples. This report presents the first independent analysis of population-level private family law data held by Cafcass Cymru, based on a total sample of over 36,000 applications, issued between 2007 and 2018 in Wales. Our profile of the families involved in these applications therefore confirms and updates the findings set out in Box 1 above, but with population-level data, rather than relatively small case file studies.

The report also breaks new ground beyond just confirming existing findings with a larger and more robust sample. By restructuring data to create a longitudinal (or year-by-year) dataset,

[6] See Chapter 2 for details of the relevant orders and wider legal framework.

we have taken a 'longer view' of private law, aiming to identity trends and patterns over almost a decade. Although immediate crises require a family justice system response, it is also important to ask questions about the longer-term and persistent nature of private law need, to inform policy and practice.

We have also taken a 'wider view' of families, going beyond information that is available on the court or Cafcass Cymru file. By linking Cafcass Cymru records to other administrative data sources available within the SAIL Databank, we are able to get a better understanding of the lives and circumstances of these families outside the court room. In this report, for example, it has been possible to consider area-level deprivation for applicants and respondents in private law cases for the first time, building on previous exploratory work by the research team (Johnson et al. 2020). We are at an early stage in terms of linking data sources, but our aim is to transform our understanding of these families and their outcomes, in line with the vision for Nuffield FJO (Broadhurst et al. 2018; Broadhurst and Williams 2019).

This report therefore adds to our understanding of private law cases in the following ways:

- it examines trends in demand, and contributes to policy debates about whether too many parents are resorting to the court by exploring the proportion of all families in Wales using the family court
- it develops a demographic profile of families, producing important new evidence on the deprivation of private law families
- it profiles who applies for what orders, providing new insights into applications for the lesser used, but still numerically significant, prohibited steps, specific issues, and enforcement orders[7]
- it builds upon existing findings about the proportion of repeat applications, probing patterns of recurrence by gender and litigation role for the first time
- it produces some tentative suggestions about how legal aid changes may have affected access to justice.

At the same time, we should point out the limitations of this report and the methodology. This is a modest first step in developing the private law evidence base. Whilst we are able to replicate previous studies on a much larger scale and contribute new analyses, use of administrative data does have limitations. Administrative data is established to serve operational needs, not research. In this case, the Cafcass Cymru database records the extent of their involvement in a case, but in private law cases that generally ends before the outcome of the case is known, limiting our ability to track case outcomes, at least with this data source.

In addition, the data source does not record whether or not there are safeguarding issues, such as domestic abuse, nor does it distinguish between child arrangements applications regarding who the child lives with and/or who the child has contact with. In some instances, we are able to find workarounds for data source limitations, for example finding proxies for identifying whether or not someone is likely to be a parent or who the child lives with.

[7] The different types of orders are detailed in Chapter 2.

However, we have to acknowledge that there are some questions that we cannot answer with the Cafcass Cymru data as it stands. One objective of the Family Justice Data Partnership—a collaboration between Lancaster University and Swansea University— is to give data providers feedback on the quality and scope of the data, and on potential changes to their data capture, which with marginal cost implications, would improve the utility of these valuable administrative data assets.[8]

As ever, the choice of methodology will always bring advantages and disadvantages. Administrative data sources offer the potential to explore total samples over time, and the value of this data can be greatly enhanced through linking justice, demographic, health and social care data, although there are limitations to this due to match rates. Use of population-level administrative data does bring significant advantages over the more qualitative case file studies, but it means an inevitable trade-off between breadth and depth. Future work will explore the possibility of more data linkage, as well as the possibility of conducting complementary, intensive qualitative work based on case file analysis.

[8] A flag to record the presence of allegations of domestic abuse and other child protection issues would be one such example.

2. The law and legal process

The emphasis on private ordering

It is the responsibility of parents to make decisions about arrangements for children after a relationship breakdown. Unlike some other countries, in England and Wales there is no requirement for divorcing parents to have arrangements for children approved by a court. Rather than mandatory scrutiny (at least after divorce), the law provides for parents to opt-in to the court process only if they cannot reach agreement privately.

The court orders available

Where parents (or other carers) cannot agree arrangements for their children, one or both may make an application to the court for an order under the Children Act 1989. There are a range of orders available for different circumstances. The most common is a child arrangements order (CAO). The CAO is to regulate arrangements relating to (a) who a child is to live, spend time or otherwise have contact with, and (b) when a child is to live, spend time or otherwise have contact with any person (S8(1)). The single CAO was introduced in 2014 to replace separate orders for contact and residence, including shared residence. The change was brought about by the Children and Families Act 2014 and was an attempt to move away from a perceived hierarchy of the 'resident' and 'contact' parent. In practice, CAOs are still regularly described as 'live with' or 'spend time with' CAOs as a shorthand to capture the reality of children's lives.

Two other orders available under S8(1) address other parenting disputes that may arise: a prohibited steps order (PSO) and a specific issue order (SIO). A PSO is an order that forbids a particular step specified in the order being taken by a parent, such as taking a child abroad without permission. An SIO can be made where parents are unable to determine a specific question about a child's upbringing, such as which school a child should attend, religious upbringing, or health matters.

Where a CAO is in place, a parent may apply for enforcement of that order. Enforcement may be sought by making an application for a new CAO or for an enforcement order, under S11J-N.

Unmarried fathers and second female parents may apply to the court for a parental responsibility order (PRO) if they were not registered on a child's birth certificate or have a parental responsibility agreement with the child's mother (S4ZA). Step-parents may also apply to the court for a PRO in the absence of a parental responsibility agreement with existing parental responsibility holders (S4A).

Private and public law cases are typically defined as in contrast—private law applications involve disputes between private individuals, whereas, public law applications are brought where the dispute is between the state (or local authority) and family members. In a small number of cases however, there is 'crossover', where a 'public law' (or child protection) case is resolved by a 'private law' order. A local authority may, for example, encourage a grandparent to apply for a CAO to enable a child to live with them as an alternative to the local authority bringing care proceedings. A grandparent, or other potential carer, may also apply for a special guardianship order (SGO) under S4A-G, whether on their own initiative or

with encouragement from a local authority. An SGO gives these alternative carers parental responsibility for a child who cannot live with their birth parents.

The legal principles to be applied

The Children Act sets out a set of principles that the court must apply when making any decision about a child. Section 1(1) of the Act sets out that the child's welfare shall be the court's paramount consideration. A checklist of factors is set out in S1(3) to which the court shall have regard:

- the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding)
- their physical, emotional and educational needs
- the likely effect on the child of any change in their circumstances
- the age, gender, background and any characteristics of the child the court considers relevant
- any harm the child has suffered or is at risk of suffering
- how capable each of the parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs
- the range of powers available to the court.

In addition, the court must presume that the involvement of a parent in the life of the child concerned will further the child's welfare, if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm (S1(2A, 2B)). The court must have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child (S1(2)). Finally, although an application has been made, the court must not make an order unless it considers that doing so would be better for the child than making no order at all (S1(5)).

The court process

The framework for the private law court process in both England and Wales is set out in the Child Arrangements Programme and the associated Practice Direction 12J which deals with the process for domestic abuse cases.

There are a number of features to note, as follows.[9]

- As an attempt to divert cases from court, potential applicants are required to attend a Mediation Information and Assessment Meeting (MIAM), before issuing an application, subject to certain exemptions.

- If applications are issued, Cafcass/Cafcass Cymru will undertake initial safeguarding inquiries. This involves checks with police and children's services databases and

[9] The process for a private law case is set out in a flowchart available at www.justice.gov.uk/downloads/family-justice-reform/cap-flowchart.pdf

separate 30-minute phone calls with the applicant(s) and respondent(s). A safeguarding report should be made available to the court and the parties before the first hearing.

- The first hearing, known as a First Hearing Dispute Resolution Hearing (FHDRA), is typically used as an opportunity to identify the issues in dispute and achieve an agreement that can be enshrined in a consent order, thereby closing the case. Alternatively, an interim order or adjournment may be made at the first hearing.

- The court may order Cafcass/Cafcass Cymru (or a local authority or independent social worker) to produce a Section 7 report for the court 'on such matters relating to the welfare of that child as are required to be dealt with in the report' (Children Act 1989 S7(1)). If so, the child may be seen by the report writer as part of their investigations.

Legal representation

The adults and children in private law proceedings are not automatically provided with legal representation, unlike most public law cases. Until April 2013, parties were eligible for legal aid in private law cases, but only if they met a stringent means and merits test. As noted earlier, LASPO restricted eligibility further. Now legal aid is only available to certain victims of domestic abuse who also meet the means criteria. In only a fifth of private law cases are both parties now represented (MoJ 2020d).

Under Rule 16.4 of the Family Procedure Rules 2010, children may be made a party to proceedings. A children's guardian would be appointed by the court to independently assess the child's wishes and feelings, and welfare needs.[10] The guardian would then instruct a lawyer to present the child's case in court. Making a child a party only occurs in cases involving 'an issue of significant difficulty' and therefore the Rules state it will occur in 'only a minority of cases'.[11]

[10] A social worker employed by Cafcass (Cymru) to represent the needs of children.

[11] Practice Directions 16A – Representation of Children, Part 4, Section 1, para 7.1.

3. Methodology

Administrative data collected and maintained by Cafcass Cymru was acquired by the SAIL Databank (Ford et al. 2009; Jones et al. 2014, 2019). The SAIL Databank contains extensive anonymised health and administrative data about the population of Wales, which is accessible via a secure privacy-protecting data sharing platform, underpinned by an innovative and proportionate information governance model. For each data source within the SAIL Databank, including records from Cafcass Cymru, personal identifiable data has been removed and replaced with a unique identifier, otherwise known as an anonymised linkage field (ALF) for each person to enable linkage of records from different sources. SAIL anonymisation and linkage methodology is described elsewhere (Lyons et al. 2009).

