THE LOCAL AUTHORITY LAWYER IN CHILD CARE

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Presented for the Degree of
Master of Jurisprudence
in the Faculty of Law

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P R E F A C E

This study began towards the end of 1976 and was concluded towards the end of 1979. It was undertaken very much as a part time exercise and took place during a period of changes in the law relating to children and developing interest in the field amongst practitioners both in Local Government and outside it.

The study could not have been undertaken without the assistance of the West Midlands Solicitors who participated in the meetings referred to in the study, and without the assistance of the solicitors who responded to the national questionnaire. Clearly, all those who did respond must have taken a considerable amount of time and care over their responses from the information contained therein.

A number of people have given considerable assistance in the preparation of this study. I am particularly grateful to Lee Bridges who supervised the study and Fay Laws who typed it. It is to be hoped that some of the information collated will lay a few ghosts at the same time as raising a number of questions.

S Y N O P S I S

This research project was designed to investigate the role played by Local Authority solicitors in the field of child care law. It is primarily concerned with the Local Authority solicitor as an advocate in Court in cases of a variety of types involving children, and was designed to obtain a quantity of factual information both relating to those solicitors and also the Departments which employed them. It was also the intention to obtain information relating to the types of cases in which they were involved, and the Courts in which those cases were presented.

The origin of the study, apart from a general interest in matters relating to child care law, was a publicly made remark by an experienced Chairman of a busy Juvenile Court speaking about the problems facing the Juvenile Court in dealing with cases of non-accidental injury to children. He said that if only the cases were presented on behalf of the Local Authorities by experienced solicitors of long standing then at least some of the difficulties created by those cases might be avoided. There appeared to be no statistical data relating to the lawyers to whom that Magistrate referred, and it was in part with this absence of information in mind that they study was undertaken.

Chapter I of the study is a general introduction to the field of child care, setting out the framework within which child care lawyers in Local Government work. The background history and current statutory position is considered.

Chapter II of the study considers a number of qualitative aspects of the Local Authority lawyer's role, by setting out some of the author's own experiences in a particular authority, considering the role of the case conference and then considering a series of cases which have caused public concern, and resulted in inquiries of various sorts.

Chapter III of the study constitutes the majority of the substantive research undertaken and incorporates the findings of a study made of a particular regional group of lawyers in a variety of different types and sizes of local authorities. The findings of a national survey are then analysed and the whole drawn together to an extent in Chapter IV, which forms the assessment and conclusion.

It was never the intention that the study should be a comprehensive analysis of the field of child care law, but the responses to both parts of the inquiry provided significantly interesting information relating to the lawyers operating in the field of child care, the departments for which they worked and their attitudes to the law relating to children.

C H A P T E R I

THE GENERAL BACKGROUND TO THE STUDY

(a) Local Government Organisation

The new structure of Local Government was created by the Local Government Act 1972 following the white paper "Local Government in England ; Government Proposals for Reorganisation"[1], and the consultative document "The Reform of Local Government in Wales" published in 1971. Under the 1972 Act both Wales and England with the exception of Greater London were divided into 53 Counties and 369 Districts. Of the Counties, 6 were described as Metropolitan, and within those Metropolitan Counties the 36 District Councils were described as Metropolitan District Councils.[2] This organisation came into effect as from the 1st April, 1974, and remains the structure to date. Both Social Services and Education functions were given to the non-metropolitan County Councils and the Metropolitan District Councils.

With regard to Greater London, the administrative provision is governed by the London Government Act 1963. Under this Act there are 32 London Boroughs. Those London Boroughs have all Local Authority functions which are not the responsibility of the Greater London Council or of the Inner London Education Authority. The present day system of Local Government in London came into effect on the 1st April, 1965. For the purposes of this study, the factor to note is that the outer London Boroughs are both Education and Social Services Authorities, whilst the inner London Boroughs are

1. CMND 4584
2. Local Government Act 1972 (LGA) ss 1 + 20 (system before re-organisation) Cross on Local Government p.511 seq.

Social Services Authorities. The responsibility for Education in the area of the inner London Boroughs being given to the Inner London Education Authority.

With particular regard to the provision of Social Services which includes child care services, Authorities are obliged to appoint a Social Services Committee and to refer to it the functions listed in Schedule 1[1], Local Authorities Social Services Act 1970. The Social Services Committee are able subject to approval from the Authority to delegate functions to Sub-Committees.[2] They are required to appoint a Director of Social Services[3] who may not be employed on matters other than Social Services matters. Local Authorities are required to act under the general guidance of the Secretary of State in the exercise of their Social Services functions including any discretions conferred upon them.[4]

There is no statutory provision regulating the extent to which a Social Services Committee, or the Director of Social Services makes use of professionally qualified lawyers in dealing with any of his Social Services functions, whether related to children or otherwise. It is, therefore, open to individual Authorities to vary their methods of dealing with particular cases or particular categories of cases. In relation to the provision of legal advice and representation in child care matters the alternatives open to Authorities are to manage without formal legal advice and representation, to make use of private practice solicitors, or to obtain advice and representation from lawyers employed by the Authority

1. LGA 72 s101(8)
2. LGA 72 s101(9)
3. LGA 72 s195(3)
4. LASSA 1970 s7(1)

usually in the central department of the Chief Executive or County or District Secretary.

(b) The Legal Framework of Child Care

(i) The Background

It is not the purpose of this study to analyse in depth the historical processes behind the current law in its application to child care, but it has been argued that the Children and Young Persons Act 1969 for example made a further bold step in the development of community responsibility for those in need and at risk - a process which has grown a pace in the last generation.[1] This suggests increasing local government involvement in the field. Prior to 1847 the law did not discriminate between offenders according to their age. Those charged with indictable offences were entitled to trial by jury, and those charged with non-indictable offences were tried summarily before Magistrates irrespective of their age. All offenders were subject to the same range of penalties, even the death penalty.

It was not until 1838 that provision was made for the detention of young offenders separately from adult offenders. In that year, Parkhurst was converted into a reception prison for young offenders up to the age of 18, following upon the report of a Select Committee of the House of Lords enquiring into the state of Gaols and Prisons.

From 1847, offenders charged with stealing could be tried summarily in Magistrates Courts. This reform was introduced

1. Children, Courts and Caring - Donald Ford

because of concern at the lack of convictions for theft. There was an unwillingness to prosecute children and young people because of the penalties which would face them upon conviction.[1]

In 1854 the Youthful Offenders Act authorised the setting up of reformatory schools to be organised by voluntary societies subject to Home Office inspection and approval, and designed to cater for young offenders. A further development in 1879 was the Summary Jurisdiction Act which permitted offenders under the age of 16 to be tried summarily for most indictable offences, reducing the numbers of children in prison, simplifying the trial process facing them, and reducing the penalties to which they were subject upon conviction.

However, it was the Children Act of 1908 which for the first time established the principle that young offenders should be treated entirely separately from adults, and established the Juvenile Courts. This Court was to be a Court of summary jurisdiction sitting in a different place, or at a different time from the ordinary Court, so as to protect children from associating with older offenders. The Act abolished imprisonment of children under 14, and only, in exceptional cases, were children between 14 and 16 years to be imprisoned. In the same year, the Crime Prevention Act created borstal detention as a specialised detention for young offenders.

Since 1908, there have been several major changes in the law relating to the care of juveniles which followed upon the reports of Departmental Committees or White Papers. As a result of the Committee on the Treatment of Young Offenders[2] the Children and Young Persons Act 1933 was passed. The Act set out cat-

1. Donald Ford, Children, Courts and Caring
2. 1927 CMND 2831

egories of juveniles who were "in need of care or protection". It also contained the revolutionary proposals in Section 44 that:

> "Every Court in dealing with a child or young person who is brought before it either as an offender or otherwise shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, or for securing that proper provision is made for his education and training."

Thus was introduced the notion of the welfare of the child into the law relating to children.

In 1946 the Report of the Care of Children Committee (the Curtis Committee) was published.[1] This was the first analysis of the care provided for deprived children, and recommended a substantially enlarged public role, and emphasised the need to concentrate responsibility for it in a central department with immediate responsibility to be taken by a Local Authority working through a special Committee. Before the Committee's recommendations were enacted in the Children Act 1948 such children unable to lead a normal life at home were dealt with in a variety of ways according to the circumstances leading to their situation. Destitute children were cared for either by Local Authorities or by voluntary organisations. After the Children and Young Persons Act 1933 juveniles could find themselves committed to the care of a Local Authority or sent to approved schools, and handicapped children could also be placed in the care of a Local Authority or voluntary institution. It was felt [redacted] by the Curtis Committee that to protect the position

1. CMND 6922

of the various children, some element of central control was necessary. Accordingly, the Children Act 1948 was passed. The Act of 1948 is referred to in more detail in the following Section.

In 1960 the report of the Ingleby Committee on Children and Young Persons[1] contained recommendations which led to the Children and Young Persons Act 1963. Section 2 of the 1963 Act divided juveniles in need of care, protection or control into two categories, i.e. those who were beyond parental control, and those who were not receiving such care, protection and guidance as a parent may reasonably be expected to give, and were falling into bad associations, or the lack of care, protection or guidance was likely to cause unnecessary suffering or seriously affect their health or proper development, or who were victims of serious offences, or were living in homes where any of those offences had been committed in respect of other juveniles.

The statute in connection with which Local Authority Solicitors most frequently find themselves appearing in a Court of law in connection with the care of children is the Children and Young Persons Act 1969 which may be seen as a logical progression from the statutory provisions already mentioned, dating back to the mid 19th century. The provisions of the 1969 Act which are considered in outline in the next section of this study provided for a comprehensive network of situations which

1. CMND 1191

might make it necessary for a Local Authority or indeed a Police Constable or the National Society for the Prevention of Cruelty to Children (N.S.P.C.C.) to take action and bring the child or young person before the Juvenile Court. The Act of 1969 is distinguished from previous statutory provisions by its making no distinction between the "deprived" and the "depraved" child.

The 1969 Act is the immediate fruit of the two White Papers: "The Child, the Family and the Young Offender"[1] and subsequently "Children in Trouble"[2]. The proposals made in "The Child, the Family and the Young Offender" were revolutionary. At paragraph 11 it states "We therefore propose to remove young people so far as possible from the jurisdiction of the Courts and to empower each Local Authority through its Children Committee to appoint local family councils to deal with each case as far as possible in consultation and agreement with the parents."

At paragraph 46 it lists nine proposals for the two categories of juvenile (i.e. those below 16 years and those between 16 and 21). The most radical proposals were that any child under 16 years doing an act which would be an offence if done by an older person, or who was in need of care, protection or control would be brought before a local family council, a number of which were to be appointed for each local authority area. It would be for this Council to endeavour to reach agreement with the parents of the child on the treatment to be applied. Only if the parents and the Council could not reach agreement on the treatment would the issue be referred to a Court for determination. Special Magistrates Courts would be set up to

1. 1965 CMND 2742
2. 1968 CMND 3601

sit as Family Courts in respect of children under 16 to determine disputed issues of fact or decide treatment when agreement could not be reached. They would also sit as young offenders Courts to exercise criminal jurisdiction in respect of persons between the ages of 16 and 21. "The Child, the Family and the Young Offender" was not implemented, but was followed in 1968 by the White Paper "Children in Trouble" which essentially represents the thinking behind the Children and Young Persons Act 1969.

Paragraph 6 of "Children in Trouble" sets out the philosophy of the paper:

> "The child's behaviour is influenced by genetic, emotional and intellectual factors, his maturity and his family, school, neighbourhood and wider social settings. It is probably a minority of children who grow up without ever misbehaving in ways which may be contrary to the law. Frequent misbehaviour is no more than an incident in the pattern of the child's normal development. But, sometimes it is a response to unsatisfactory family or social circumstances, the result of boredom in or out of school, and an indication of maladjustment or immaturity, or a signal of a deviant damaged or abnormal personality. Early recognition and assessments are particularly important in these more serious cases, and variety and flexibility in the measures that can be taken are important if society is to deal effectively with these manifold aspects of doing this. These measures include supervision and support of a child in the family, further development of the services working in the community, and variety of facilities for short term and long term care, treatment and control, including some which are highly specialised."

