

FW: Permission to publish research report

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Wed 27/05/2020 12:18

To: Draghici, Carmen <Carmen.Draghici.1@city.ac.uk>

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Dr Draghici

Further to your email, I can confirm that the MoJ has no objections to the publishing of the report.

Many thanks

Kind Regards

Justine Cree

DAP Secretariat | Analysis & Performance Team | Finance, Governance & Performance
5th Floor - PP 5.23 | 102 Petty France | London | SW1H 9AJ | DX 152380 Westminster 8

Phone: 07840 013625

DataAccessPanel@justice.gov.uk

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From: Draghici, Carmen <Carmen.Draghici.1@city.ac.uk>
Sent: 30 April 2020 21:53
To: Weston, Bob (Gloucester) <bob.weston@Justice.gov.uk>
Cc: Frances Burton <frb@frburton.com>
Subject: Permission to publish research report

Dear Mr Weston,

Further to the approval by HMCTS in July 2018 of the *Data Collections and Research Request Application* we submitted for the project of the Centre for Child and Family Law Reform on “Fast-Tracking Low Value Financial Claims in the Family Court”, and in accordance with the *Privileged Access Agreement* we signed with the Departmental Library and Records Management Services of the Ministry of Justice, we are writing to request permission to publish the report produced on the basis of the data extracted from the case files consulted between August and October 2018 at the five Family Courts visited under the terms of the agreement (Edmonton, Oxford, Exeter, Leeds, Cardiff).

Please find attached a copy of the report and the executive summary accompanying the report. Subject to the permission requested, we are planning

to publish these documents on the website of the Centre for Child and Family Law Reform, which is one of the City, University of London's Law Research Centres pages: <https://www.city.ac.uk/about/schools/law/research/centre-on-child-and-family-law-reform>.

Yours sincerely,

Dr Frances Burton

Dr Carmen Draghici



Dr Carmen Draghici

Reader in Law, Academic Visitor Programme Director

The City Law School

City, University of London

Northampton Square

London EC1V 0HB

<https://www.city.ac.uk/people/academics/carmen-draghici>

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CENTRE FOR CHILD AND FAMILY LAW REFORM

NORTHAMPTON SQUARE · LONDON · EC1V 0HB

CCFLR Report on Fast-Tracking Low-Value Financial Claims in the Family Court

Executive Summary

Background:

The Centre for Child and Family Law Reform (CCFLR)

The CCFLR was founded in 1998 to scrutinise existing family law and to facilitate reform where appropriate. The Centre is sponsored by the Law School of City, University of London. The Centre's Committee, chaired by His Honour Michael Horowitz QC, is comprised of academics, judges and practising family law barristers and solicitors. The Committee meets quarterly in London.

Aims of the 2018/19 Research Project

In 2018 the CCFLR initiated a research project to examine whether the operation of the Family Court system in adjudicating on financial claims was fit for purpose in dealing with cases at the lower end of the financial scale of income and capital, in the light of the near total elimination of legal aid and the consequential rise in self-representation by either or both parties.

The Committee wished to test whether the anecdotal concerns of CCFLR practitioner members of undue delay in small-value cases reflected the reality experienced by litigants and whether the deficit in guidance for self-representing parties compromised their understanding of the process, leading to deficiencies in disclosure and poor preparation, and whether, generally, it risked an unfair result, both in negotiated settlements and after full hearing.

The project was funded by a HEFCE Enterprise and Knowledge Exchange Fund grant of £2,500 to meet travel and other expenses and pay for a professional researcher. The full Report is the result of research at Court Centres and analysis by two Family Law academic members of the Committee, Dr Carmen Draghici, Reader in Law at City, University of London and Dr Frances Burton, Senior Lecturer in Law at Buckingham University.

Access to Court files

The essence of the project was to examine and evaluate the reality of the experience of litigants. With the approval of the President of the Family Division, a successful application was made to the Court service (HMCTS), an agency of the Ministry of Justice, to allow a researcher to examine actual Court files and collect summaries for analysis. HMCTS approval was given to access paper files but not the parallel electronic management system, Family Man.

The Committee decided to continue notwithstanding impaired access to data. Two changes were made to the research plan. Dr Frances Burton, a member of the Committee with judicial experience, agreed to undertake collection of the Court data personally, to ensure capture of available qualitative evidence from the paper files to which we were uniquely to be allowed access while preserving confidentiality and anonymity. Dr Draghici undertook drafting of the protocols for processing the Court data to provide the quantitative evidence extracted from the paper files, with the assistance of a researcher experienced in the use of standard statistical software and methodology. A Data Collections and Research Request was approved by HMCTS in July 2018. Dr Draghici and Dr Burton both signed a Privileged Access Agreement.

To adjust for limited access, the number of Courts to be visited was expanded, with HMCTS consent, from three to five: (in the order visited) Oxford, Edmonton in North London, Cardiff, Leeds and Exeter.