The study used the population-level Cafcass Cymru administrative data on all private law applications made to the family court in Wales between calendar years 2007 and 2018. Information about the legal orders applied for and the applicants, respondents and subjects involved were included for applications issued between 2011 and 2018, as data of sufficient quality is not available prior to 2011. We counted each individual application, although in practice some may have been part of the same set of court proceedings.

A majority of applications involved one female and one male adult party (litigant), who we presume were, on the whole, the separated parents of the child(ren)—we refer to these as standard parental applications. With the caveat that a small number of these applications may be made by non-parents, we refer to male and female applicants in these standard parental cases as mothers and fathers throughout.

To assign a Welsh Index of Multiple Deprivation (WIMD) quintile for individuals at the time of application, their records were linked to the Welsh Demographic Service Dataset (WDSD) via ALF. Due to match rate and record availability, only 84% of individuals were able to be assigned a WIMD quintile (further details are provided in the appendix).

We analysed the number of applications made, across Wales and within the three designated family judge (DFJ) areas, over time. Annual incidence rates were calculated and expressed as the number of private law applications per 10,000 family households (those containing dependent children) in the general population (Welsh Government 2019). To set this in context, in 2018 there were around 302,000 family households in Wales, with very little change over the period. The number of applicants and respondents involved was examined for all applications. We then profiled the adults and children involved in standard parental applications, including demographic characteristics, deprivation, who the youngest child was living with at the time of application, and the orders being applied for.

Finally, we investigated whether applicants on a current application had been involved in previous private law applications within the last three years, summarising their previous role(s), i.e. applicant, respondent or both, and whether they were returning with the same adult and child parties.

All findings presented were significant at the 0.1% level. Full details of the methodology are available in the appendix.

4. How many families are coming to court?

As noted above, there is significant concern within the family justice system about the level of private law demand, with a perception that too many parents are becoming over-reliant on the courts to resolve personal disputes (Private Law Working Group 2019; McFarlane 2019b). In this chapter we look at the pattern of demand in Wales over time. We also offer a new approach to establish what proportion of families are using the family courts to resolve child arrangements.

Volume of private law applications

We start by looking at trends in overall demand within private family law in Wales, quantifying the number of applications and the number of children involved. We then analyse the rate of applications per 10,000 family households each year. A single application may involve more than one child, and an individual child may be the subject of more than one application (or set of court proceedings) within a single year.

The number of applications made in Wales each year has risen from a low of 2,440 in 2007 to 3,390 in 2018 (Table 1). The number of children involved in proceedings has similarly increased from 4,000 in 2011 (the earliest year for which we have robust data on the individuals involved) to 4,530 in 2018.

Table 1: Total number of private family law applications and children involved, 2007–2018

Year	Total number of applications	Number of children as subjects
2007	2,440	-
2008	2,800	-
2009	2,820	-
2010	3,110	-
2011	2,860	4,000
2012	3,440	4,700
2013	3,800	5,030
2014	2,720	3,590
2015	2,780	3,680
2016	3,080	4,150
2017	3,260	4,340
2018	3,390	4,530

How many families in Wales are using the courts to make child arrangements?

Although the numbers of applications are useful in understanding demand on the courts, they do not tell us what proportion of separated families turn to the family courts for help to resolve disputes associated with separation—a key question for both policymakers focused on out-of-court provision as well as those responding to demand within the court system. Put another way, are too many families turning to the courts when matters could be resolved in other ways, as the President of the Family Division has suggested (McFarlane 2019b)?

Answering that question is surprisingly difficult. We noted above that only a minority of separated families use the courts to sort resolve child arrangements issues, but putting a precise figure on it is methodologically challenging (Peacey and Hunt 2008). There is no list or sampling frame by which to identify separated families, especially former cohabitants or parents who have never lived together.

One established approach has been to use omnibus surveys to identify separated families and then to ask them whether they used the courts to make child arrangements.[12] This is a robust approach and has produced relatively consistent findings indicating that the use of the court is low, at 10% or fewer of separated families. Three separate surveys drawn from the Office for National Statistics (ONS) Omnibus Survey have reported that about 10% of contact arrangements were made in court (Blackwell and Dawe 2003; Lader 2008; Peacey and Hunt 2008). Using the Millennium Cohort Study, Goisis, Ozcan and Sigle (2016) identified that 9% of parents who had separated before the child was seven years old reported having made contact arrangements at court. Of the 8% of divorced or separated adults in a nationally representative household survey, it was reported that fewer than 1% had been involved in any type of family court case over the previous two years (Summerfield and Freeman 2014).

More recently, Teresa Williams, Director of Strategy at Cafcass England, suggested that the proportion of court users may be three or four times higher than previous estimates, and that one in three separated families uses the courts in England (Williams 2018). However, as the author noted, this estimate was provisional, prompted by an increasing volume of cases within the organisation. However, this proposition was subsequently taken up by the President of the Family Division to suggest that 38% of separated families resort to litigation, indicating this to be a 'major societal problem' (McFarlane 2019b).

Data sources held within the SAIL Databank do not enable us to establish a list of separated families, hence we adopted a slightly different approach. We used publicly available annual mid-year estimates of the numbers of different types of households in Wales (Welsh Government 2019) to calculate the number of households including dependent children, or 'family households'.[13] Then we calculated incidence rates, asking for every 10,000 family households' in Wales, how many private law applications were made each year?

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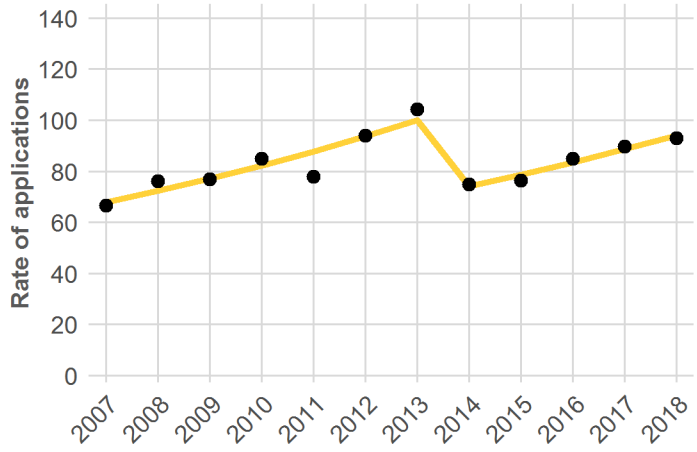
[12] The Omnibus Survey, now the Opinions and Lifestyle Survey, is a survey conducted monthly by the Office for National Statistics (ONS) in Great Britain to collect information for different government departments.

[13] A household comprises one person living alone, or a group of people (not necessarily related) living at the same address with common housekeeping—that is sharing either a living room or sitting room or at least one

The upward growth in private family law applications per 10,000 family households in Wales was found to be consistent over the 12-year period, with the removal of legal aid acting as a one-time shock to the rate of applications (Figure 1). As can be seen, there was an increase from 67 applications per 10,000 family households in Wales in 2007 to 104 applications per 10,000 family households in 2013. This was followed by a 28% drop in applications in 2014, following the introduction of legal aid changes. Since 2014, the year-on-year increase in the volume of private family law applications has returned to that seen pre-LASPO, with 93 applications per 10,000 family households in 2018.

These figures do indicate a sustained and increasing need for assistance. They suggest that demand can be influenced by the availability of extra-familial factors, such as legal aid changes. However, the removal of legal aid appears to have mainly delayed or paused applications, rather than reduced levels of need for assistance over the longer term.

Figure 1: Rate of private family law applications per 10,000 family households, 2007–2018



What is also apparent is that only a very small fraction of all households with dependent children are bringing disputes to court—less than 1% each year. Clearly, this is not an estimate of the proportion of *separated families* bringing a case each year or having ever brought a case. 'Family households' includes all families in Wales—the intact as well as those that have separated. We also note that some of those families may make multiple applications each year. Nevertheless, compared to the broader population of families, the proportion of families in need of assistance are few in number.

As we write, the COVID-19 public health emergency has caused another major shock to the family justice system. The crisis initially created a downturn in applications, but early evidence is that the volume of applications is now increasing (McFarlane 2020). Future data refreshes in the SAIL Databank will enable us to explore the impact of the pandemic on the trend in private law applications.

meal a day. We refer to households including at least one adult and at least one dependent child as 'family households', acknowledging that these individuals may not be related.

5. Who are the families involved?

In this chapter we describe the children and adults involved in private law proceedings. Whether court use is understood as demand, need or both, it is essential to have a clearer picture of the families involved. As Box 1 above showed, we know from previous research, primarily conducted in England, that private law cases are mostly applications by non-resident fathers to spend time with a young child living with their mother. In this report we are able to confirm (or 'replicate', in research terms) these findings for Wales, using population-level Cafcass Cymru data.

We are also able to start adding new insights to the research base, exploring continuities and change over time, including the possible impact of legal aid changes. By linking to other data sources, we are also able to understand the socio-economic profile of private law families.

It is also important to reiterate what we cannot say in this first report. The Cafcass Cymru data does not record demographic characteristics such as religion and ethnicity. Nor historically has it documented safeguarding issues such as the presence of domestic abuse, substance abuse or mental health issues.[14] We know from other studies that about half of private law cases in England involve allegations of domestic abuse (Hunt and Macleod 2008; Harding and Newnham 2015; Cafcass/Women's Aid 2017). These are major gaps given that these factors profoundly shape children's experience and life chances, and should also inform the court process. We aim to address these gaps in future research.