At paragraph 49 "Children in Trouble" states:

> "Action should take account of each child's family and wider social background, and should be designed, where possible, to support the child in the family, and in creating and helping the parents to fulfil their responsibilities, and preserving the child's links with his community ... children may require control as well as help if they are to overcome their problems, and to become mature citizens. The proposals in this paper are intended to promote these aims providing a comprehensive yet flexible legal framework for the development of work with children in trouble."

The philosophy of "Children in Trouble" was continued in the preparation of the Children and Young Persons Act 1969. In Parliament the then Home Secretary stated:

> "The first aim of the Bill is to help parents and families to do what most people want to do - to bring up their children well, making use of the services provided by the community, and with the help which is available for children falling into trouble, but it provides measures to ensure that where control of a child is needed, as well as help to the family that control is available and those provisions can be implemented."[1]

Part 1 of the Children and Young Persons Act 1969 is the basic means by which a Local Authority is able to initiate action in respect of children and young people who are in need of care or control.

In 1968, the report of the Committee on Local Authority and Allied Personal Social Services[2], the Seebohm Committee, analysed the difficulties inherent in the reorganisation of Local Authority health and welfare services into a unified family service, and felt that the difficulties could be overcome. The Local Authority Social Services Act 1970 implemented some of the proposals made by the Seebohm Committee and as a result, there is currently a system of unified Social Service Departments within each major Local Authority, merging the previously existing Children's Departments, Welfare Departments and some sections of the Health Departments. The provisions of this Act in so far as they affect the organisation of the current Social Services Department have already been referred to.

In concluding this section of the introduction to the study, reference should be made to the continuing changes in the law

1. Hansard Vol. 7791195
2. CMND 3703

relating to children. The Children Act 1975 represents a substantial piece of legislation dealing with a wide range of matters involving children, and which are being progressively introduced as facilities become available. It is not considered in detail in the introduction to this study, but, nevertheless, in modifying the provisions for the law relating to both care proceedings and proceedings under the 1948 Children Act, it has widened the circumstances in which children or young people may find themselves before Juvenile Courts.

(b) The current legislation

The ways in which Local Authorities may become involved with matters relating to the care of children are numerous, but this study has revealed that insofar as Local Authority Solicitors become involved on behalf of their employers, that the involvement is primarily related to a limited category of statutory provisions, and although the study reveals that from time to time the Solicitors responding might be involved in more unusual cases, this part of the study is designed to consider the categories of cases with which Local Authority Solicitors become involved with most frequently. It should be borne in mind that whatever the circumstances of a particular case may be Local Authorities always have a general obligation to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive or keep them in care or to rely on other proceedings.[1]

The Children Act 1948

Section 1 requires a Local Authority to receive a child into

1. Children and Young Persons Act 1963 Section 45

its care if it appears to the Local Authority:

A. That he has neither parent or guardian or has been abandoned by his parents or guardian or is lost; or

B. that his parents or guardian are for the time being or permanently prevented by reason of mental or bodily disease or infirmity or other incapacity or any other circumstances from providing for his proper accommodation, maintenance and upbringing; and

C. in either case the intervention of a Local Authority is necessary in the interests of the welfare of the child.

The obligation on the Local Authority is "to receive" not "to take" children in such circumstances into care, and whenever it is consistent with the welfare of the child concerned efforts must be made to return the child to a parent, guardian, relative or friend if possible of the same religious persuasion.[1] The question of whether a Local Authority may retain the care of a child in the face of an application for the child's return by a parent has been the subject of both amending legislation in the 1975 Children Act and also been considered in the Court of Appeal and the House of Lords. In an effort to ensure that children will not be spontaneously removed from the care of a Local Authority on the whim of a parent without effective notice, it is now a requirement in respect of any child who has been in the care of a Local Authority for the preceding six months that a parent must first give 28 days' notice of his intention to remove the child from that care. The question that has been analysed in the two recent cases referred to is whether, if a parent has actually

1. Children Act 1948 Section 1(3)

asked for the return of the child the Local Authority may resolve, under Section 2 (see post) to assume parental rights, and thereafter refuse to return the child at the expiry of the 28 day period of notice. Although the first of the two decisions on this point suggested that once the application for return had been made then no such resolution could be passed, the Lewisham case[1] decided in the House of Lords now makes it reasonably clear that in such a situation when a parent requests the return of his child from voluntary care, the Local Authority may pass a resolution under Section 2 if that is appropriate. Had the Lewisham case not been decided in that way, there could have been two possible developments from it arising from the concern felt by Local Authorities. In the first place as a precautionary measure, it would have been necessary for Local Authorities to pass more resolutions under Section 2 than might otherwise have been the case, and at a point earlier in the period of care of a given child, to ensure that the resolution was passed before a parent had the opportunity of requesting the child's return. The second alternative consequence had the Lewisham case not been decided as it was would have been an increase in the use of the wardship jurisdiction (see post) to enable Local Authorities to seek to retain the care of a particular child notwithstanding a request for the child's return received from the parent.[1]

The power to pass a resolution to assume the rights of a parent is contained in Section 2 of the Act and relates only to children who are in care under the provision of Section 1 of the same Act. Under this provision, the Local Authority is entitled to resolve that the parental rights and duties with respect to that child shall vest in

1. Johns v. Jones; Lewisham Borough Council and Lewisham Juvenile Court 1978 3AER 1222 1979 NLJ 339

them if they are satisfied that:-

(a) his parents are dead and he has no guardian; or

(b) that his parent:

(i) has abandoned him; or

(ii) suffers from some permanent disability rendering him incapable of caring for the child; or

(iii) while not falling under (ii) above, suffers from a mental disorder (within the meaning of the Mental Health Act 1959) which renders him unfit to have the care of the child; or

(iv) he is of such habits or mode of life as to be unfit to have the care of the child; or

(v) has so consistently failed without reasonable cause, to discharge the obligations of the parent as to be unfit to have the care of the child; or

(c) that a resolution under paragraph (b) of this sub-section is in force in relation to one parent of the child who is, or is likely to, become a member of the household comprising the child and his other parent; or

(d) that throughout the three years preceding the passing of the resolution, the child has been in the care of a Local Authority under the foregoing section or partly in the care of a Local Authority in the care of a voluntary organisation.

1. With regard to the general question of requests for return of a child in voluntary care see re. K.R. (an infant) 1963 3AER337; re. Krisham v. London Borough of Sutton (1969 3AER1367)

Unless the Local Authority has previously received the written consent of the parent in question to the assumption of his parental rights and duties, the Authority must, if they are aware of his whereabouts forthwith after passing the resolution, give him written notice of the fact that the resolution has been passed, and that he is entitled to object to the passing of the resolution. If he does object, he may do so within one month in writing, and upon receipt of that objection in writing, the resolution passed by the Local Authority will lapse after fourteen days from the service of the Notice of Objection unless before the expiry of that period, the Local Authority complain to a Juvenile Court. If the Local Authority do complain to a Juvenile Court, the resolution remains extant until the Court decides whether or not it should lapse.

The Court must order that the resolution shall lapse unless it is satisfied of three things:

(a) That the grounds relied on by the Local Authority in passing the resolution were, in fact, made out at the time the resolution was passed.

(b) That at the date of the hearing, there continued to be grounds on which a resolution could be founded; and

(c) That it is in the interests of the child so to do.

In the event of the resolution not lapsing for any of the reasons specified, it continues in force until the child concerned reaches the age of 18 unless it is rescinded before that time by the Local Authority or determined by an order of the Juvenile Court on a complaint by the parent or guardian whose rights were assumed.[1]

1. Children Act 1948 Section 4

As may be seen, the issues involved in both Section 1 and Section 2 of the Children Act 1948 are complex. The definitions of the circumstances in which children may be received into care are difficult. What, for example, is meant by abandonment in this context? To what extent may a parent demand the return of his child, and when he does make that demans, how quickly must the child be returned? With particular reference to Section 2, what evidence is required to satisfy the appropriate Committee of a Local Authority that the requirements of Section 2 are met? Even more difficult is the question as to what evidence is required to satisfy a Juvenile Court that on a date at some time in the past (and this may be a long time in the past, taking into account the possibility of adjournment in the Juvenile Court), one of the requirements contained in Section 2 applied to a particular child? Is it permissible to claim that a different Section 2 requirement applies on the date when presenting the case to the Juvenile Court to the requirement referred to in the resolution? The issues raised by Sections 1 and 2 of the Children Act 1948 are legal in nature, notwithstanding the social demand that the Sections meet. It is an interesting question to ponder the extent to which lawyers are involved in the Local Authority processes relating to both Section 1 and Section 2 of the Children Act 1948, and to some extent this is analysed later in this study.

The Children and Young Persons Act 1969

Care proceedings under Section 1 of the Children and Young Persons Act 1969 may be commenced by a Local Authority, constable or a person authorised to do so. The only body authorised to bring proceedings under the Act is the National Society of the Prevention

of Cruelty to Children, and in their case only if the reason for the proceedings is not the offence condition (see post). The prosecuting authority has to ensure the attendance of the juvenile before the Court, and this may be done by way of summons or warrant for his arrest.[1] The juvenile may also have been taken to a place of safety. A place of safety may be "a community home provided by a Local Authority or a controlled community home, any police station or any hospital, surgery or any other suitable place, the occupier of which is willing temporarily to receive a child or young person".[2]

Under the provisions of Section 28(1) of the Children and Young Persons Act 1969, a Justice may order a juvenile to be detained in a place of safety for a period not exceeding 28 days, and which period must be specified if he has reasonable cause to believe that any of the conditions (other than the offence condition) set out in Section 1 of the 1969 Act is satisfied, or that Court would find that the condition relating to the probability of neglect or ill-treatment would be so satisfied. A police constable has the power, under Section 28(2) to detain a juvenile without an order from a justice, if he has reasonable cause to believe that any of the conditions in Section 1 (with the exceptions of truancy and the offence condition) are satisfied, or that a Court would find the condition relating to the probability of neglect or ill-treatment would be satisfied. Under this provision, the juvenile may only be kept for a maximum period of 8 days and there is an obligation to carry out investigations and release the child if appropriate. Both Section 40 of the Children and Young Persons Act 1933 and Section 43 of the Sexual Offenders Act 1956 set out circumstances in which a constable may be authorised by a magistrate to take a juvenile to a place of safety.

1. Children and Young Persons Act 1969 Section 2(4)
2. Children and Young Persons Act 1933 Section 107(1); C & YP 1969 Section 72(3); and Schedule 5 paragraph 12(2)

The place of safety procedure is important in relation to children at risk, because it is a logical first step in the process of bringing the juvenile before the Court to assess the risk with a view to the juvenile being placed in the care of the Local Authority. The range of ways in which a place of safety order may be obtained in practice varies from a formal application heard in the setting of a Juvenile Court or, indeed, a Magistrates' Court with representation on both sides and notice served on parents to an exparte application arranged by telephone at the house of a particular magistrate made by a Social Worker. There are different views that may be taken on this variety of practices for achieving a place of safety in respect of a given juvenile. It may be seen as a flexible means of achieving an important objective in the protection of juveniles when circumstances can change quickly, and the demands of the particular case may call for instant action. On the other hand, it relies largely on the good sense of individual magistrates and Social Workers to ensure that the right to make an exparte application to a particular magistrate is not used in circumstances where it is not appropriate. Whether individual Social Workers or, indeed, individual magistrates are best equipped to make this decision, bearing in mind the circumstances in which place of safety orders may arise is a question that has not been answered in practice. To make the evidential requirements on an application for a place of safety order more demanding might possibly make it more difficult to render the assistance to juveniles in need which is the whole object of the place of safety procedure in any event.

Once the juvenile has been presented to the Juvenile Court by the Local Authority, the Juvenile Court has to be satisfied of two

separate, though naturally overlapping issues. In the first place, the Court has to be satisfied that one of seven factors applies to the child. Those alternative factors are:

(a) His proper development is being avoidably prevented or neglected, or his health is being avoidably impaired or neglected, or he is being ill-treated.