Data Examined

Court Staff randomly selected case files matching minimum features:

- Form A commencing proceedings was lodged between 1 January 2012 and 1 January 2016
- One or both parties self-representing for at least part of proceedings
- The case had been concluded, either by lodging a Consent Order or by judicial hearing and determination

Although not all files were complete, the Researchers are satisfied that generally they provided information on the litigants and the issues, including:

- Dates of marriage and separation
- Parties' ages and occupation
- Ages of any minor children
- Approximate value of assets and incomes
- Provision of legal advice and assistance
- Whether Court papers properly served
- Compliance with or breach of duty to make full and frank disclosure
- The stage at which a claim was resolved

Value of Assets in Issue

The criteria for file selection did not directly include asset values, but, allowing for difficulty in extracting figures from a number of selected files, cases without representation on both sides did appear to be at the lower end of the financial scale. The average gross value of all assets

(including pension rights) after allowing for the distortion of two higher-end value cases was £381,455 before debts and liabilities. The average combined gross income in 75% of files was £62,000 pre-tax.

Methodology

Dr Burton inspected 69 Court files, as follows:

Court	No. of Files
Oxford	10
Edmonton (North London)	18
Cardiff	19
Leeds	19
Exeter	3

The collated statistical data was analysed by Dr Draghici and a research assistant using standard statistical methodology. The qualitative data was analysed by Dr Burton with input from the practitioner members of the Centre's sub-committee assigned to the project.

Findings:

Quantitative Findings

Settlement: 81.16% settled before final hearing, leaving 18.84% for adjudication.

Basis of Settlement/Adjudication

- Property Adjustment Orders: generally requiring sale of matrimonial home and apportionment of proceeds: 76.47%
- Periodical Payments Orders without time limit 4.41%
- Periodical Payment Orders for limited term 5.88%
- Nominal Periodical Payments Orders 7.46%
- Pension Adjustment Order (for which an Order is essential) without other capital adjustment 7.46%

While the Court's powers may be exercised in combination to make a suite of Orders, only a minority of settlements within the project criteria involved more than one element.

- Lump sum with property adjustment: 28.36%
- Property adjustment only 28.36%
- Maintenance and property adjustment 4.48%
- Maintenance, property adjustment and pension sharing 2.99%

(NB: Property adjustment may involve sale and equal division or alternatively re-allocation of beneficial shares)

Duration from Application to Resolution

Duration averaged for settlement and judge made orders was 245.57 days. Cases judicially resolved averaged 413.29 days.

Agreed Resolution

Between issue proceedings and first Directions 14.63%

At First Directions 9.76%

At or very shortly after FDR (without prejudice early evaluation by a Judge) 12.2%

After FDR and before final fixed hearing date – 63.41%. Although it was not easy always to pinpoint settlement date, the clear impression was that of a large proportion of late settlement shortly before hearing date.

In 21 out of 25 cases where neither side was represented, agreement was reached before hearing.

Representation

36.23% (25) files showed neither party represented. Applicants alone were represented in 31%. In 14.49% representation on the Applicants' side was partial. Only 16% of cases involved full representation of the Applicant and no representation for the Respondent. Applicants were more likely to be represented. Only in 6% of cases had the Applicants no representation at any stage whereas the Respondents had some representation.

Difficulties Associated with Lack of Full Legal Representation

Obstructive behaviour indicated by Orders for disclosure, penal notices for failure to disclose or comply with valuation of assets was noted in 29% of cases. 26% of non represented parties were associated with obstructive behaviour as measured by disclosure and discovery orders.

Qualitative Analysis Observations and Findings

- Absence of clear signposting to alternative dispute resolution whether by mediation or arbitration or other settlement methodology. The compulsory MIAMs information is not followed through by judiciary at first appointment or later.
- Cases involving limited means were moving through a court system unsuited and disproportionately complex for the parties' circumstances and without guidance.
- Unrepresented parties not given sufficient assistance in dealing with formalities of Court procedure.

Recommendations:

- Much clearer signposting and encouragement to out of Court settlement at all stages.
- The process at the level of our investigation is too protracted. An average start to settlement process of 279 days and 413 days for contested hearings where the assets are not complex does not serve this category of litigant well.
- Poor compliance with procedure may be the result of ignorance rather than ill will. Parties are given no assistance in completing their Form E to distinguish e.g. between net and gross figures or actual ownership and share claimed, nor informed of the consequences of omitting assets. Leafleting and Guidance for complying with Court procedure is inadequate.
- A post of delegate Court Official could and should assist the parties in these cases to prepare and document their claims. We adopt the suggestion of Lord Briggs in his Civil Courts Structure Review 2015 and 2016 for such formal assistance in low-value cases where representation is limited or non-existent. The cost of such an ancillary service should be weighed against the overall cost to the current system and of delay in dealing with the surge of unrepresented parties.
- A Fast Track simpler procedure for low-value cases, merging the two steps of FDA and FDR and actively pursuing settlement at every stage. Such an approach could adopt the Early Neutral Evaluation (ENE) model, frequently used by courts in the USA, of which the formal FDR is a stand-alone example. A trained expert or judicial officer could advise on a without prejudice basis on realistic parameters of the dispute for both parties.

The full text of the report is available on the [Centre for Child and Family Law Reform website](#).

Dr Carmen Draghici
Dr Frances Burton