Although identifying the 'typical' case can be insightful, it can limit the ability to tailor interventions to particular case characteristics. This is particularly important given the interest of the Private Law Working Group in developing different tracks for different types of cases: for safeguarding, non-safeguarding and returner cases (Private Law Working Group 2019; Private Law Working Group 2020). In this section we start to differentiate the types of case within the overall total of around 3,500 applications in Wales each year. In future reports we will explore how returner cases compare to first/sole application cases.

Differentiating case types: standard and non-standard cases, applicant gender, and returns

Over the course of our research we are likely to develop a number of different case typologies. At this stage in the analysis there are a number of ways to categorise cases—by gender of applicant, their relationship to the child, and whether they have appeared in court before.

Standard parental and non-standard cases. One potentially useful approach is to differentiate cases by the relationship to the child(ren). Past research has distinguished between cases involving two (presumed) parents who have separated and those cases involving multiple parties and/or one or more non-parents (Harding and Newnham 2015; Cassidy and Davey 2011). On that basis, the evidence suggests that around 90% private

[14] Cafcass Cymru is currently trialling a 'case closure' form to collect information on welfare issues and outcomes of the case.

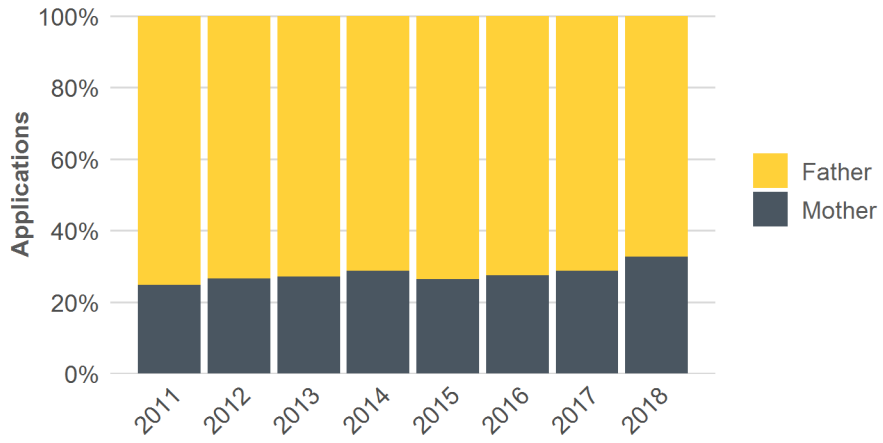
law cases involve two separated parents (what we will call 'standard parental cases') with about 10% being 'non-standard' cases involving one (or occasionally) two non-parents. Harding and Newnham's case file study (2015) found that the non-standard cases were most commonly applicant grandparents, followed by step-parents and aunts/uncles.

Our analysis of Cafcass Cymru data confirmed that the majority of applications made to the courts in Wales consisted of one male and one female adult party, who we presume were, in the great majority of cases, the separated parents of the child(ren).[15] That nine out of every ten applications are standard parental cases has been remarkably consistent over time, varying between 87% and 93% over the period (2007–2018).

In future reports we will take a detailed look at the 10% of non-standard cases to explore how they compare with standard parental cases. This extended analysis will enable us to develop case profiles of inter-parental and inter-generational disputes about child arrangements. Importantly, it will also allow exploration of public-private law 'crossover' cases, including those where the extended family is used as a resource in child protection cases. The remainder of this report however will focus in detail on the 90% or so 'standard parental' cases.

Gender of applicant. Another way to differentiate private law applications is by gender of applicant. As noted above, private law cases are primarily driven by male applicants, typically non-resident fathers. We found a shift from three quarters (75%) of 'standard parental' applications being brought by fathers in 2011 to around two-thirds (67%) in 2018 (Figure 2).[16]

Figure 2: Proportion of standard parental applications made by mothers and fathers, 2011–2018



[15] With the caveat that a small number of these applications may be made by non-parents, we refer to male and female applicants in these standard parental cases as mothers and fathers throughout.

[16] Information about the legal orders applied for and applicants, respondents and subjects involved were included for applications issued between 2011 and 2018 (data of sufficient quality is not available prior to 2011).

As we will see below, there are both similarities and differences to draw out between cases initiated by mothers and by fathers. Understanding what, if any, differences there are may assist further with developing appropriate interventions.

New or returning cases. A further characteristic, which we will explore in more detail later, is whether an application is a return to court for one or more parties.

Profiling the children

We start by profiling the children of these standard parental cases. This analysis is able to replicate earlier research—private law children are typically young, appearing on their own or in small sibling groups, and are primarily living with their mother only at the time of application (Hunt and Macleod 2008; Harding and Newnham 2015; Jay et al. 2019).

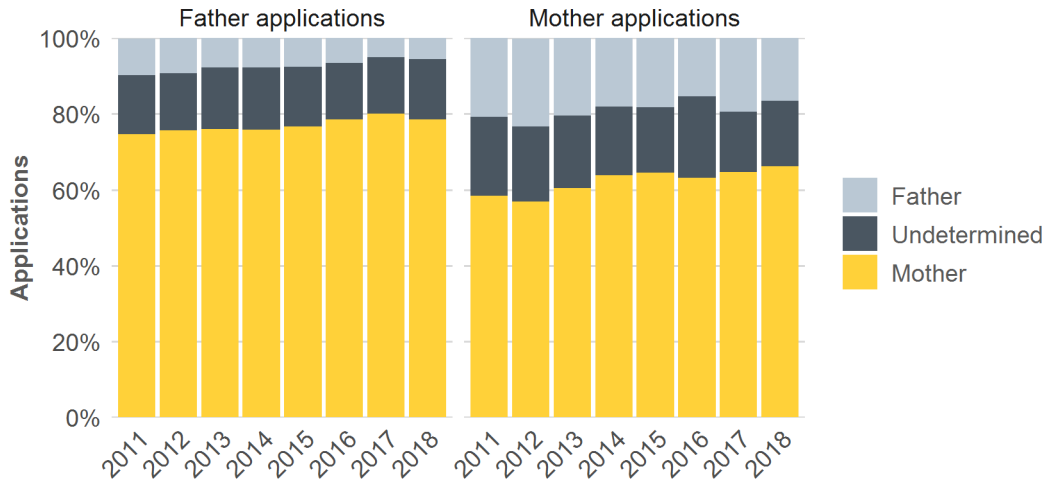
Who were children living with at time of application?

The majority of children live with their mothers following relationship breakdown, regardless of court involvement (Blackwell and Dawe 2003; Lader 2008; Haux et al. 2015). This pattern of post-separation parenting reflects gendered care patterns and expectations pre-separation. Previous research has found that the same gendered patterns of care in the general community are repeated in private law samples. In other words, families appearing in private law proceedings are just as likely to be mother-resident families as in the wider community. The case file study by Harding and Newnham (2015) for example, found that where arrangements had been established, 83% of children were living with the mother, 13% with the father and 3% had shared care.

Our analysis of Welsh data replicates these patterns from England, with some limitations.[17] The majority of children (70–76%) involved in proceedings were known to be living with the mother at the time of application, with between 15% and 17% known to be resident with their father. Around one in ten children resided in the same small local area (lower layer super output area) as both parents, so the resident parent cannot be determined. Figure 3 shows that in the majority of applications made by fathers, the (youngest) child was known to be living with the mother, i.e. the respondent. Similarly, in most applications made by mothers, the (youngest) child was resident with her, i.e. the applicant.

[17] Cafcass Cymru does not record where the child is living at application. However, we can infer this by using details of the small local area (lower layer super output area, LSOA) in which the applicant, respondent and child were resident, based on GP registration. We have done this for the youngest child in cases with more than one subject. This measure was missing for 22% of applications, due to ALFs needing to be available for applicant, respondent and youngest child.

Figure 3: Who the youngest child was living with at the time of application, for applications made by mothers and fathers, 2011–2018



These patterns are fairly stable over time, although there is a slight increase in the number of mother-resident cases in recent years, both as applicant and respondent. The existing pattern of care has obvious consequences for litigation, with the majority of applications being made by fathers. We return to this in Chapter 6.

Age, gender and sibling group size

As with previous research (Harding and Newnham 2015; Jay et al. 2019), we found no evidence that child gender appeared to influence litigation. There were equal numbers of boys and girls involved in litigation in Wales, in cases brought by both fathers and mothers.

Like their English-based counterparts, the children involved in proceedings were also generally young. In contrast with public law proceedings, where almost a third (30%) of children entering care proceedings in Wales between 2011 and 2018 were under a year old (Alrouh et al. 2019), there were relatively few infants. Around 8% of the youngest children in private law cases were under a year old at the time of application (Table 2), slightly higher than the 5–6% reported in English private law cases (Jay et al. 2019). In the majority of applications—around four out of five—the youngest child was aged between one and nine years old, again similar to the pattern in England (Jay et al. 2019). The percentage of children aged 1–4 years decreased over the period, with an increase in the proportion of children age 5–9 years old. It has to be borne in mind here that other, older, children may be included in cases involving a sibling group.

Table 2: Age of the youngest child in standard parental applications (percentages), 2011–2018

Age	2011	2012	2013	2014	2015	2016	2017	2018
Less than one year	7.9	8.2	8.4	7.9	6.9	7.3	8.3	8.1
1–4 years	46.7	46.6	45.8	45.5	43.1	43.4	42.2	41.2
5–9 years	35.0	34.5	36.3	36.1	39.6	38.8	38.9	38.6
10 years plus	10.4	10.7	9.5	10.4	10.4	10.5	10.6	12.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Almost two-thirds (63–67%) of cases involved a single child, with a further quarter (25–28%) concerning two siblings (Table 3). Only about 9% of cases each year involved sibling groups of three or more. This pattern replicates earlier findings about relatively small sibling groups in English proceedings (Jay et al. 2019). The pattern is fairly consistent over time across the Welsh data.