(b) It is probable that the previous paragraph will be satisfied having regard to the fact that a Court has found that that condition is satisfied in the case of another child or young person who is or was a member of the same household to which he belongs.

(bb) If a person who has been convicted of an offence under Schedule 1 to the Children and Young Persons Act 1933 and is or may become a member of the same household, andit is probable because of this that paragraph (a) above will be satisfied.

(c) If the child or young person is in moral danger.

(d) If the child is beyond the control of his parent

(e) If the child or young person is of compulsory school age, and not receiving full time education suitable to his age, ability and aptitude.

(f) If the child or young person is guilty of an offence excluding homicide.

In addition to the above alternative primary conditions, the Juvenile Court must be satisfied that the child is in need of care of control

which he is unlikely to receive unless the Court makes an order in respect of him.

The alternative primary conditions present a number of difficulties in practice, and perhaps the most difficult of these to resolve relates to paragraph (a) above which is couched in the present tense.[1] To satisfy that condition, the juvenile must, for example, be being ill-treated. There is no provision for the pre-emptive intervention in cases where there is a reasonable certainty that a child will be ill-treated except insofar as paragraph (b) and (bb) provide for this situation. Perhaps if the right of pre-emptive intervention were extended, it would be seen as an unwarranted interference with the rights of parents over their children. Nevertheless, in this study a number of respondents did intimate that they felt that there was a defect in the sub-section in requiring some form of suffering first before any intervention without the co-operation of the parents could take place. Even the place of safety procedure does not anticipate future difficulties, but requires belief that any of the conditions prescribed by Section 1 of the 1969 Act is satisfied.

The interpretative difficulties of Section 1 and the rest of the Children and Young Persons Act 1969 and the growing volume of case law relating to the Act complicate its operation. Questions on statutory interpretation are the province of the lawyer, and the extent to which lawyers are involved in the processing of care proceedings from their inception through to their conclusion is therefore a matter of some interest, and, in part, the purpose of this study.

If the Juvenile Court are satisfied that both the primary test and the secondary test apply in a particular case, then under the

1 See Essex CC. v T.L.R [1979] 9 Fam Law 15.

provisions of sub-section 3 of Section 1, they have five alternative orders available to make in respect of a particular juvenile:

(a) An order requiring his parent or guardian to enter into a recognisance to take proper care of him and exercise proper control over him; or

(b) a Supervision Order; or

(c) a Care Order (other than an Interim Order); or

(d) a Hospital Order under the meaning of Part 5 of the Mental Health Act 1959; or

(e) a Guardianship Order within the meaning of that Act.

If a Care Order is made, the obligations and rights of the parent in relation to the juvenile are essentially (with some very material exceptions) given to the Local Authority who must exercise that care in accordance with the principles set out in Part 2 of the Children and Young Persons Act 1969. It is the making of the Care Order which creates most difficulties because that Order permits the juvenile to be removed from his parents or guardians and may result in his separation from then until the age of 18. Bearing that in mind, and notwithstanding the likelihood of an early return to the parents, it is most important that the care proceedings in the Juvenile Court should be handled in an especially careful manner. The rules governing the procedure should be clear and explicit, and each individual involved should be aware of his own rights and duties in regard to those proceedings and also of all the alternative courses of action which might ensue.

The 1969 Children and Young Persons Act being an Act of 73 sections and 7 Schedules contains many matters which are not referred to in this part of this study, but it does contain provision in Section 21 for the variation or discharge of Care Orders on the application of the Local Authority concerned, or on the application of the individual juvenile concerned, and it does contain provision for the appeal to the Crown Court in the event of the juvenile concerned not being satisfied with the decision of the Juvenile Court, whether that decision be made under the provisions of Section 1, or alternatively, on an application to discharge or vary a Care or Supervision Order.

(c) The Juvenile Court

It is in the Juvenile Courts that the Care Orders are made, and it is also in the Juvenile Court that the assumption of parental rights under Section 2 of the 1948 Children Act is tested. It is in the Juvenile Court that the Local Authority lawyer engaged in child care work most frequently finds himself, and the Court and its procedure are, therefore, most important elements of this study.

The Juvenile Courts may not sit in a room in which sittings of a Court other than a Juvenile Court are held, if a sitting of that other Court has been, or will be, held there within an hour before or after the sitting of a Juvenile Court.[1] The Courts must sit as often as necessary to exercise their jurisdiction,[2] and the categories of persons entitled to attend Juvenile Courts are restricted by Section 47(2) of the Children and Young Persons Act 1933 to the following categories:-

1. Children and Young Persons Act 1963, Section 17(2)
2. Children and Young Persons Act 1933, Section 47(1)

(a) Members and officers of the Court.

(b) The parties to the case before the Court, their Solicitors and Counsel and witnesses and other persons directly concerned in the case.

(c) Bona fide representatives of newspapers and news agencies who are subject to restrictions imposed to preserve the anonymity of the juvenile concerned.[1] Unless the Court or the Home Secretary gives express permission to the contrary, a newspaper report or broadcast must not reveal the name, address or school of a juvenile or any other details which are calculated to lead to his identification and a newspaper must not carry a picture of him.

It is important to note in relation to those people entitled to be present in Court that the parents are not expressly referred to as being permitted to attend. In relation to care proceedings, it has been stated that they are entitled to attend because the issue of whether the juvenile is in need of care or control is a matter with which the parent is directly concerned.[2] With regard to parents, however, the Court are entitled to insist on their attendance during the whole or part of the proceedings.[3]

There are a number of anomolies in the procedure in the Juvenile Court relating to children which gave rise to concern amongst the people interviewed during the course of this study. The procedure is governed by the Magistrates Courts Act 1952 except insofar as the provisions of that Act are modified or excluded by either the Children and Young Persons Acts 1933 to 1969 or the Magistrates Court (Children

1. Section 49, Children and Young Persons Act 1933
2. Law relating to Children, Bevan page 74
3. Children and Young Persons Act 1933, Section 34(1)

and Young Persons) Rules 1970.

Care proceedings are essentially similar to those proceedings commenced in the Magistrates Court by way of complaint. The Court must inform the juvenile of the nature of the proceedings, and the grounds on which they are brought, except where it is his application to vary or discharge an Order, and the explanation must be in terms which the juvenile will be able to understand. In cases where the child is too young or indeed where the child is absent any parent present must be informed. Except where the juvenile or parent is legally represented or the proceedings are commenced at the parents' request because the juvenile is beyond control or where the juvenile otherwise requests, the Court must allow the parent to conduct the case.[1] This relates to one of the issues most commonly complained of by those people interviewed in the course of this study, i.e. what is the precise role of the parent in care proceedings, what are the parents rights? Are those items sufficiently explicit for the parents to understand them, and are those rights the appropriate rights to the circumstances of this type of case?

Under Rule 14(b) a parent or guardian shall be permitted to meet any allegation made against him in the course of the proceedings by calling or giving evidence, and where the Court has made an Order under Section 32(a) of the Act of 1969 (i.e. that the parent shall be separately represented because there is conflict of interest between parent and child) to make representations to the Court. Section 32A has not yet been fully implemented, and currently only applies to a limited category of cases. The position is, therefore, that in the majority of cases the parent is entitled to represent the child, notwithstanding the fact that the basis of the case may be that the child has been neglected by that parent.

1. Rule 17(1)

With regard to the provision of legal aid in relation to care proceedings, there remains a serious deficiency in that currently legal aid is available for a juvenile in such proceedings, but not for a parent. Again, this was a matter which respondents to this study found to be a cause for concern. It was the consensus of expressed opinion that parents should be parties to the proceedings, that they should be accorded full rights to present their case including the right to legal aid where appropriate, but that their case should be distinguished from the case of the child, making the cases, in effect, three party proceedings. The current situation is confusing for lawyers as was exemplified by the frequent references to solicitors representing children in care proceedings and a legal aid certificate not being certain as to who they represented, and where they should take their instructions from and how. If solicitors are not always aware of the role they are taking, how much more difficult must it be for the parents concerned to comprehend proceedings in which they find themselves.

The situation found in the Juvenile Court is well set out in an article by W. Evans[1] when he speaks of the field of care law:-

> "Practitioners in this field are well aware of the unsatisfactory state of affairs that has resulted: the solicitor ostensibly representing the child but, in fact, blatantly arguing the parents' point of view: the solicitor who endorses the authority's case without further enquiry: the solicitor who has to put forward the cases of both the parents and the child and ends up doing neither."[2]

Mr. Evans goes on to argue the merit of Central Government promptly implementing the whole of s32A, Children and Young Persons Act 1969 to remove the anomoly by providing for separate representation for

1. Parents under Disability in the Juvenile Court NLJ 129 p558
2. See also Hickman (1978) 128 NLJ 877

parents and appropriate legal aid. He recognises[1] that the likelihood of this section being fully implemented is remote.

The solicitor representing a baby incapable of communication will inevitably remain in a dilemma, and under the present provisions if he is not to take instructions from the parent, and not to take instructions from the Social Services Department, must play a dual role of both solicitor and "guardian" to the child, making both the qualitative value judgements relating to the child, and also the legal decisions required to represent the child properly. This position is not satisfactory, and it would be interesting to know from experienced solicitors in private practice what view they take of this. To ensure that the Solicitor has a clear role as Solicitor and nothing more in care proceedings, it is necessary to make provision for the appointment of some form of guardian in each and every case. It may be that the present system operates reasonably well in practice because so many of the cases involved are reasonably straightforward. Nevertheless, the issues involved require consideration.

(d) <u>The children concerned</u>

This is a study of Local Authority lawyers engaged in the field of child care. Their purpose is to assist the Local Authorities which employ them, to exercise their statutory obligations in that context. The purpose of the exercise is to help children who, for a variety of reasons, are in circumstances demanding some form of Local Authority intervention on their behalf. To be able to appreciate the broad significance of the field in which the lawyers in question are concerned, it is necessary to consider those children, and for the purposes

1. Home Office Circular 97/78

of this study, the children are referred to from two points of view. In the first place, the Department of Health and Social Security provides statistical information as to the numbers of children in care, and the types of care provided for them. They also provide information as to costs and trends. The figures give an insight into the extent of the problem facing all those engaged in the field of child care.

In addition, there has been a series of well publicised cases involving children where, for a variety of reasons, circumstances have conspired towards a profound failure of the systems designed to protect those children. A consideration of some of those histories identifies the highly contentious nature of the work involved, demonstrates the most harrowing and difficult category of cases with which the lawyers concerned may become involved, and also the reports arising from the particular histories demonstrate, to an extent, the view taken by those preparing the reports of the role of lawyers in the context of the most difficult category of care cases.

(i) The Department of Health and Social Security Statistics[1]

For the five years up to March, 31st, 1976, the number of children in care varied between 90,600 and 100,600, increasing from year to year. Of those children in care, perhaps the most significant increase was those children in care under provisions other than those contained in Section 1 of the Children Act 1948 or the Children and Young Persons Act because between 1972 and 1976, the number of such children in care increased by more than 100% from 1,500 to 3,100.

However, insofar as the children were in care under either of the two previously mentioned Acts the trend between 1972 and

1. Children in Care in England and Wales, March, 1976

1976 was quite marked in that whilst there was a progression from 48,100 up to 50,600 in 1975 and down to 49,000 in 1976 when dealing with the numbers of children in care under Section 1 of the 1948 Act, if the 1969 Act is considered, there was a progression from 41,000 progressively rising to 48,500 in 1976. In other words, the trend as between Acts was for a larger proportion to be in care as a result of proceedings under the 1969 Act, i.e. as a result of positive intervention by the Social Services Departments as opposed to by reason of voluntary reception into care.

From 1972 to 1976, there was always approximately one third of the total numer of children in care boarded out. The number of those accommodated in the various sorts of community homes rose between 1972 and 1976 from 21,00 to 35,200 whilst the number under the charge of a parent, guardian, relative or friend rose from 15,200 to 18,000 over the same period. It is interesting to note that these rising figures occurred during the same period that there was a reduction of numbers in voluntary homes and hostels from 7,200 in 1972 to 4,900 in 1976.