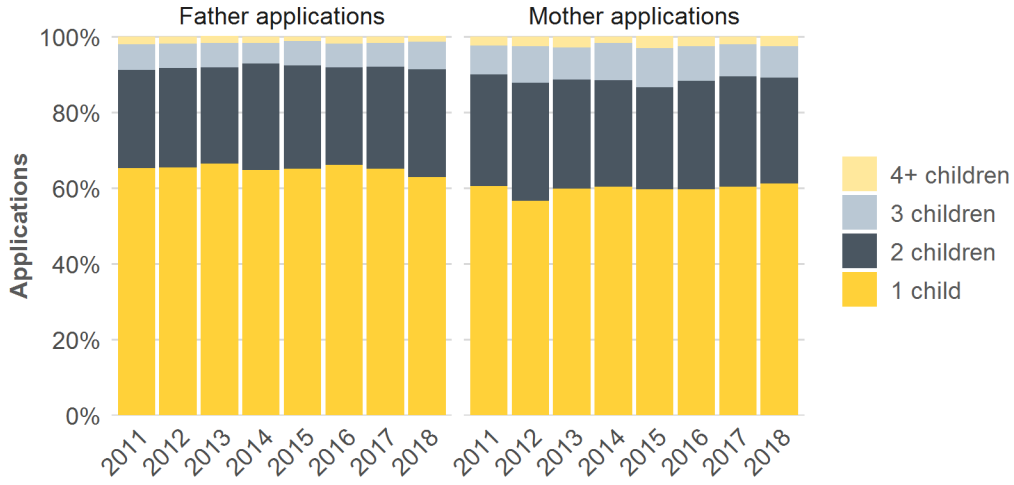
Table 3: Number of children included in standard parental applications (percentages), 2011–2018

Number	2011	2012	2013	2014	2015	2016	2017	2018
1	65.2	65.4	66.5	64.8	65.1	66.0	65.1	62.9
2	25.9	26.2	25.4	28.1	27.2	25.8	27	28.4
3	6.9	6.5	6.4	5.4	6.5	6.3	6.2	7.4
4+	2.0	1.9	1.8	1.7	1.2	1.8	1.6	1.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The large number of young single children being litigated over does raise practice implications, particularly around the availability of support for children. There is very robust evidence that parental conflict that is frequent, intense, poorly resolved and about the child is associated with multiple negative outcomes for children (Acquah et al. 2017; Grych and Fincham 1990; Harold et al. 2016). That risk may be exacerbated for single children without the presence of siblings to act as a protective factor or buffer. The same may be said for those single children experiencing domestic abuse without the support of a sibling.

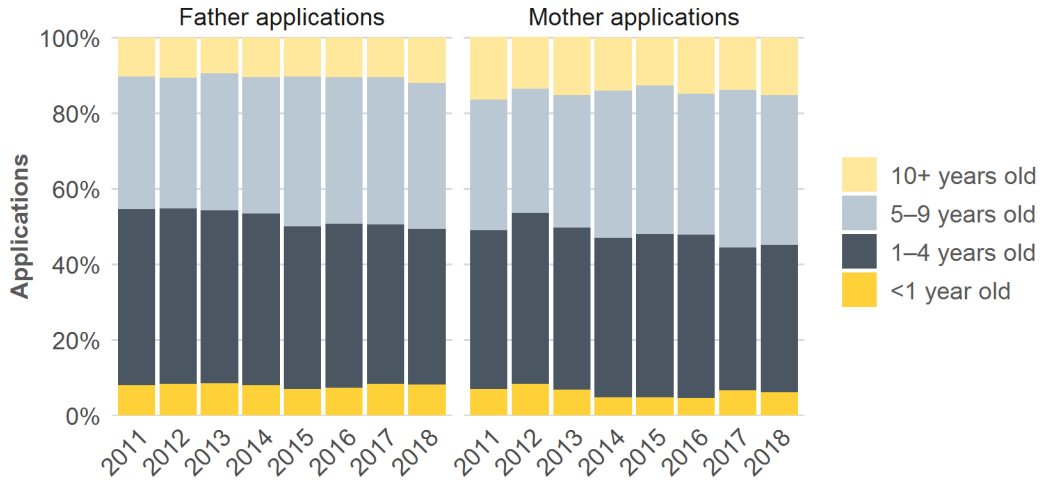
There are some small differences in the profiles of children in applications brought by fathers and mothers. Applications by mothers do involve slightly higher proportions of larger sibling groups (Figure 4), a stable finding over the period—10–14% of applications made mothers involved three or more children, compared with 7–9% of applications made by fathers.

Figure 4: Number of children included in applications made by mothers and fathers, 2011–2018



In terms of the age of the youngest child involved in private law cases, a slightly higher proportion of cases brought by fathers included a young child (under one, or one to four years old), with mother applications more likely to have a youngest child aged ten or over. The proportion of children in the youngest age groups has fallen slightly since 2014 in applications made by fathers (Figure 5).

Figure 5: Age of the youngest child in applications made by mothers and fathers, 2011–2018



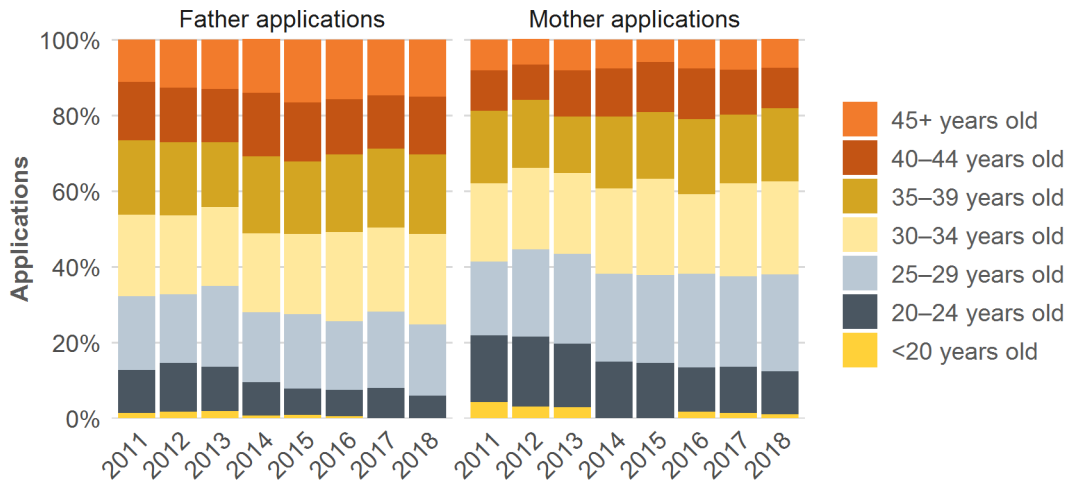
Profiling the adults

The Cafcass Cymru database contains relatively sparse information on the adults involved in proceedings, beyond age and gender.

The majority of both mothers and fathers were in their late-twenties and thirties, with men somewhat older than women (Figure 6), not dissimilar to parents in the general population. Over the period, 69–73% of fathers and 79–84% of mothers were under 40. It also appears that the percentage of applicants under 25 years old has decreased over recent years, particularly so for fathers for whom there is an apparent reduction post-LASPO. In 2011,

13% of fathers and 22% of mothers were under 25—by 2018 this had fallen to just 6% and 12% respectively.

Figures 6: Age of applicants in applications made by mothers and fathers, 2011–2018



As is common in Western societies, the majority of former relationships were between parties of similar age. We found that two-thirds (65%) of applications involved parents who were aged within four years of each other, and this was a consistent pattern over time.

Deprivation and the possible emergence of a justice gap

Socio-economic status, as published research indicates, has an impact on family stress and breakdown—a possible trigger for private law disputes and a point of possible intervention to prevent disputes starting or escalating. Over recent years there has been a considerable focus on poverty and deprivation as a key causal factor in public law or child protection cases (Elliott 2020). There is also a growing body of literature that evidences the concentration of public law cases in the most deprived parts of England and Wales (Alrouh et al. 2019; Bywaters et al. 2016; Harwin and Alrouh 2017). In contrast, there has been very little focus on socio-economic status as a relevant factor in private law children cases, until exploratory work by this research team (Johnson et al. 2020). This is partly a methodological challenge—that information has not been readily available on court files for researchers. It may also reflect a perception that private law disputes are 'merely' arguments between adults, rather than related to or a reflection of economic stressors (or indeed of domestic abuse).

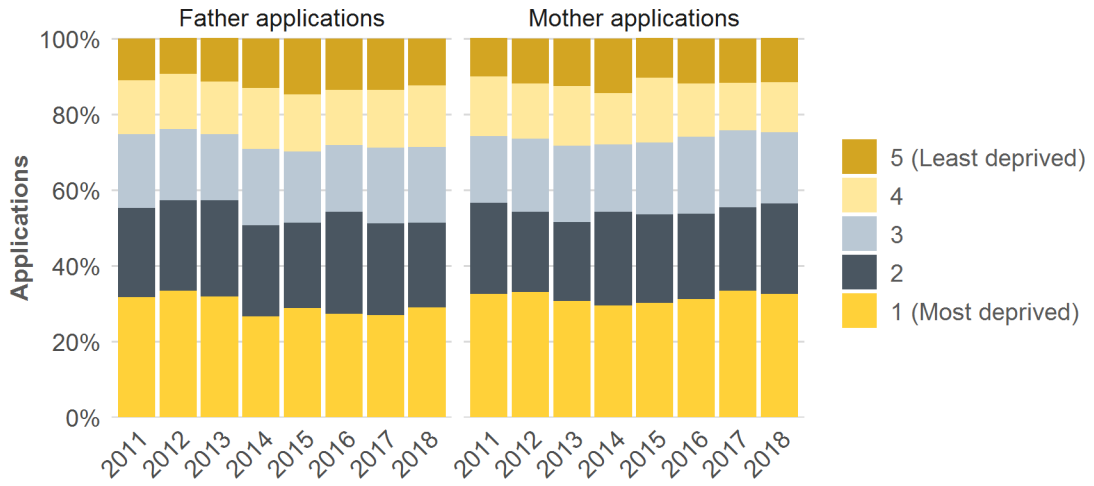
There has been some prior suggestion that private law parents may be more economically disadvantaged than the wider population. This work has identified lower income levels (Goisis et al. 2016), lower levels of work activity (Trinder et al. 2005), and lower occupational level (Blackwell and Dawe 2003).

By linking Cafcass Cymru data to demographic data and the WIMD, it has been possible to establish a clear link between deprivation and private law cases, advancing the initial

analysis undertaken by the team (Johnson et al. 2020) by examining trends over time for applicants, by gender.[18]

By far the majority of private law applications are made by applicants living in the most deprived areas of Wales (Figure 7)—in 2018, 29% of fathers and 33% of mothers lived in areas in the most deprived quintile, with 51% of fathers and 56% of mothers living in the two most deprived quintiles.

Figure 7: Proportion of applicants by area-level deprivation quintiles, for applications made by mothers and fathers, 2011–2018



An association between private law demand and deprivation is not a new phenomenon, although we can see a subtly changing picture over time (2011–2018) regarding the distribution of private law applications by deprivation quintiles. A slightly lower proportion of applications were made by fathers living in the most deprived quintile post-LASPO—this reduced from 32–33% between 2011 and 2013 to 27–29% between 2014 and 2018.

Although the purpose of the report is not to draw direct comparison between public and private law cases in Wales, these findings add to the overall picture of the scale of family justice need in Wales in the most deprived areas. Public and private law cases are often counted, managed or analysed in isolation, yet it is only by connecting the two that we appreciate the full scale of need associated with socio-economic deprivation. Given this new evidence, we think it is important to conceptualise private law in terms of need for support and assistance, both outside and within the courts.

In our view, the association between economic deprivation and private law children applications is firmly established. It is vital that the family justice system acknowledges this and begins to consider how the impact of deprivation can be addressed.

[18] Due to ALF match rates and record availability in WDSD, this measure was missing for applicants in 17% of applications (see appendix for details).

Emerging evidence of a justice gap?

Our ability to track patterns of use over a long period of time provides an opportunity to see if any groups are more or less likely to be involved in proceedings. In private law, the impact of the legal aid changes in 2013 is of particular interest. To date, it has not been possible to compare profiles of cases before and after LASPO, but our use of the Cafcass Cymru data enables us to do that.

The two shifts identified above, in the ratio of applications made by mother and fathers, and the proportion of younger applicants, would be consistent with a 'justice gap', where certain sections of the population who might have previously been eligible for legal aid can no longer afford to bring private law applications (Hunter 2014). The small shift towards an increased proportion of applications by mothers may reflect the continuing availability of legal aid for some domestic violence victims, who are more likely to be women (Office for National Statistics 2019). Younger parents are perhaps less likely than those who are older to be able to afford to bring proceedings without legal aid. The data on deprivation provides further insights into a possible justice gap. We also observed that lower proportions of applications are being made by fathers living in the most deprived quintiles post-LASPO.

These conclusions are tentative, as the data on the possible impact of LASPO is limited. Further analysis and discussion with stakeholders and communities would be needed before drawing any firm conclusions. It is important also to note that the replacement of residence and contact with CAOs occurred at broadly the same time as legal aid changes. This may muddy the picture to a degree.

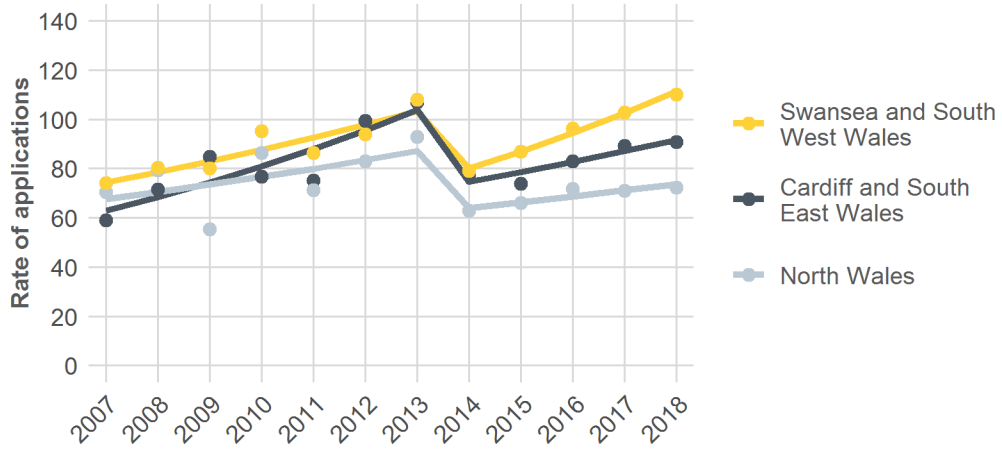
The geography of private law need

Uncovering the distribution of private law cases by deprivation quintiles does not, however, answer the question: *where do private law families live?* In contrast to public law where decisions to bring court proceedings are taken by local authorities, in private law decisions about litigation are taken by private individuals, albeit often with advice from lawyers and others. However, uncovering the geography of private law as a need for assistance should inform any helping strategies, either in, or out of court. Put simply, services need to be in the right localities to meet needs.

We calculated incidence rates (total private family law applications per 10,000 family households) for the three DFJ areas in Wales: North Wales; Swansea and South West Wales; and Cardiff and South East Wales. Incidence rates rather than frequencies were calculated, as meaningful comparison can only be made by adjusting for the size of the underlying population. Future work plans to consider the geography of private law need at a more granular level.

All three DFJ areas saw fluctuating but modestly increasing incidence rates between 2007 and 2013, then a drop between 2013 and 2014 (subsequent to the introduction of LASPO). Rates subsequently returned to more stable increasing trend, although rates in the three DFJ areas have started to diverge post-LASPO (Figure 8).

Figure 8: Rate of private family law applications per 10,000 family households, by DFJ area, 2007–2018



In 2007, there were 59 applications per 10,000 family households in Cardiff and South East Wales, compared with 71 per 10,000 in North Wales and 74 per 10,000 in Swansea and South West Wales. The incidence rate pre-LASPO in Cardiff and South East Wales was increasing at a greater rate than in North Wales or Swansea and South West Wales—with average year-on-year increases of 11%, 8%, and 7% respectively.

The fall in the incidence rates in 2014 was similar in each of the three DFJ areas, at between 27% and 32%, then rates began to rise once again. The private family law application incidence rates returned to an increasing trajectory post-LASPO, although the year-on-year increase was higher in Swansea and South West Wales (9%) than in North Wales and in Cardiff and South East Wales (3% and 4% respectively).

In 2018, there were 91 applications per 10,000 family households in Cardiff and South East Wales, compared with 71 per 10,000 in North Wales; however, in Swansea and South West Wales, the rate had risen far higher to 110 per 10,000 family households. Thus it appears that private law need is greatest in Swansea and South West Wales, when considered as a rate per 10,000 households.

A similar geographical picture was seen in the incidence rates of newborns and infants entering S31 care proceedings (Alrouh et al. 2019). Family breakdown resulting in litigation over children is most evident in the Swansea and South West Wales DFJ area, whether we view this through the lens of public or private law. Put together, families appear to be facing greater vulnerability requiring external support in this court area. Although public law cases are initiated by the state (local authorities) and private law cases are initiated by private individuals (typically non-resident fathers); what unites the two types of cases is geography and level of deprivation.

6. What is being applied for and by whom?

We now turn to what the Cafcass Cymru data tells us about the orders parties were applying for, confining our analysis here to the standard parental cases—that is, those involving only two adult parties that we presume are a former couple. We will explore what orders the non-standard cases seek in a subsequent report.

Our analysis here is hampered somewhat by the replacement of contact and residence orders with the single CAO by the Children and Families Act 2014. A CAO can specify whether it is a 'live with' or 'spend time with' order, and indeed Family Court Statistics for England and Wales records CAOs made as 'CAO (residence)' or 'CAO (contact)'.[19] However, Cafcass Cymru does not currently record whether an application is 'live with' or 'spend time with' or both. Whilst legally correct, this is an important loss of detail in distinguishing between applications made by men and women. That said, when exploring gendered patterns of applications, we were able to use the pre-2014 data relating to separate residence and contact orders.[20]

Overall trends in applications

The majority of private law applications are primarily about child arrangements—where a child should live and who they should see (Table 4). However, the proportional increase in applications for the other orders is not insubstantial and has risen over the last few years from 15% of all parental applications in 2011 to around one in three (30%) in 2018.

The increase in enforcement orders, SIOs and PSOs is an interesting development. All three types of application might be seen as markers for more difficult or contentious cases, both for the families and the system. The jump in enforcement applications from 2014 onwards may reflect greater difficulties with making contact arrangements work, possibly in the post-LASPO absence of solicitors who might find other routes to addressing contact difficulties than making an enforcement application. It may also reflect the wider range of enforcement options available.