Although, during the period 1972 to 1976, the total number of children admitted to care reduced each year from 53,400 to 52,400, it is interesting to note the progressive rise in the number of children admitted to care each year as a result of care orders under the Children and Young Persons Act 1969 not including interim care orders. Between 1972 and 1976, the numbers of such children rose from 9,600 to 12,000. The number of children admitted to care as a result of the confinement or short

term illness of a parent or guardian under Section 1 of the Children Act 1948 progressively reduced during the same period from 20,000 to 14,300 whereas other reasons under Section 1 of the Children Act 1948 accounted for a fluctuating pattern commencing with 23,500 in 1972 and rising to 25,600 in 1974 before falling to 25,200 in 1976.

Again, this overall pattern reveals a progressively greater role for the Care Order provisions of the Children and Young Persons Act 1969, and demonstrates a rising interest in appropriate intervention as opposed to voluntary reception into care. Bearing in mind that the Care Orders are made in the Juvenile Court, this suggests a progressively increasing role for Local Authority lawyers representing their Authorities in the Juvenile Court if those Authorities are actually using lawyers in the Juvenile Court. (See post).

Between 1972 and 1976, the number of children leaving care remained approximately similar varying between the lowest year of 1975 when 47,800 children left care, and the higher years of 1972 and 1976 when 50,500 left care each year. Of those children leaving care by far the greatest number in any year left as a result of themselves becoming self-supporting or because care was taken over by a parent, guardian, relative or friend. The numbers each year leaving care for these reasons vary between 33,800 in 1975 and 38,900 in 1972.

Much smaller numbers of children left care as a result of the discharge of care orders, but once again, the figures relating to this demonstrate a progressive rise in the number leaving for

this reason. In 1972, 2,300 care orders were discharged, in 1976, when the same total number of children left care, 3,100 care orders were discharged, an increase of 800. The increasing volume of care orders being discharged may simply be a reflection of the increasing volume of care orders made. Nevertheless, the procedure for discharge involves proceedings in the Juvenile Court, and again a potential increase in work in this field for Local Authority lawyers.

Finally, the cost of children boarded out rose between 1971/2 and 1975/6 from £7.4m nationally to £14.9m. The cost of accommodating children in residential accommodation rose during the same period from £47.8m to £132.7m.

CHAPTER 2

QUALITATIVE ASPECTS OF LOCAL AUTHORITY LAWYER'S ROLE IN CHILD CARE

While Chapter 1 provides a general introduction to the work of local authorities in child care, this chapter examines in more detail the role of local authority lawyers in this field, drawing upon three sources of qualitative information. First, the author's own experiences while employed as a local authority lawyer in the field of child care over a two year period are summarised. Secondly, the case conference system, which constitutes a major point of contact between social workers and other professionals, including lawyers, in dealing with child care matters, is analysed and some problems of inter-professional communications are identified. The third source of information relates to a number of well-known cases, involving non-accidental injury and death of children, which have resulted in some form of inquiry. The reports of these inquiries have been examined in order to provide general insights into the ways in which the system of child care and protection can so tragically go wrong and, more specifically, to determine what role, if any, lawyers played in these cases.

1. The Writer's Experience in one Authority

As a solicitor admitted to the role in September, 1975, I took my first appointment in Local Government in June, 1976. My previous employment had been in a small private practice concerned primarily with magisterial court work predominantly legal aid assisted. I had been involved in proceedings involving children only to the extent of representing juveniles charged with criminal offences in the Juvenile Court and, on occasions, assisting in the taking of statements from parents involved in care proceedings. My recall of those proceedings in private

practice is that they were undertaken with the assistance of legal aid certificate granted in the name of a given child but that the practice was to take instructions from the parent and generally to argue the case for the return of children to their parents. I was certainly not familiar, in detail, with the different statutory provisions relating to children.

At the interview preceding my employment in Local Government, I was advised that I would be expected to specialise, to some extent, but that I would also be able to cover more general work as well. I was told that a solicitor was needed who would be interested in assisting the Social Services Department and, in particular, able to present cases involving children in the Juvenile Court. However, my role was to be flexible to the needs of the Authority in question.

The Authority I joined was a Metropolitan District within the West Midlands County. It was headed by the Town Clerk who was, himself, a solicitor and who had a Deputy Town Clerk who was also the Chief Legal Officer and responsible for the provision of legal services for the Authority. In addition, there were two Assistant Town Clerks, both of whom were solicitors and beneath them, one Senior Assistant Solicitor and two Assistant Solicitors, including myself. During the latter part of my period with that Authority, an additional Assistant Solicitor was taken on to the staff. There were also two articled clerks and staff specialising in conveyancing and general litigation and debt collecting.

Of the qualified staff, theoretically, any of the solicitors might find themselves in Court representing the Council. Nevertheless, it is true to say that in practice the most frequent attendances in Court were by the Assistant Solicitors with the Senior Assistant frequently involved as well. The Assistant Town Clerks and the Chief Legal Officer were very

much less involved as advocates and I was not aware of an instance where either the Town Clerk or his deputy became involved as advocates before any form of tribunal. It was a matter of particular concern to me, though naturally, I was grateful for the opportunity which it presented, that the most recently admitted solicitor was the one who was presenting the contentious child care cases in Court. It is true to say that at all times there was considerable assistance in legal interpretation etc. from senior colleagues, but within the Department there was no structure which, for example, militated towards senior solicitors dealing with particular categories of difficult care proceedings. Whilst personally perfectly happy to undertake such cases, I was surprised that no such structure was built into the system. This seemed an endorsement for the view referred to in the synopsis that child care cases were presented by inexperienced solicitors.

The corollary to this situation was that within that departmental organisation progress tended to remove the advocate from the practice of advocacy and towards the practice of administration. Indeed, in my own case, after two years' work in Local Government, primarily as an advocate, I was appointed to a post on a higher grade which substantially reduced the volume of advocacy undertaken and proportionately increased the volume of committee administration. Had that promotion taken place within the first Authority for which I worked, I have every reason to believe that the same variation in the nature of the work would have occurred. This matter was subsequently referred to in the face to face interviews by a number of solicitors who felt that it ought to be possible to build into the framework of Local Government legal departments a career for advocates as such. It may be that to some extent in some authorities that already exists, but it did not emerge during the course of this study.

Before discussing the breakdown of my own work experience with the particular Authority in question, it would be helpful to consider, to some extent, the ways in which the particular Authority dealt with cases involving children before any lawyer became involved. Detailed research into this area was not within the terms of reference of this study and, therefore, the matters described are the subjective interpretation of what went on by the writer. The Social Services Department of the Authority which employed me, was divided into a number of area offices, each of which was staffed by an Area Officer, under whose guidance operated Senior Social Workers, Social Workers and Social Work assistants. Cases were allocated to Social Workers as they arose by their area officers, and in respect of each case, they were the subject of regular checks and discussions with the Senior Social Workers. Senior Social Workers also carried a caseload and, in particular, dealt with cases which it was anticipated would be of a complex nature. Operating during a period after the inquiry into the death of Maria Calwell, not surprisingly the methods of the Department in regard to child care matters, reflected the guidance that followed that case and, in particular, there was an established sequence of discussions relating to cases involving children, which took place between the Social Worker in charge of the particular case, and that Social Worker's Senior Social Worker and the Area Officer. By this process, it was hoped that subjective decision making could be avoided, and also by reducing the burden upon a particular Social Worker, that a more balanced approach to the particular problems could be developed. In relation to child care matters, it was the clear policy that in the event of suspicion arising as to a child being at risk of injury, that that child should be the subject of a case conference which would draw in senior officers of the Social Services Department from their Central Office and outside the area office. Once such a situation had arisen, whilst it

was for the Social Worker involved to arrange the case conference and to decide on who should be invited, that action could be monitored by the senior workers mentioned and, in particular, by the Deputy Director of Social Services for the Authority. In other words, children at risk were accorded a level of managerial involvement which might, in other situations have seemed surprising.

Whilst it is impossible, without surveying the matter accurately, to be certain, it is apparent from the number of Social Workers employed, and their individual caseloads of child care matters, that a very great majority of such child care cases were handled by the Social Workers without any involvement of the available legal expertise at all. Certainly, many variations and revocations of care orders and many equivalent decisions never came to the attention of a solicitor. By the same token, many care proceedings were initiated and completed either by Social Workers themselves, or by their ex-police officer liaison officer. Perhaps, inevitably, following the ramifications of some of the cases referred to earlier in this study, which had taken place before the period discussed here, the prevailing attitude was that the cases which needed the most careful consideration and the involvement of the widest variety of specialists of different professions were the cases where children were at risk of injury, and for that reason, it was policy to invite a solicitor to all case conferences involving such children. It also became a growing policy during the time that I was working there to call for the assistance of a solicitor in case conferences involving varying degrees of neglect of children. Whilst there were no written guidelines on the subject, there was a developing awareness of the difficulty of proving certain categories of cases in court relating, in particular, to the question of neglect and, for that reason, there was a growing preference for involving a lawyer at an early stage in such cases as they arose. Nevertheless, the legal

expertise was essentially "called in" expertise and once a particular case was over, in court, or otherwise, it was entirely a matter for the Social Workers with the guidance of their senior officers to exercise their own function.

In cases where the Social Services Committee of the particular Council were to be advised to pass a resolution assuming the parental rights in respect of a particular child, then before Committee, the reports relating to those children were generally referred to a solicitor for consideration. However, it is true to say that there was still a prevailent view amongst Social Workers in that Authority that, in the majority of cases, they would be able to proffer the advice relating to that matter without the assistance of legal comment on the report, and so, although the reports would be submitted to the legal staff before the Committee met, lawyers would not be sought out for special discussion in most cases.

I was never exclusively employed on matters relating to child care for the very simple and obvious reason that in the particular authority for which I worked to be so exclusively employed would have meant being under-employed and also with available staff resources would have thrown an unnecessary burden of extra work upon other professional colleagues. Whilst I cannot suggest that my own role was typical of the role of local authority lawyers engaged in child care work, I do not have any reason to believe that it is grossly atypical from my own contacts and so it is worthwhile setting down the actual fields of work undertaken to see the child care element in context. There is always an element of jobs changing to suit the individual preferences of the officer concerned and O have no doubt this was true in my own case. I have broken my own work down into the following categories:-

(a) Managerial - In the authority for which I worked, the process

legal clerks were employed in a separate building from the main body of the Town Clerk's staff and one solicitor was placed in that building to be a point of contact and professional reference for those clerks. I was given that role and it involved day to day contact with the process work of the authority, in particular debt collection, library book prosecutions etc.

(b) Miscellaneous individual cases - From time to time, complex cases in the High Court or for example relating to building contract arbitration would arise and those particular cases would not necessarily be applicable to an individual solicitor. Theywould therefore be passed to a solicitor for day to day control, subject to consultation with senior colleagues and during my period of employment with the Authority, I expected to have at least two such difficult cases at any given time.

(c) Housing - In relation to housing, I had a general, though minor involvement with a large housing action area programme involving attendance at public inquiries, consultations with service department staff and general queries arising. I also undertook regular appearances in the County Court on housing possession cases which, in that Authority, were always presented by a solicitor in batches of 60 or so each month.

(d) Social Services other than Child Care - The Social Services Committee of the Council was normally serviced by an Assistant Town Clerk and I would only expect to attend alone in the absence of that Assistant Town Clerk through illness or on holiday. I would, however, attend the Social Services Committee along with the Assistant Town Clerk to report on particular matters with which I was dealing or with which I would be familiar in greater

detail than the Assistant Town Clerk. This was also part of the process of introducing a new local government solicitor to the Committee systems used in that service. In this connection, it was necessary for me to check reports to the Committee which were produced by the Social Services Department.