Why SIOs and PSOs have increased over the same period is not clear. It may reflect changing relationship patterns, with more transnational families.[21] Or it may again reflect a greater number of more difficult cases with less family justice resource, especially legal advice, to contain and divert them. But those suggestions are speculative. This is an area where we will be doing further qualitative research, given that so little is known about these orders despite their increasing significance to families and the family justice system.

[19] The use of contact and residence is incorrect in legal terms, but helpful analytically to distinguish cases.

[20] The pre-2011 data is insufficiently robust to use here.

[21] Where family members are spread across national borders.

Table 4: Types of standard parental applications (percentages), 2011–2018

Application type	2011	2012	2013	2014	2015	2016	2017	2018
Child arrangements	84.5	82.9	81.6	74.4	71.9	72.0	72.0	69.5
Contact order	57.2	56.6	55.2	16.4	-	-	-	-
Residence order	17.8	18.0	17.7	7.2	-	-	-	-
Contact order and residence order	9.5	8.3	8.7	3.5	-	-	-	-
Child arrangements order	-	-	-	47.3	71.9	72.0	72.0	69.5
Prohibited steps order	5.4	5.2	5.0	6.1	5.9	7.5	7.6	8.3
Specific issue order	4.3	3.4	3.8	3.6	4.8	4.7	5.3	5.1
Enforcement order	3.3	5.0	6.1	10.0	11.0	12.0	10.8	12.0
Other	2.5	3.4	3.5	5.9	6.4	3.8	4.3	5.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

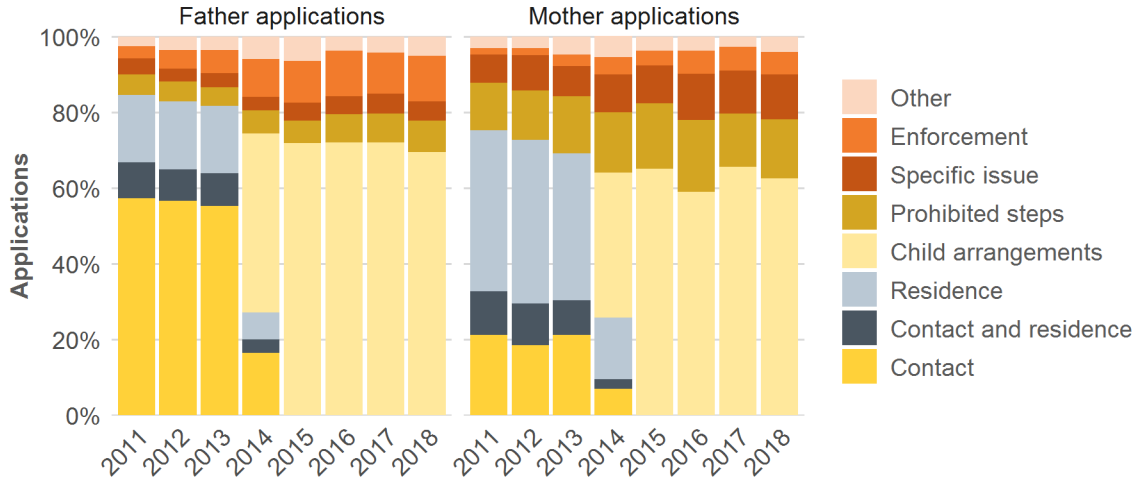
The percentage of cases that included an application for parental responsibility dwindled away from 12.8% of applications by fathers in 2011 to just 0.8% in 2015. This is almost certainly due to the long-term impact of changes in parental responsibility introduced by S111 of the Adoption and Children 2002 Act. Prior to the Act, unmarried fathers had to apply for parental responsibility by making a formal agreement with the mother or through a court order. From December 2003, unmarried fathers were conferred parental responsibility automatically if they were named on the child's birth certificate.

How do applications made by fathers and mothers differ?

As flagged in Box 1, it is well-established that the pattern of applications in private law is highly gendered—primarily consisting of applications made by fathers for contact. We were able to confirm this pattern for Wales using population-level data, but we were also able to extend the analysis to explore how gender, and where the child lives, interact with type of application.

As noted, our analysis is partially hampered by the replacement of contact and residence orders with CAOs in 2014. For the period 2011–2014, however, we are able to distinguish 'live with' and 'spend time with' applications. Figure 9 shows the types of application made by mothers and fathers.

Figure 9: Types of applications made by mothers and fathers, 2011–2018



Overall, we can see that in 2011, around seven out of ten (72%) applications made by fathers included a contact order and a third (32%) included a residence order (either singly or in combination). Conversely, almost seven in ten (69%) applications made by mothers included a residence order and a third (35%) included a contact order. A similar pattern was seen in 2012 and 2013, when information about applications for contact and residence orders was available. Thus, within the scope of child arrangements, fathers were more likely to be applying for contact and mothers for residence.

The reason for the gendered difference is straightforward. As the majority of children were living with their mother at the time of the application, the majority of father applications would be by the non-resident parent seeking to (re)establish contact or possibly to secure residence. We know from case file analysis that a prime motivation for resident mothers to seek an order is to confirm the status quo, including where there are concerns about abduction (Harding and Newnham 2015). At the same time, there will be small numbers of applications from resident fathers seeking to confirm residence, and from non-resident mothers seeking contact or to switch residence.

That a greater proportion of enforcement applications are made by fathers is as expected given that they are most likely to be the non-resident parent. It is noteworthy that this has increased over the period (2011–2018). Similarly, that the greater proportion of SIO and PSO applications by mothers is likely to be also related to the fact that they are the resident parent in most cases. Why the numbers have increased is not clear. These are areas where case file analysis would be particularly helpful.

7. How many families return to court?

As with public family law, there is increased awareness and some concern about repeat applications in private law. During the scoping review for Nuffield FJO, one of the major issues raised by frontline practitioners was in relation to recurrence (Broadhurst et al. 2018). The concerns are three-fold.

First, repeat applications suggest that children may be experiencing long periods of time in arrangements that are probably not working for them. That could be because those arrangements increase or prolong children's exposure to domestic abuse. It could be because arrangements are not happening (or no longer happening) as ordered, because circumstances have changed, the original order was inappropriate, or adults and/or children are not complying with the order (Trinder et al. 2013; Halliday et al. 2017). In this context, return to court is an indicator that arrangements are not working for the child, rather than necessarily being inherently problematic.

Second, repeat applications mean that children will be the focus of further or protracted litigation. Litigation might be positive for the child, where it resolves issues or improves arrangements. However, developing an effective response to repeat litigation is pressing, given robust evidence that unresolved conflict, which centres on the child, is damaging (Acquah et al. 2017).

Third, repeat litigation is also likely to be a major source of stress and anxiety for adults, impacting not only their own mental health, but possibly also undermining their parenting capacity (Whiteside and Becker 2000; Bream and Buchanan 2003; McIntosh and Long 2006; Trinder et al. 2008). Given the new evidence presented above regarding deprivation, repeat litigation may add further stress to the lives of parents and children already exposed to considerable disadvantage.

Further, repeat litigation has an impact on the family justice system, adding to existing pressure on resources. That said, there is some recognition that recent attempts to limit the input and support that families receive at court may have had the effect of increasing the return rate. In particular, the Private Law Working Group has queried whether the reduction in the number of review hearings (introduced in the Child Arrangements Programme) to support families through a period of increasing contact had been counter-productive, leading to greater numbers of families returning to court when arrangements subsequently broke down (Private Law Working Group 2020).

Existing evidence from England

There is a small but developing body of research on the extent of returns in private law cases, both in England and internationally. The evidence suggests that only a minority of private law cases return to court in England. Returners comprise between a fifth and a third of cases, respectively (Jay et al. 2019; Halliday et al. 2017). It is further estimated that nearly two-thirds of returners (63%) re-litigate within two years of the previous case being closed to Cafcass (Halliday et al. 2017).

There is also evidence that repeated returns, or chronic litigation are rare. Only 3% of Halliday's sample of 40,599 children returned to court more than once, consistent with (limited) international evidence (Hunt and Trinder 2011). However, studies have hitherto involved relatively short observational windows, limiting the ability of researchers to capture multiple returns. This is a methodological limitation that exploitation of administrative data sources should be able to overcome as data improves, both through longevity and incremental changes in the data fields recorded.

Understanding the scale of return in Wales

We are able to add to the evidence base by reporting on the return rate in Wales with population-level data. By extending our analysis beyond questions of scale, we were also able to probe patterns of recurrence by gender and litigation role, as a first step towards understanding what might be driving cases returning to court.

To capture the scale of recurrence in private law, we looked back at the history of an individual's appearances in private law applications. We have kept the same focus on standard parental cases with one applicant and one respondent. For applicants in any given year, we asked: *has this applicant appeared on at least one previous application in the last three years? If so, what was their role in those previous applications; applicant only, respondent only, or both?*

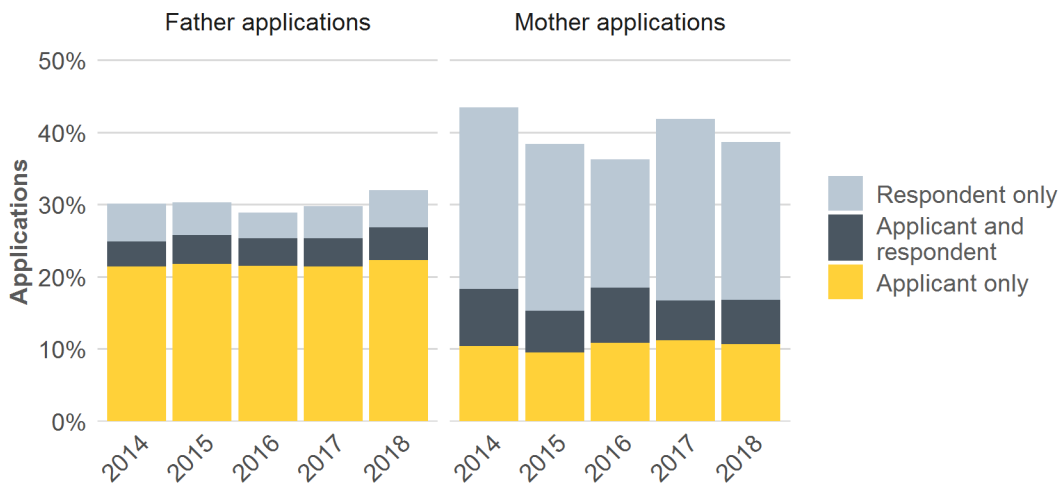
Use of administrative data for applied policy audiences requires some rationalisation of the underlying data. Regarding recurrence, readers should note that we have included all instances of recurrence during the three-year window regardless of whether a) the applicant returned with the same or different respondent; and b) an application was a cross-application—i.e. a further application was made during the course of an initial set of proceedings.