(e) Social Services work relating to children - The largest proportion of my time was spent in this field. The Social Services Committee regularly considered whether or not it was appropriate in a given case to assume the parental rights over particular children under Section 2 of the Children Act 1948. In that connection, they received a report from the Director of Social Services previously considered by myself and heard his comments on the particular case in Committee. In the event of their deciding to assume parental rights and in the absence of a consent to that course from the parent, then if the parents whereabouts were known, it was necessary, in each case, for me to serve a notice upon the parent informing them that parental rights had been assumed. If that notice were then responded to with a counter notice as referred to in the introductory section to this study, it would fall to me to prepare the necessary form of complaint to the Juvenile Court and to make the necessary arrangements with the Juvenile Court and with the parent for the subsequent hearing of the case by the Juvenile Court in accordance with the provisions set out in Section 2, Children Act 1948. In my experience, such cases inevitably involved adjournments whilst the parent made arrangements for legal representation. However, such objections to the assumption of parental rights were relatively infrequent.

In relation to care proceedings under the Children and Young Persons

Act 1969, my ordinary involvement would commence with attendance at a case conference. In the area of the Authority for which I worked, there was an area review committee for non-accidental injury to children which met each quarter and which I attended on behalf of the Chief Executive as secretary. The purpose of this review committee was broadly to monitor non-accidental injury to children in the area and to consider ways in which non-accidental injury could be reduced and ways in which its incidence could be more accurately forecasted and therefore preventive measures taken. This Committee had made a decision that in all cases where non-accidental injury was suspected or anticipated, whether that injury were physical, mental or otherwise, a case conference should be convened involving all the agencies with an interest or knowledge of the particular case. This would invariably involve a central core of regular attendants i.e. the Deputy Director of Social Services who chaired such case conferences, the Community Health Doctor responsible for matters of child care. Other attendants varied according to the circumstances of the case, but very frequently involved a Consultant Paediatrician, a Senior Police Officer, a Social Worker, a Probation Officer, anhome help, a district nurse and a teacher. The numbers at the case conferences varied from approximately four to approximately fifteen but generally involved in the region of eight members.

It was the policy of the Area Review Committee that the Town Clerk should be invited to send a solicitor to such conferences and I was instructed to attend as many such case conferences as it was possible to fit in. In practice, this meant that I attended at the majority of case conferences called in connection with non-accidental injury to children and also any other case conferences

called where some form of legal intervention was either anticipated or considered appropriate in respect of the given child. Unfortunately, I did not maintain statistics of the precise personnel at particular case conferences, nor indeed the precise number of case conferences at which I attended during a given period, but I certainly attended, on average, more than one per week.

The case conferences which I attended were a forum for broad discussion of particular cases, the main objective always being to assess an appropriate course of action to follow in the best interests of the given child or children. It was always the policy to go round the table hearing the comments of all those present in an effort to ensure that all salient factual information was known before courses of action were considered. I interpreted my own role as being two-fold: In the first place to listen carefully in an effort to ensure that those more closely involved were not being blinded by details to the extent of missing obvious and compassionate solutions, but also to listen carefully to what was said to assess whether there appeared to be the basis of a prima facie case for some form of positive intervention by the local authority, whether that be in the form of care proceedings, wardship proceedings in the High Court or the offer of voluntary care under Section 1 of the 1948 Act or in cases where a child was already in voluntary care, whether it would be appropriate to assume parental rights in a particular case. I am certain that whilst not always in agreement, the Social Workers involved in the case conferences found it useful to have the objective view of a lawyer there available to comment on the legal implications of the matters under discussion.

In my own case, once a case conference had made a decision, then if that decision were in favour of one form of legal intervention or another, it would be necessary forthwith to begin the process of taking detailed statements from all those involved and making the necessary arrangements with specialist medical practitioners, normally consultant paediatricians or child psychiatrists, for their presentation of reports and also, in appropriate cases, for their attendance at Court. I was fortunate in my own area in never having any difficulty whatsoever with the specialist medical practitioners who were always willing to attend at Court, if neccessary, at short notice and give oral testimony in support of their reports.

Having prepared a given case, I would then present the case in Court. I have no record of any care proceedings which did not need to come before the Court on more than one occasion. Invariably, the difficulty over representation of the child concerned, or the non-availability of particular witnesses led to the adjournment of cases and the application in appropriate situations for interim care orders for a period of 28 days. On occasions, it was necessary to make up six such applications before final disposal, particularly in cases where the outcome of a Crown Court prosecution was awaited before disposal in the Juvenile Court. Because of concern over the effect of the adjournment on the children concerned, (who, unless they were below the age of five, had of necessity to be in Court for each adjournment), on occasions it was felt appropriate to make an arrangement with the parents concerned to receive the child into care under Section 1 of the 1948 Children Act and, if appropriate, to assume parental rights thereafter. Inevitably, even in the field of

child care, expedients are found to achieve the desired objective in the way least likely to cause difficulties to those involved.

During the course of my work with this Authority, I maintained a breif diary note of particular cases with which I was involved and a group of these diary notes are attached as Appendix 1 to this study, purely for information. Naturally, those notes have been varied in such a way as to ensure that there is no question of identifying the individuals concerned.

Inevitably, I was the point of contact for all Social Workers with queries relating to legal matters involving children, and, in consequence thereof, I was in frequent contact with such Social Workers. I formed the distinct impression from discussions with them that they felt as a body that they were always advised by the most junior solicitor available to their Authority (which, of course, was true in my own case) and that they were regarded as the least important clients which those solicitors had (which I would argue was not true in my own case). It seems reasonable to postulate the idea that Social Workers would function with greater conviction and certainty and greater efficacy if they worked in the knowledge and belief that they were advised by a lawyer whose primary interest was child care and who worked exclusively, or to a very large extent in the field of Social Services.

2. Case Conferences

It will be seen from the brief description above of the author's own experiences as a local authority lawyer involved in child care that the case conference constitutes a major part of inter-prefessional contact and decision making in this field. The case conference system has recently

been subjected to a detailed, in-depth study by Christine Desborough and Olive Stevenson, and their work is interesting both for the general problems which they identify and for their specific findings concerning the role of law and of lawyers.

Of course, the term 'case conference' may have a variety of meanings to different people and may have different perceived objectives for those different people. The fact that that may be the case does not detract from the significant importance of the case conference in the context of child care matters and non-accidental injury cases in particular.

In the summer and early autumn of 1976, Professor Stevenson and Miss Desborough of Keele University undertook a study of inter-professional communication in case conferences, concerning non-accidental injury to children. Their study incorporated all the case conferences which took place in one particular area during July, 1976, and in all a total of 25 case conferences. Although it subsequently emerged that they had not been advised of absolutely every case conference which took place in the prescribed period, they accepted that where they had not been invited, it had been as a result of the short notice of the meetings. In all, they attended 13 case conferences and in each case sought the permission of those attending the conference to be present as observers. Their intention and practice was to observe the conferences and conduct follow-up interviews with those of the participants who agreed to be interviewed.[1] It was accepted from the outset that this was a small survey and that as such, its results were open to more than one interpretation and that the information acquired could not be regarded as statistically significant nor representative of problems and of trends generally, and it was the

1. CASE CONFERENCES - A study in inter-professional communication concerning children at risk - Christine Desborough and Olive Stevenson

intention of the survey that the information collated, along with information from other sources would assist in gradually putting together a convincing picture of the workings of case conferences and of procedures in relation to non-accidental injury generally.

In their study of case conferences, they defined four broad objectives for a case conference relating to children as being:-

1. To pool information about the child or children thought to be at risk and their family circumstances, in order to build up as full a picture as possible;

2. To reach decisions as to action; there are many which are part of a general treatment plan (e.g. securing a play group place); the most serious in terms of consequences are - placing on the 'At Risk Register'; deciding upon the prime worker; and instituting legal proceedings to remove the child or children; or, of course, deciding to take no action;

3. To pool evidence about abuse which could be used in legal proceedings - a different process from "information sharing";

4. To share and sometimes "defuse" the anxiety which is inevitably felt by those most responsible and accountable.[1]

Whilst there can be little doubt that that analysis of the objectives is an accurate one, the fact that those objectives exist does not necessarily mean that they will be achieved in a given case. For example, at any case conference, there will be those who are able to communicate to their colleagues from other disciplines and there will be those who, however capable of exercising their own professional discipline in practice, will not be able to communicate adequately matters within their

1. Case conferences page 5.

knowledge. This, of course, is a not uncommon problem and one obvious response to it is that it is better to have the attempt at pooling of information with all its difficulties than not to have the meeting at all.

There will also be at a given case conference people who will not communicate all the information which they have in theis possession. For example, it may be that either Social Workers or Police Officers may have information relating to and relevant to a particular case, which they do not wish to disclose to anybody from another organisation. The absence of that information might materially affect and prejudice the decision made by the case conference. This could, of course, apply to others apart from the organisations mentioned.

Some of those present may concentrate solely on their own area of professional expertise to the detriment of the decision making capacity of the conference as a whole. For example, a local authority lawyer present at such a conference may, in part, regard it as the venue for assessing whether or not there is a prima facie case for proceedings. With that in mind, he might endeavour to direct the concentration of the conference to matters relating to that, and to the exclusion of other things. A teacher, on the other hand, might wish to concentrate on the educational needs of a particular child, and it is to overcome difficulties such as these that require that the case conference should be structured and chaired in an entirely satisfactory manner. Notwithstanding the difficulties which may arise in the case conference meeting, it is worth reiterating that a deficient case conference is probably better than no case conference at all.

In the Desborough/Stevenson study, it emerged that there was a feeling amongst some that the conference was a charade so far as decisions

were concerned and that the Social Services Department had "tied up" everything before hand.[1] In this regard, there is little doubt that the fact that at the end of the day, individual departments retain their own specialised fields of responsibility might make some people attending case conferences wonder whether the case conferences were worthwhile in fact. One of the conclusions of the study was that there was a need to clarify the status of the conference in relation to different types of decision to ensure that the distinction between advisory and executive responsibility was not blurred. Miss Densborough and Professor Stevenson felt that it was important to make it explicit to those who were only peripherally involved in a case conference, or who were inexperienced that they were not, themselves, expected to take decisions on all crucial matters relating to a particular child, but that this did not, of itself, mean that their contribution was any the less valuable.[2]

This study was particularly concerned with the question of communications at case conferences and noted that those attending the conferences were from different fields of expertise and had different degrees of experience and familiarity with child abuse, yet on no occasion during the conference did members seek clarification of points about which they might have been unclear. In this connection, the writers interviewed participants in the conferences afterwards with a view to assessing their actual understanding of technical jargon used by other professional groups and the interviewers' reaction was that the information received was

> "difficult to analyse since we gained an impression of vague and slightly evasive answers to the questions. This could suggest that respondents found as much difficulty in admitting uncertainty to the interviewers as they seem to have done in the conference. A member commented that while they thought they

1. Case conferences p.13
2. Case conferences p.33

> broadly understood, they imagined that many others present would not have done ... when pressed, some acknowledged that they did not find it easy to ask for clarification of things they had not understood in conferences."[1]

If this is the case, then the consensus decisions of case conferences relating to children are not truly consensus decisions at all. When the nature of some of the decisions taken is considered and the implications they hold for the children and families concerned, this is a cause for concern.

It is interesting to note in this study of 13 case conferences at which 113 people particulated, there is only one reference to the attendance of a solicitor at one of the conferences, notwithstanding the fact that the purpose of five of the conferences referred to was to consider the need for removal of a child from home on a place of safety order or care order. The absence of solicitors for case conferences of such controversial matters is significant in itself but equally, the absence of comment upon the apparent lack of involvement of solicitors in these case conferences is worthy of note.

It is quite clear that child care matters call for a measure of close co-operation between Social Workers and lawyers which would be improved by the regular attendance of lawyers at case conferences.

1. Case conferences p.43

Miss Desborough and Professor Stevenson took the view that the uncertainty and confusion about the technicalities of the law relating to children and of the broader legal framework within which Social Services Departments operated was a cause of particular concern, because they formed the strong impression that phrases such as "place of safety order", "reception into care", "section 2 rights", were not always understood by all of those present.[1] If that is the case, concern is well-founded. Clearly, some consideration ought to be given to the education of those people most likely to be participating in case conferences and, in particular, those people who form part of the peripheral or occasional attendance groups who are, at the end of conferences, drawn into consensus decisions with which perhaps they might not agree if they were familiar with the true implications.

The case conferences is part of the accepted practice of child care. The study by Miss Desborough and Professor Stevenson, a small but in-depth study, revealed a number of the dangers inherent in the case conference system. If they are to function properly and assist in the object of reaching appropriate conclusions in relation to given children, then it is clearly important that the study of the case conferences should continue and their role should be widely discussed. In practice, it is most important that the conferences are properly chaired, that appropriate

1. Case conferences p.46

parties are present and participating, that those present do not feel inhibited by issues of confidentiality, that those who are less experienced in participating in case conferences should not feel inhibited from admitting ignorance of particular matters under discussion and thereby enabling themselves to be more fully a party to the consensus decisions which often follow from such a case conference.

3. Cases which have been the subject of inquiry

In recent years, a number of cases have arisen in which a child, subject to the care or supervision of a local authority, had died as the result of non-accidental injury, and these cases have been subject subsequently to some type of formal inquiry. The reports of these inquiries reveal both a general picture of the way in which the system of child care can tragically go wrong and some specific insights into the involvement of the law and lawyers in this system.

Maria Colwell

Maria Colwell was born on the 25th of March, 1965, and died at the hands of her step - father, William Kepple on the night of the 6th/7th of January, 1973. An inqiry was convened by the Secretary of State for Social Services to inquire into and report upon the care and supervision provided by local authorities and other agencies in relation to Maria Colwell and the co-ordination between them.

Maria Colwell was the fifth child of her parents and her father left her mother a few weeks after her birth in 1966. Maria was looked after by her father's sister from the age of four months and, at about the same time, her brothers and sisters were removed into care because of their mother's inability to cope with them. At the age of 15 months, Maria was taken back by her mother to be left in unsatisfactory conditions with another woman, as a result of which a care order was sought

and obtained, under which she was placed back with her aunt. The aunt became an approved foster parent, but it was explained to her that long-term, the intention of the Social Services Department would be that Maria would be returned to her mother, who was now living with another man. Maria's mother pressed for the return of Maria to her care. But, between 1966 and 1969 her mother had 19 different addresses, there had been consistent concern at the state of children living with her, and concern at the violent nature of her husband. During August, 1969, Maria's mother made an application to the Juvenile Court for stated access, and during the following year, Maria's Social Worker in charge changed and her new Social Worker, whilst well qualified had no experience in local authority social work, and carried a very heavy workload. During April, 1971, a case conference took place at which the future of the child was discussed and the suggestion was made that the gradual re-introduction of Maria to her mother and her husband was the appropriate course. The inquiry into Maria Colwell's death particularly criticised this case discussion as being based upon an inadequate amount of material information relating to the main personalities involved in the case. In relation to the same meeting, the inquiry pointed out that those present felt themselves fettered by the requirements of the legal and social system which militated towards the return of children to their natural parents. They viewed the return of Maria to her mother as being eventually inevitable and beyond their control. In November, 1971, the Juvenile Court heard an application for the revocation of the care order in respect of Maria and the only evidence was that of Maria's mother. The Social Services Department in the case did not oppose the application and in consequence, a supervision order was substituted, and the child was sent to her mother. Evidence collated by the inquiry indicated that during the period following the return of the child to her mother and the child's death from

multiple injuries in January, 1973, that there was a catalogue of inadequate liaision between the interested departments that there was inadequate communication and inadequate response to indications of incidents which ought to have caused suspicion.

The Tribunal view was that local authorities and agencies in the case could not avoid censure. There had been errors and omissions by workers involved in the case who were responsible for supervision of the child, and there had been failures at all levels within the authorities concerned to devise efficient and fail-safe systems of exercising that supervision. The inquiry listed the failures of the various organisations involved as follows:-

(a) The County Council

(1) They took the decision not to oppose revocation of the care order in 1971 upon insufficient evidence, and upon a misapprehension of the evidence.

(2) They made no attempt to gain time for the better testing of the suitability of Maria's return to her mother.

(3) They failed to monitor the results of the return.

(4) They failed to respond properly to particular indications of danger.

(5) For periods of importance, they failed to supervise at all.

(b) The District Council

(1) They failed properly to co-ordinate essential information in their possession.

(2) They failed to press the County Council for reports.

(3) Their departments failed properly to liaise at crucial times.

(c) The N.S.P.C.C.

(1) Their message and communication system had serious faults.

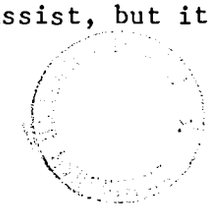
(2) There were serious misunderstandings of warning signs.

(3) Complaints they received were not always properly investigated and in accordance with their laid-down directives.

In setting out the circumstances surrounding the various appearances of Maria Colwell in Court in connection with care proceedings and the revocation of an existing care order, there is no reference to any Local Authority lawyer being used by the Local Authority concerned. Paragraph 68 of the report sets out matters which were recited in Court on behalf of the application to revoke which were known to be untrue, but which were left unchallenged, and which if challenged might have led to a different decision being made. There was little point in challenging this factually incorrect information because the decision had been taken not to oppose the application to revoke. The report of the Inquiry concludes:-

> "They based the decision not to oppose revocation of the Care Order in 1971 upon insufficient evidence and upon a misapprehension of the evidence."

There is, of course, no guarantee that had the assistance of a lawyer been used that that lawyer would have advised a different course of action. Nor is there any guarantee that in the particular case a lawyer was available to assist, but it is true to say that a solicitor



(the most frequently employed category of professionally qualified lawyer in Local Government) is likely to consider evidential matters from a different point of view to that of Social Workers, and whilst there is no guarantee, it is more likely that a lawyer would assess the matter in a different way. Certainly, the inquiry into the death of Maria Colwell took the view that legal representation on both sides in care proceedings is helpful.[1]

John George Auckland[2]

John George Auckland was convicted of the manslaughter of his nine week old daughter in 1968. He was convicted of the manslaughter of his 15 month old daughter, Susan in 1974. A public inquiry was convened to analyse whether or not there had been any breakdown in service in relation to the Auckland family which had contributed to the death of the second child.

The broad thesis of the public inquiry report is that the law relating to the particular circumstances of John George Auckland was extremely complicated but that if all the information available had been pooled in a "case conference" then an application would probably have been made for a care order in respect of the second child.

The Auckland story began when John George Auckland killed his daughter aged nine weeks in July, 1968. He was imprisoned until July, 1969, when he was released and resumed cohabitation with his wife. In January, 1971, Mrs. Auckland gave birth to a son, and later that year the family moved home, and there was a change of the agencies assisting the

1. Maria Colwell inquiry - conclusions section
2. Report of the Committee of Inquiry into the provision of and co-ordination of services to the family of John George Auckland - D.H.S.S. 1975

family. During that period, consideration was given to the appropriateness of care proceedings in respect of the son born, bearing in mind the death of the earlier child, and dissatisfaction with aspects of the son's care currently. The inquiry into this case pointed out that when the son was born, there was a degree of ignorance and lack of communication between the various authorities, i.e. the hospital and the Social Services Authority which could have prejudiced the child's safety. However, care proceedings were, in due course, considered by the Social Services Department, and rejected on the basis that there were no grounds for taking those proceedings. This decision was criticised by the inquiry, not necessarily because the decision was incorrect, but because it was not founded upon an analysis of all the available evidentiary information. The inquiry was also critical of both a psychiatric specialist and a general practice involved in the Auckland saga, in particular, because of their grossly inadequate system of record keeping and checking upon communications. Communications within the Social Services Department during this period were also the subject of criticism. In March, 1972, a further daughter was born to the family and in March, 1973, a daughter, Susan was born. During all of this period, the Social Services Department's investigations were the subject of criticism by the inquiry and, in particular, when the file relating to the family was transferred from one office to another, that transfer was described as having been handled in a deplorable manner. Following a series of domestic difficulties, the situation arose where the children were placed in care by their mother and subsequently released from care to their father, and it was whilst living with her father that the second daughter was murdered by him. In general terms, the Tribunal were critical of the lack of liaison, the lack of accurate written note keeping, and particularly critical of the inactivity of the general practitioner involved. They expressed surprise that

Social Workers involved failed to appreciate the significance of the stress imposed upon the father by having three children at home with him.

Although describing the complexity of the law, the report does not specifically recommend the use of a solicitor in the presentation of the local authority case in Court, nor indeed, does it recommend the attendance of such a local authority solicitor at the "case conference". It is, perhaps, a significant commentary that not only did the Social Workers in the particular case not instruct a solicitor but also those charged with the duty of enquiring into the circumstances of the case did not positively adopt a different attitude to that of the Social Workers. The report makes the following point:-

> "A Social Worker who considers that care proceedings should be initiated must first satisfy herself that a Court is likely to make the order which she seeks because if it does not do so, her relationship with the family can be jepordised. She must, therefore, know precisely what the Court will be looking for when deciding whether or not to make an Order and she will not find that easy to discover by looking at the Children and Young Persons Act 1969. Furthermore, we consider that the relevant section of the Act is so worded that the matters upon which the Court will be focussing its attention will not always be those which appear material to a responsible social worker who has to consider whether, in relation to a particular case, an order is desirable. We would like to see the situation changed."[1]

Having set out so clearly the complexity of the law relating to children contained within the Children and Young Persons Act 1969 it is perhaps surprising that the inquiry did not advise the use of those specially professionally qualified to interpret those complex statutory provisions.

Simon Peacock

In the case of Somon Peacock, an inquiry was convened by the four

1. Report on John George Auckland - page 91 paragraph 273
2. Report of the Committee of Inquiry concerning Simon Peacock - 1978

authorities concerned i.e. Cambridgeshire Area Health Authority, Cambridge County Council, Suffolk Area Health Authority and Suffolk County Council, to investigate the circumstances surrounding the death of Simon Peacock who lived for only seven months before being killed by his parents who were found guilty of his manslaughter in August, 1977.

The inquiry made nine recommendations as a result of their investigation. Those recommendations were essentially related to the need to ensure adequate inter-communication between different departments of different authorities when parents of children considered to be at risk of injury or neglect move from one area to another. The text sets out the circumstances of the case and in particular considered questions relating to care proceedings and place of safety applications in relation to Simon Peacock.

Simon Peacock was born in May, 1976, and it was noted in hospital that his mother had bruises, possibly indicative of a beating she had received, particularly because, during her stay, further bruises developed. During a visit, her husband was heard to abuse her and was asked to leave the hospital. The baby failed to thrive, and his mother was discharged before he was ready to leave. As a result of hospital concern, the local Social Services Authority took out a place of safety order under Section 28(1) of the Children and Young Persons Act 1969, so as to enable inviestigations to take place into the circumstances involving the child. In fact, through bad communications, the child was allowed to leave the hospital because not all relevant people at the hospital had been advised of the situation. Within a week, the case conference was convened to disucss the case, at which Social Workers, medical and nursing staff were present. The case conference decided that the place of safety order obtain should be allowed to lapse and this occurred. Subsequently, further

bruising was noticed on the mother, but the child progressed until a small bruise and cut were seen on the child, which appeared unlikely to be accidental in origin. A further case conference took place, at which it was decided that there was insufficient evidence to justify care proceedings, and that no place of safety order should be obtained and that no other Court proceedings should be commenced. Shortly afterwards, there was a change of address by the family, and difficulties over visiting. In December, the child died and post mortem examination showed that he had been injured in a number of ways over a protracted period. The Tribunal were critical of the steps taken to obtain information at the outset of this case and the communcations and inter/intra departmental liaison. They did not, however, consider the basis upon which the case conferences called had considered matters of evidence relating to the child.

On two occasions, case conferences were convened in relation to the child and the inquiry sets out the matters which those case conferences decided.