The overall level of return in Wales is similar to that reported above from studies in England —between 31% and 34% of private law applications between 2014 and 2018 were made by an applicant who had been involved in a previous application within the last three years. Mothers had a slightly higher return rate of between 39% and 43%, compared to between 29% and 32% for fathers.

Beginning to unpack the drivers of return

We were also able to scrutinise the relationship between gender and litigation role in repeat cases (Figure 10). Of those who were returning to court between 2014 and 2018, fathers were more likely to have been an applicant in a previous application (70–74%) than mothers (24–30%). Conversely, mothers were more likely to have been a respondent in a previous application (49–60%) than fathers (12–17%). A small proportion of both mothers and fathers bringing a private law application in 2014-2018 had been both an applicant and a respondent in previous applications. Thus, it appears that fathers are far more likely to be repeat applicants, whereas mothers are subject to repeat applications as respondents, or to issue their own applications after being subject to previous applications.

Figure 10: Litigation roles of current applicants in previous three years, for applications made by mothers and fathers, 2014–2018



We were also able to explore whether return cases involved the same or different children and the same or different adult parties. The vast majority (94–96%) of returners had previously been in court with the same adult party and the same child(ren). Albeit in a fairly short 'returns window', these were almost always the same adults litigating over the same child or children. As noted above, the duration of unsatisfactory arrangements and prolonged litigation is likely to have a toll on the well-being of adults and children.

There is much more work to be done in understanding returns in private law, including the orders applied for and the impact of repeated litigation on children, as well as on adults. Qualitative analysis of Welsh case files is likely to be necessary to understand the drivers more fully, building on the work in England by Trinder et al. 2013 and Halliday, Green and Marsh 2017. Further quantitative analysis of the patterns of return will be possible over the coming years as these longitudinal sources of data mature, in particular to explore *why* some cases return or return repeatedly. This is where the use of large-scale linked data (health, welfare and further demographic) could shed more light on what might distinguish the profiles of single, repeat, and multiple (or chronic) users. That understanding may also help earlier identification and intervention to prevent what would otherwise be chronic cases from becoming entrenched. Evidence-informed, practice-led initiatives in public law illustrate that pioneering prevention initiatives can be very effective, where there is a close fit between research and practice change, incorporating user-centred child and family perspectives.

8. Conclusions and implications

This report is the first in a series on private law children cases. It is the first analysis of private law applications in Wales, and the first to be based on population-level data, rather than relatively small case file analysis samples. It has demonstrated the potential gains in understanding that can be achieved by taking a longer-term and broader approach, extending beyond a single snapshot in time and linking court data (from Cafcass Cymru) to other administrative data sources. The conceptual work that has underpinned the analysis will aid other researchers to grasp the nature of private law cases handled by Cafcass Cymru and Cafcass.

What does this research add to existing knowledge?

Our analysis has confirmed earlier findings from England: the majority of Welsh private law cases are between two parents, are mainly brought by fathers, who are mainly non-resident parents, and concern a single child, aged predominantly between one and nine years old. The private law adults are mainly in their late-twenties and thirties.

Private law need or demand

- Since 2014, the trend in the rate of private family law applications per 10,000 family households in Wales has seen a modest increase, recovering to the pre-LASPO level, and continues to rise. These figures indicate a sustained increase in the need for support and assistance from the family courts over a long period.

- The level of private law applications can be influenced by extra-familial factors, such as the availability of legal aid. However, the removal of legal aid appears to have mainly delayed or paused applications, rather than reducing the levels of need for assistance over the longer term.

- Overall, use of the court in private law cases is low—fewer than 1% of all family households make a private law application each year.

The socio-economic context of private law

- The research showed a clear link between deprivation and private law cases. In 2018, 29% of fathers and 33% of mothers making a private law application lived in the most deprived quintile, with 51% of fathers and 56% of mothers living in the two most deprived quintiles.

- There was a reduction in the proportion of applications brought by fathers, by younger applicants, and by fathers living in the most deprived areas from 2013 onwards. This is consistent with the emergence of a 'justice gap' following the removal of legal aid from private law cases in 2013, other than for some victims of domestic abuse.

- Levels of need and trends vary by geographic area, as with public law children cases, with the highest rates of private family law applications seen in Swansea and South West Wales.

- The majority of private law applications are about where a child should live and who they should see. However, there have been proportional increases in applications for the other orders (enforcement, prohibited steps, and specific issues) over the last few years —these accounted for 15% of all parental applications in 2011, increasing to around one in three (30%) in 2018. This represents quite a substantial shift in the workload of the family justice system. It may also reflect an increase in more challenging or contentious cases, compared to child arrangements cases.

- The jump in enforcement applications from 2014 onwards may reflect greater difficulties with making contact arrangements work, possibly in the post-LASPO absence of solicitors who might find other routes to addressing contact difficulties than making an enforcement application.

- In line with previous work, around a third of applications are returns to court. Mothers are somewhat more likely to be involved in a return to court. Fathers are more likely to be repeat applicants, whilst more mothers are likely to be subject to repeat applications or to issue their own applications after being subject to a previous application.

Implications for policy and practice

While this programme of work on private law children is still in its early stages, four clear implications seem to be emerging for policymakers and service providers.

- The impact of deprivation is now well-recognised in public law children cases. This level of understanding is very different in relation to private law cases. This research has established that private law cases also disproportionately involve people living in more deprived areas. It is critical that policymakers now give due consideration to the role of deprivation as a factor in private law cases. The current emphasis on diversion of what are sometimes portrayed as fairly trivial disputes may underestimate the role of deprivation as a potential causal factor in private law need, and as a potential barrier to the take up of preventative services. There is a need to understand more about the role of deprivation and its interaction with other factors such as conflict, domestic abuse, and child protection. This will be a critical step in informing—and possibly reshaping—the response to private law need both in and out of court.

- The research highlighted some reductions in private law applications from fathers, from younger applicants and from those living in the most deprived areas following the LASPO reforms. This is the first detailed empirical evidence of a 'justice gap' in terms of mapping pre- and post-LASPO patterns of applications by demographic factors. We recommend that the MoJ reviews this evidence, alongside other analyses they may have, to reflect on whether access to justice is being inhibited and what might be done to address that.

- As noted, the majority of private law proceedings involve a single child or two siblings. Sibling support is a well-documented resilience factor for children, which will be missing in large numbers of private law cases. In addition to addressing the dispute between adults, the research highlights the importance of making support available for children.

- The Cafcass Cymru database is designed to meet operational requirements, rather than facilitate research. That said, there are a number of improvements that could be made to the quality and scope of data that would facilitate research and enhance organisational effectiveness with minimal time and resource costs. In particular, we would recommend that Cafcass Cymru, ideally in concert with Cafcass England, records whether there are allegations of domestic abuse and other safeguarding concerns, each adult's relationship to the child and other adult(s) and, ideally, the child's living arrangements at application. It would also be of benefit if CAOs were recorded as 'spend time with' or 'live with'. A 'case closure' form, to record some of this information, is currently being trialled in the North Wales court area.

Implications for research and next steps

At this stage of the research programme, there is a long list of questions to explore. The most important are as follows.

- Cafcass Cymru receives over 3,000 private law applications each year. There is increasing interest in attempting to differentiate various types of case in order to tailor interventions to particular case characteristics. The Private Law Working Group proposes to introduce three tracks—for safeguarding, non-safeguarding and returner cases. The evolution and effectiveness of any triaging or tailored approach will depend, however, on sound empirical foundations. The next steps in this research programme will therefore be to delve deeper into different case types, particularly the non-standard cases, where there is very little prior research: those with two or more applicants and/or two or more respondents; and those including orders other than those for child arrangements.

- This first report has focused solely on demographic profiling. Later reports will explore the vulnerability of children and adults entering the family justice system, their pathways, experiences and outcomes.

- We also plan to undertake detailed work on understanding returns, building upon small case file analyses to explore *which cases return and why*, especially why a very small number return repeatedly. The use of large linked sources of data could shed more light on what might distinguish the profiles of single, repeat, and multiple (or chronic) users. That analysis may also help the development of earlier identification and intervention to prevent what would otherwise be chronic cases from becoming entrenched.

- This first report has highlighted both the potential and limitations of administrative data. We were able to look beyond Cafcass Cymru records to understand more of the socio-economic circumstances of families by using linked data. At the same time, some of the most significant factors that shape private law cases and their outcomes are not available from the quantitative dataset maintained by Cafcass Cymru. By far the most significant gap is the absence of data on domestic abuse, that smaller case file studies put at around half of cases. Future work will therefore explore the possibility of more data linkage, building on the deprivation data linkage, as well as the possibility of conducting complementary, intensive qualitative work based on case file analysis.