The first case conference made the following decisions:-

(a) Place of Safety Order be allowed to lapse

(b) Suffolk Health Visitior discontinue to visit regularly

(c) Suffolk Social Services Department only to remain involved if specifically requested to visit

(d) The Cambridgeshire Social Services Department press East Cambridgeshire Housing Department for re-housing

(e) Case to be reviewed at regular "children at risk" meetings

The second case conference decided:-

(a) No Place of Safety Order was to be taken

(b) No Court action should be sought

(c) Agency of prime responsibility should be Social Services Department

On the face of it, amongst those issues were questions as to whether to make an application for a place of safety order, and subsequently whether or not to allow a Place of Safety Order once made, to lapse and also questions relating to the viability of care proceedings in the particular case. There is no suggestion that in either case a lawyer was invited to the case conference in question, and again, there is no suggestion from the inquiry that a lawyer ought to have been invited to the case conference to assist in the analysis of complex legal issues.

Wayne Brewer[1]

On the 20th October, 1976, the Somerset Area Review Committee decided to appoint a panel to consider the case of Wayne Brewer who died on the 20th of May, 1976, as a result of injuries received from his stepfather who was subsequently convicted of the child's manslaughter. The reason for the inquiry was because prior to his death, the child had been the subject of supervision by the Somerset County Council under the terms of a Supervision Order made by the Sedgemoor Juvenile Court.

This review of a particular case is interesting from the point of view of this study because it highlights, in passing, some of the issues stimulating this study. The case hinged around an application by the parents for the revocation of a Care Order in respect of the child which was initially rejected but some three months later a further application for the revocation of the Care Order was upheld and a Supervision Order

1. Report of the Review Panel - Wayne Brewer, March, 1977.

substituted for the previously existing care order. It was during that period of supervision that the child died. The outline history of Wayne Brewer was as follows. The child was born in November, 1971, an illegitimate child who needed to remain in hospital for 20 days after his mother left hospital following his birth. Two years later, Nigel Brissett began to live with the child's mother at the child's grandmother's house. Brissett was violent and in February, 1974, there was an incident when Wayne was reported as having several bruises given on more than one occasion. Brissett admitted causing the injuries and care proceedings were taken. It would appear from the report that that case was presented by the Social Worker, though that is not certain. (In care, Wayne was abnormally fearful of men). In March, 1975, Nigel Brissett and Wayne's mother applied to the Juvenile Court for the child's return which application was rejected. However, in June, 1975, a further application for Wayne's return was heard by the Juvenile Court and the care order revoked and a supervision order for three years imposed in its stead, with a recommendation that the supervisor should visit three or four times a week, which recommendation incidentally provoked the Social Services Department to advise the Magistrates' Court that such a level of supervision was beyond the resources of the Department in question. An allegation of violence followed in July, 1975 when an anonymous caller said that the child was always being knocked about. He was seen bruised, and his mother failed to take him to the doctors. It was felt that there was insufficient evidence for the child to be removed, but a play group placement was arranged to assist. In January, 1976, Wayne failed to attend play school allegedly because of financial difficulties and when these financial difficulties had been resolved and his attendance recommended, he was still an irregular attender during February. In March, 1976, there was a report of a blackeye and the child said "Daddy did it",

but again it was felt that there was insufficient evidence to warrant care proceedings. On the 20th of May, the child died following a severe shaking by Brissett. The inquiry considered the whole of the case and made observations and recommendations in regard to the provision of the service as a whole.

The report makes no value judgement on the contribution of the local authority solicitor in this case, merely making the two following bald statements:-

> "We understand that the presentation of the County Council's case was in a lower key altogether. This is consistent with their normal practice of putting forward the relevant considerations objectively and dispassionately."[1]

> "We know that the solicitor for the County Council seems to have relied for the substance of his case on the written social inquiry report. We know that he made no cross-examination of either Eileen or Nigel Brissett and the statement of Nigel Brissett that "I have not got a bad temper" was allowed to go unchallenged"[2]

In passing, there is also reference at paragraph 4.4 of the report to the solicitor representing the child in the revocation hearing and that reference indicates that that solicitor had taken his instructions on behalf of the child from the parents because of the child's tender age. The dilemma and difficulty facing solicitors appointed to represent children in such circumstances has already been referred to and in particular the concern felt by those interviewed in the course of this study over this problem has been referred to. The dilemma is well documented in reported cases recently.[3] It has been pointed out that where a child is too young or too inarticulate to instruct a solicitor that the

1. Wayne Brewer Report paragraph 4.10
2. Wayne Brewer Report paragraph 4.15
3. re. D.J.M.S. (1977 3AER 582; Humberside County Council v. D.P.R. (1977 3AER 964); R.V. Worthing Justices ex parte Stephenson (1976 2AER 194)

solicitor will conduct the child's case in accordance with the parents' instructions and that where the child's interests and the parents' wishes are in conflict the lawyer may, by his advocacy, put the child's welfare in jeopardy.[1]

The case of Wayne Brewer is a case where legal representation of the parties did not assist in avoiding a tragedy. That is not to say that the basis thesis that when dealing with complex legal issues such as those contained in the Children and Young Persons Act 1969 and the Children Act 1948, those prefessionally trained in the interpretation of that complex legislation should be called upon to assist.

Karen Spencer[2]

Karen Spencer was born on the 4th of December, 1975. On the 16th of April, 1977, she was assaulted by her mother whilst home on trial following a period in foster care. She received injuries as a result of which she died. An inquiry was commissioned into the circumstances surrounding her death. Karen Spencer's background was that she was the product of a difficult labour and required special care after her birth, and was kept in hospital after her mother had been discharged. When she was born, her family was not known to the Social Services Department, but in February, 1976, she was admitted to hospital for a check following an alleged fall from a chair. A place of safety order was obtained, and Police investigations began because the injuries which the child had received were entirely inconsistent with the nature of the fall as described by the parent. A decision was taken at a case conference to seek a care order, but that continuing family contact was to be maintained following the care order. In June, 1976, the Spencers

1. Separate representation of children in care proceedings - Mary Hayes Family Law 8 No. 3 1978
2. Report by Professor J.D. McClean Professor of Law, University of Sheffield

saw a solicitor about the discharge of the care order, but at a case conference later in the summer, the decision was taken that the child should not go home at that stage. This decision provoked Karen's mother to attempt suicide and later in the year to present the case to the Juvenile Court for the child's return. However, it was decided before the case actually appeared in Court that it should be adjourned sinedie with increased access being agreed between the parties. During January, 1977, the child's position was reviewed by Social Workers and the decision was made that the child should be introduced to the idea of going home on trial. By the end of March, 1977, she was home on trial. On the 16th of April, following a parental row, it appears that Mrs. Spencer assaulted Karen and later in the day dropped her on the ground. When her husband returned home and saw the child's condition, he took her to hospital where she died.

In paragraphs 2.54 to 2.57 the report deals with the convening of a case conference to consider care proceedings. Again, there is no reference to a solicitor being invited to the case conference although the case conference decisions included the decision to take care proceedings in respect of the child in the Juvenile Court. There is no comment in the text of the report on the absence of a solicitor from the case conference.

However, the Karen Spencer Inquiry does refer to the local authority lawyer in the care proceedings when, at paragraph 12, the report states:

> "The Local Authority Solicitor had been admitted to the role of solicitor in December, 1975, having served his articles with the County Council. His special work was to act on behalf of the Council in Juvenile Court proceedings all over the county and with this degree of specialisation, he would rapidly acquire considerable expertise. The availability of this sort of specialised legal help for the Social Services Department

is, I would comment, of very great value; not all local authorities have made such provision."

The report goes on to state at paragraph 2.116:

"I was very impressed by the Local Authority Solicitor's approach to the case. His prompting of a weekend visit was entirely appropriate. The sad thing is that despite the structural reviews, supervision and case conferences, it took a lawyer with Court proceedings in mind to bring such a visit about."

Of the list of cases so far referred to, this is the first and most positive comment on the role of a local authority lawyer in a particular case. This report acknowledges the contribution made by the lawyer. The report does not, however, demonstrate whether the particular lawyer in question is representative of the majority of local authority lawyers in child care or an outstanding example of the particular skills required. Nevertheless, it is possible to say that in this case, a good solicitor assisted. It would appear from the later parts of the report that the solicitor was not concerned with the subsequent decision to permit the visiting arrangements which eventually resulted in the child's death.

C H A P T E R III

A SURVEY OF LOCAL AUTHORITY LAWYERS IN CHILD CARE

Having considered, on the basis of the author's own experiences and other sources of information, some of the issues relating to the involvement of local authority lawyers in child care, it was decided to undertake a broader survey of this subject. The purpose of this survey was to determine who the lawyers were who were representing local authorities in the field of child care, and to what extent and in what circumstances they were used by their authorities in this respect. In addition, it was hoped that by contacting these lawyers further insights would be gained as to the procedural and practical difficulties involved in child care matters in different parts of the country.

In the following section, the methodology employed in this survey is described. The following two sections deal respectively with the separate parts of the survey, the first consisting of the results of face-to-face interviews with lawyers employed by local authorities in one region of the country, and the second of the results of a postal questionnaire circulated to all local authorities in the remaining areas of England and Wales.

1. Methodology

(a) Regional Survey

At the outset, it was decided to make face-to-face contact with lawyers employed in the field of child care by the local authorities in one region. The purpose of this series of interviews was essentially three fold at the outset. It was always the intention to formulate a national questionnaire to be conducted by post, and to deal with that appropriately to ensure the fullest and speediest

response, it was obvious that the questions contained in it needed to be carefully formulated, relatively straightforward and not demanding too much of the time of the participants. A face-to-face session with a selected group was seen as a useful method of predicting which of the original questions warranted inclusion, and how those questions should in the event be modified for the purpose of a national survey conducted by post.

It is well recognised that face-to-face meetings permit a much wider analysis of attitudes, opinions and roles, than the mere consideration of sets of written replies. Through note taking after each meeting, it was anticipated correctly that further useful information would emerge upon analysis of the responses.

The third reason for the face to face sessions was that it was hoped to obtain a more detailed picture of what went on in a particular region than would be reasonably practicable in the national questionnaire where an uneven response was anticipated. In the general sense that there were more questions in these interviews than were eventually used in the postal questionnaire, this anticipated result was borne out, but it emerged very quickly that in one important respect, the face to face interviews would fail. It was hoped in these preliminary meetings to obtain detailed statistical information, in particular in relation to solicitors involvement in care proceedings under Section 1 of the Children and Young Persons Act 1969 and related sections, to permit an analysis of how many applications, how many interim applications as opposed to final applications, how many resulted according with the application, how many failed to obtain the desired objective. In the event, with one exception, none of the respondents were in a position to give

statistical information either during the course of the interview or within a reasonable time thereafter. In most cases, the suggestion was that such statistical information as was kept would be kept by the Social Services Department, but that even they would not refer to the recommendation made in each case, and whether the recommendation was achieved when a case was successfully proved.

The Authorities concerned in this first set of interviews ranged between County Authorities with their more numerous and wide spread Courts, and densely urban Metropolitan Districts. It was felt that the eight selected were a reasonably representative sample of the types of Authority having the Social Services function, though they were also self-selecting because of their location.

An appropriate Officer from each Authority agreed to participate in a face to face interview lasting between one hour and a little more than two hours to answer the questions contained in the questionnaire. The general nature of the questions, but not the questions themselves were made known to the particular Officer in advance of the interview. Each interview was conducted in the office of the particular Officer concerned, and none of them were wholly free from outside interruptions.

The interviews took place between September and December, 1977, and were specifically arranged with the intention of avoiding interviewing heads of department, for example, who would not themselves be personally and directly involved in child care matters. Only on one case was the interview conducted with a "Senior Solicitor" instead of the more actively involved Assistant Solicitor, but even in that case, the interviewee was directly involved himself as well. In one other case, finding that child care cases were not handled by an Assistant Solicitor employed by the Authority, but in fact, were "farmed out"

to private practitioners it was felt appropriate to interview the person responsible for the "farming out". In this instance, the interviewee was designated "Assistant Town Clerk".