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Appendix

Study design

This study analysed aggregated, annual, population-level trends in applications made to the private family law courts in Wales between 2007 and 2018. Under consideration were the trends relating to: the rate of applications across Wales, as well as across the three designated family judge (DFJ) areas: what orders are being applied for; the administrative characteristics of who was involved: applicants, respondents and the child subjects; and what proportion of applicants each year had previously been involved in an application within the last three years.

Data sources

For each data source within the SAIL Databank, each person has their identifiable data removed and anonymised to a given unique identifier, otherwise known as an anonymised linkage field (ALF). For those successfully matched, this enables linkage of records from different data sources within SAIL while maintaining anonymisation. SAIL anonymisation and linkage methodology is described in more detail by Lyons et al*.* (2009). All data within the SAIL Databank is treated in accordance with the Data Protection Act 2018 and is compliant with the General Data Protection Regulation (GDPR).

The main source of data for this study was the Cafcass Cymru case management data extract available within SAIL (further details about the Cafcass Cymru data are available in Johnson et al*.* 2020). With other data sources being used to derive and join additional information on to the Cafcass Cymru data extract.

Cafcass Cymru

Cafcass Cymru provided SAIL with a data extract of its administrative case management records relating to public and private family court proceedings in Wales. Cafcass Cymru is involved in work with all private law applications prior to and including a first court hearing. However, it should be noted that Cafcass Cymru is only involved in subsequent hearings in specific instances, such as where concerns exist over child welfare and the court has directed further work or has decided to appoint a children's guardian under 16.4 of the Family Procedure Rules. Information relevant for this study included details relating to:

- application – date of issue, orders applied for, local authority of the applicant.
- applicant and respondent – week of birth, gender, ALF.
- the child(ren) subject – week of birth, gender, ALF.

Welsh Demographic Service Dataset (WDSD)

The Welsh Demographic Service Dataset (WDSD) provides demographic characteristics of people registered with general practices in Wales. This was used to provide the lower layer super output area (LSOA 2011 version), from which measures of deprivation could be looked up.

Welsh Index of Multiple Deprivation (WIMD)

The Welsh Index of Multiple Deprivation (WIMD) is the Welsh government's official deprivation measure for small areas in Wales. For this report we made use of the 2014 version of WIMD. Each LSOA, which in 2011 in Wales and England contained an average population of 1,614 (ONS 2012), is ranked from 1 (most deprived) to 1,909 (least deprived). WIMD ranks were then categorised into five equal groups to obtain deprivation quintiles.

Data processing

Within the Cafcass Cymru data extract, de-duplication was performed at the application-level. Applications made on the same day by the same set of applicant(s), respondent(s), and subject(s) were aggregated, merging all additional information, for example, location, orders applied for, and legal outcomes.

Through the use of individuals' ALF and WDSD, the LSOA at the time of application and, by extension, the WIMD quintile was assigned. To establish the link between individuals within the Cafcass Cymru data source and WDSD, either a direct match or a probabilistic match with a percentage of 50% or greater for ALF was used. Linkage rates are summarised below.

Analytic samples and measures

Two main samples were established for this study: one to enable analysis of the volume of applications over time and by DFJ area, and the other to profile the individuals involved in 'standard parental' applications.

Volume sample and measures

The unit of analysis for this sample was 'area-year', with the main measure being rate of private family law applications. Applications were selected if they met all five of the following criteria: were open or closed applications; had a valid issue date; had at least one applicant, one respondent and one subject recorded; had at least one recorded private order being applied for; and the application could be linked to one of three DFJ areas. A total of 38,510 applications were identified as being issued between calendar years 2007 and 2018, with 36,490 (94.7%) meeting all five criteria, giving us our selected sample.

To create the sample unit, the number of applications per calendar year were counted for each calendar year from 2007 through to 2018 for each of the three DFJ areas within Wales. To establish the rate of interest, these counts were used as the numerator, while the estimated number of households with at least one child and one adult at 30 June each year were used as a denominator i.e. family households (Welsh Government 2019).

Profile sample and measures

The unit of analysis for this sample was an application involving only one applicant and one respondent of opposite genders i.e. 'standard parental' applications. Measures of interest were descriptors of those involved and the orders being applied for. Applications were selected for profiling if they meet all of the following four criteria: year of issue is between

2011 and 2018; featured only one applicant and one respondent; applicant and respondent both had a valid gender recorded; and the genders of the applicant and respondent were different. A total of 25,320 applications were recorded as being issued between 2011 and 2018, of which 22,830 (90.2%) had one applicant and one respondent, while 22,040 (87.0%) met all four criteria, giving us our selected sample. Because of the criteria imposed and the additional knowledge that 95.9% of applicants and respondents had an age gap of less than 15 years, it was decided that we would refer to those involved as 'parents'.

Several measures were created to describe those involved and the application itself. For applicants and respondents these were: the applicant's age at the application issue date, the respondent's age relative to the applicant's age i.e. age-gap and the associated WIMD quintile of the applicant's residing LSOA at the time of application. As highlighted in Table A.1, due to the linkage rates and the record availability in WDSD, only a proportion of the sample was able to be analysed with respect to features relating to LSOA and WIMD.

Table A.1: Sample linkage summary

	Applicant		Respondent		Youngest subject	
Total	22,040	(100.0%)	22,040	(100.0%)	22,040	(100.0%)
ALF match	19,970	(90.6%)	19,340	(87.8%)	20,470	(92.8%)
LSOA identified	18,320	(83.1%)	18,140	(82.3%)	19,350	(87.8%)

The children who were subject to each application were summarised by counting how many were included in the application and providing descriptors for the youngest subject: age; gender; and who they were living with at time of application. Who a subject was living with was determined via their LSOA and whether or not it was the same as that of the applicant, respondent, or both.

Finally, for applicants only, a 'return to court' measure was created, which summarised their roles (applicant or respondent) on private law applications within the previous three years of the application issue date of their current application.

Analytical approach

The analysis of the volume of applications considered changes over time at both national and DFJ area level. The trend of total number of applications being issued per year at a national level was modelled using a Poisson generalised linear model (GLM) offset by the number of family households (McCullagh and Nelder 1989). The model had a covariate structure that averaged the linear relationship of rates pre- and post-2014 with time, as well as a change point at 2014. The trend model at the DFJ-area level was similar in structure with the addition of allowing DFJ-area specific effects. All estimated coefficients with $p < 0.001$ were regarded as significant.

The analysis of the standard parental applications considered annual changes over time for male and female applicants separately (Table A.2) as well as overall between gender differences for each descriptor (Table A.3). Percentages were calculated based on available data for each year, and missing data was effectively ignored. Testing for associations with time was carried out using the appropriate ordinal chi-squared test, decided on a per-

variable basis; either the generalised Pearson chi-squared test or the linear-by-linear association test (Agresti 2002). All tests of associations with $p < 0.001$ were regarded as significant.

Table A.2: Chi-squared test results for associations between application characteristics and time—father and mother applications tested separately

	Mother applications		Father applications	
Characteristic	**Chi-squared**	**p-value**	**Chi-squared**	**p-value**
Orders applied for [a]	3174.8	<0.001	9344.4	<0.001
Applicant age [a]	61.4	<0.001	150.4	<0.001
Respondent age-gap [a]	19.2	0.002	16.7	0.005
Applicant WIMD quintile [a]	3.3	0.505	28.5	<0.001
Respondent WIMD-gap [a]	5.5	0.478	8.3	0.215
Number of subjects [a]	1.2	0.752	5.4	0.144
Gender of youngest subject [b]	-1.7	0.093	-0.7	0.483
Age of youngest subject [a]	16.8	0.001	26.3	<0.001
Residence of youngest subject [a]	16.5	<0.001	38.1	<0.001
Applicant has entered previously [b]	1.0	0.3061	-1.1	0.2796

[a] Generalised Pearson chi-squared test
[b] Linear-by-linear association test

Table A.3: Chi-squared test results for associations between application characteristics and gender

Characteristic	Chi-squared	p-value
Orders applied for	1703.5	<0.001
Applicant age	397.4	<0.001
Respondent age-gap	4,828.9	<0.001
Applicant WIMD quintile	10.7	0.031
Respondent WIMD-gap	19.8	0.003
Number of subjects	80.9	<0.001
Gender of youngest subject	5.5	0.019
Age of youngest subject	87.8	<0.001
Residence of youngest subject	6,629.5	<0.001

Data processing and analysis were carried out using R v3.5.3 (R Core Team 2019), together with packages tidyverse v1.2.1(Wickham et al. 2019) and coin (Hothorn et al. 2008).

Information governance approval and statistical disclosure control

The project proposal was reviewed by the SAIL Independent Information Governance Review Panel (IGRP) at Swansea University. This panel ensures that work complies with information governance principles and represents an appropriate use of data in the public interest. The IGRP includes representatives of professional and regulatory bodies, data providers and the general public. Approval for the project was granted by the IGRP under SAIL project 0990. Cafcass Cymru approved use of their data extract for this project. The agency considered the public interest value of the study, benefits to the agency itself, as well as general standards for safe use of administrative data.

SAIL has strict statistical disclosure processes and policies to prevent potential disclosure of any individual. This includes suppressing information in tables where counts are small or where geographical identifiers might disclose the identity of the individual concerned either alone or in combination with other data. Where counts were greater than zero but less than ten, they have been supressed. Percentages were calculated on available counts only. All available counts have been reported to the nearest ten, including totals. All percentages are reported to one decimal place.