The interview schedule (see Appendix II) took the form of 13 sheets, each sheet having three questions, with the exception of the 37th question which was given a whole sheet. At the outset, there were also three questions inviting comments amongst other things on the effectiveness of the Children and Young Persons Act 1969, but these questions were excluded at the first interview as both interviewer and interviewee felt that they would have taken a disproportionate amount of time to answer. In addition, an extra question specifically related to statistical information was left in, but no answers were given to it. The questions divided into the five following categories:

1. Staffing in the legal department: who exactly handles the child care cases.

2. Categories of child care work undertaken.

3. Selection and preparation of child care cases undertaken and case conferences.

4. Presentation of child Care cases in Court and other aspects of cases in Court.

5. General questions related to reading, interpretation of relationship with Social Workers, and membership of outside bodies relevant to child care matters.

(b) National Survey

Following from the face to face interviews which were both a

pilot project and a study in themselves a written questionnaire was circulated to all those Metropolitan Districts, non-Metropolitan Counties and London Boroughs, not included in the first series of interviews. As in the face to face interviews, the intention was that the questionnaire should be answered in each case by the solicitor most likely to present care proceedings in Court for his Authority. It was hoped that by doing this, a degree of standardisation of approach would be achieved, that would increase the usefulness of the survey as a whole.

The questionnaire (see Appendix III) itself was not subdivided, but divided naturally into five sections, plus an open invitation to comment at the end. Each section represents a separate area of interests within the same general field, and follows the themes developed in the first set of interviews. The broad categories of questions were as follows:

1. The Local Government lawyer in Child Care himself.

2. The areas of child care law, and quantities.

3. Local Authority lawyers and the case conference system.

4. Local Government Solicitors' observations of child care in Court

5. General questions of particular interest in the field of child care.

Questionnaires were sent out to 106 Authorities in March, 1978 along with a covering letter (see Appendix III) which explained the reasons for the research, and invited response by the solicitor engaged in child care cases on behalf of the Authority concerned. A

total of 63 responses were received with the use of only one follow up letter to the County and London Borough Authorities concerned. In the case of the Metropolitan Boroughs concerned, one contact was made by telephone in cases where no reply was received. No doubt increased follow up action would have produced a higher response rate. The response rate was as follows:

County Councils - 24 out of 45 (53.3%) - 1 refusal to respond

Metropolitan Districts - 21 out of 29 (72.4%)

London Boroughs - 18 out of 32 (56.3%)

The overall rate of response was 59.4%. Clearly, with the number of responses and the rate of response achieved, a body of extremely useful information has been collated relating to Local Authority lawyers in child care generally. The spread of the responses covers the gamut of categories of Authorities including sparsely populated rural Counties and the most densely populated Metropolitan Districts and London Boroughs with the widely varying administrative and other problems facing the different types of Authority concerned. It has not proved possible to identify any particular characteristic of either the responding group of Authorities or those Authorities who failed to respond.

It will be seen that because of the different nature of the parts of this study, different techniques have been used to present the information collated. Those different techniques are referred to in the introduction to each part of the study.

2. The Regional Survey

The first element of this study involving contact with other lawyers was the face to face survey conducted in one particular geographical

region and described in the passage on the methodology of the study. For the purposes of this chapter, the questions put are set out and the variety of responses indicated, with such comment on the responses as appropriate. Each group of questions is sub-divided and placed under a group heading for each of reference.

(a) Staffing in the Legal Department: Who exactly handles the child care matters

Five questions in all were asked in this section and the variety of answers was wide. The first question asked respondents to describe the staff structure of their departments and their position in it. Inevitably, in response to this question, each respondent gave his or her job title. (There were incidentally two women respondents in this sample of eight). There were six alternative titles amongst the group:-

(i)	Assistant Solicitor	(3)
(ii)	Principal Solicitor	(1)
(iii)	Deputy Head Legal Division	(1)
(iv)	Assistant Director	(1)
(v)	Assistant Town Clerk	(1)
(vi)	Assistant Secretary	(1)

The titles appear to be tailored to the divergant needs of individual authorities, and it does not automatically follow that the job with the most elevated title is the most senior post. The work is not undertaken by Chief Executives or their Deputies. Nor, in general, is it undertaken by the designated "Chief Legal Officer" or "Head of Legal Services". It is usually undertaken by a person whose role is perhaps most effectively described by the words "Assistant Solicitor" or "Senior Assistant Solicitor". By way of

an indication of how careful it is necessary to be in considering titles, it was noted that one designated assistant solicitor had twenty years varied experience in both private practice and local government, whereas the one principal solicitor had a period of qualified service of one year and three months.

Taking the departmental structure concerned as a whole, there were many differences in titles and the numbers of individuals on a specified level. Nevertheless, there did seem to be an overall similarity between the various county authorities on the one hand and the metropolitan district authorities on the other. The differences between the two categories were not remarkable, taking into account the differing sizes of the authorities concerned, and the different mixture of urban, non-urban population. Because it is difficult to see through the titles given to the actual job involved in a job specification to consider, there is little to be gained in this context by analysing each authority's structure; suffice it to reiterate that the child care work appears to be handled in all cases, bar one, by an Assistant Solicitor or a senior assistant.

The second question asked how many individuals in the "legal department" were involved in child care matters and where anyone was specifically allocated to it. With the exception of emergency situations when a particular individual might not be available, or during the absence of particular individuals on holiday, each authority had an established pattern for dealing with child care matters. They were not all the same, but in each case a specific person, or people, were designated to deal with the work.

The most notable part of this group of responses (and this overlapped with one of the later questions) was the entire absence

of any law clerk/legal executive involvement. Child care work, insofar as it involves local authority lawyers appears, from this sample, to be the exclusive prerogative of solicitors. The one exception to this is the authority where an unqualified Assistant Town Clerk handles such matters, a case which is considered later. This pattern of handling cases appaears to contrast with what might be expected in private practice where a greater involvement of law clerks might be found.[1]

Related to the above and perhaps a cause for some concern is the absence of reference to articled clerks in all but two cases. Indeed, the involvement of articled clerks in this field does not appear to be a carefully designed part of their training programme. The general pattern is summarised by the following remark of one respondent, in this case a solicitor in a Metropolitan Borough:

> "No articled clerks are specifically allocated, though from time to time in particular cases, articled clerks might assist."

With regard to the solicitors involved, it appears that the work is specifically allocated to particular individuals. In every case, comment was made on the special care demanded by cases involving children, and on the unusually arduous nature of such cases. In five authorities, only one solicitor undertook the child care cases). In one other, a senior solicitor (Assistant Director) and one Assistant Solicitor shared the work. In one case, there appeared to be three solicitors involved i.e. one dealing with matters before the Social

1. I am not aware of any research on this subject, but observation in one area over a two year period suggests that while some solicitors in private practice undertake all the interviewing in such cases, certainly in a statistically relevant proportion of cases, interviewing etc. is undertaken by law clerks/articled clerks.

Services Committee, one handling two thirds of all care cases and other cases going to Court, (Deputy Head, Legal Division) and one assistant solicitor handling the "overflow" from the above. In only one case were two solicitors assigned to this work, to share it because the pressure of such work was held to be an unfair burden for one solicitor alone. This situation arose in a Metropolitan area where the frequency of such cases might be expected to be greater than in other areas, taking into account its densely urban nature and high population, although it is not possible to be certain of this because of the absence of accurate statistical information.

Each respondent was asked to estimate how much of his/her time was devoted to child care matters and in what other areas they worked. The one consistent element of the replies to this question was the universal uncertainty over how much of their time was devoted to child care. As will be seen later, the precise involvement in child care categories of work varies to some extent from one authority to another, but it was interesting to find that nobody had done a time study on this part of their work which every respondent emphasised was a most time consuming and demanding area of their work. The actual figures for time taken up by child care were as follows:-

(i) 50% of my time

(ii) Impossible to give an answer

(iii) 25% of my time is a shot in the dark. One week it might take 95% of my time. 15% of the articled clerk's time.

(iv) 10% - 15%

(v) It should be 60% committee work. 40% case work. In reality it is more like 80% - 86% case work.

(vi) 35% of my time devoted to child care.

(vii) Approximately 1½ days per week.

(viii) Approximately 50% including all aspects of child care i.e. case conferences, Area Review Committee etc.

The above figures are obviously unreliable. Nobody has a thorough analysis of how their time is spent. Perhaps it would be useful if that check could be undertaken. However, a piece of useful information did emerge from most of the respondents, namely that whilse one week might be totally devoted to child care matters, it was by no means an even and regular flow of work and weeks could pass with no child care work. Bearing in mind the emphasis placed on this area of their work, a number of solicitors indicated that they needed to be able to "drop everything" to be ready to handle child care cases as they arose.

It was interesting to note the alternative patterns of other work undertaken. To simplify the replies given, it would appear that the solicitors are either "general litigation solicitors" responsible for all or a part of the litigation generated by the whole Council, dependent upon the size of their authority. The other category combines the administration of particular Committees with a limited amount of litigation. Avoiding reference to those occasions when any solicitor might in an unusual situation be called upon to assist a colleague, four of the respondents seemed to be primarily litigation solicitors and four seemed to combine some litigation with the administration of particular committees. Not surprisingly, Committee involvement was primarily either the Education Committee or Social Services Committee of the particular authority.

Nobody in any of the legal departments dealt exclusively with

matters involving child care. Everybody had other functions to perform. Everyone expressed the view that because of the particularly demanding nature of some child care cases in time and effort that they had to be accorded special priority. But in no area had this part of the job actually been the subject of a detailed appraisal. In every case it was left to the particular solicitor's discretion to decide how much time to devote to particular cases. Although every respondent referred to these cases as needing priority treatment, there was no suggestion that they were formally regarded as different to any other branch of the litigation of particular authorities, by the authority concerned. The question therefore arises "Should these matters be handled in a way different from other cases?" If they should, and the case in favour is by no means certain, should that be expressly recognised in formal job definition? Is it a matter properly left to the discretion of the individual solicitor concerned?

Finally, in this section, respondents were asked about their qualifications and experience. The answers to this question provide an extremely interesting picture of the real emphasis placed on child care matters by local authorities, in particular their attitude to who should be presenting these cases in the Juvenile Court following the recommendation in the Maria Colwell report.[1] Of the eight respondents the pattern of qualified practice was as follows:-

(i) Six of the respondents or colleagues referred to as involved had been qualified for a period of three years or less.

(ii) One respondent was not a solicitor.

1. Report of the Inquiry into the care and supervision provided in relation to Maria Colwell p.30 para. 68. 1 22.

(iii) One respondent had seven years qualification

(iv) One had twenty years varied experience

Although the total breadth is significant the predominance of those practising for less than three years is the obvious factor to note.

With regard to the question of previous experience, four of the seven solicitors interviewed had both private practice and local government experience. Only one solicitor had been articled and then employed by only one local authority. The variety of actual experience varied enormously from international commercial practice to a few months general advocacy work. The actual diversity of backgrounds was particularly interesting and on that sample, there did not seem to be any pattern which predisposes certain solicitors to elect for local government service, although it was not the purpose of this research to enquire specifically into this point.

(b) Categories of Child Care Work undertaken

This section of the questionnaire involved one general question and a series of probles on particular areas of work. Thus, respondents were asked first of all what general types of case involving children they handled, and then more specifically whether they dealt with all proceedings under the Children and Young Persons Act 1969, s. 1 and related sections and, if not, what types of cases were handled elsewhere and by whom. The first and most obvious difference between the authorities was that between those who had lawyer involvement in education cases under s.1 of the Children and Young Persons Act 1969 and those which did not. Three authorities specifically referred to

Education Welfare Officers as presenting such cases. Five authorities specifically referred to their departments presentation of education cases as well.

The next question related to the degree of involvement in 1969 Children and Young Persons Act cases other than education cases, and it is true to say that the degree of involvement in these cases is reflected by the degree of involvement in other cases of child care law. The predominant pattern of involvement was that legal departments handled virtually all other s.1 cases in Court and five of the respondents gave that answer. One variant of that answer was that all cases were handled by the legal department with the exception that where the Police had prosecuted in a case of non-accidental injury to a child, then the Police would normally present the case proceedings in the Juvenile Court under s.1. Each authority referred to the occasional presentation of cases by the N.S P.C.C.

Two respondents fell into a rather different cateogy. In their authority, the pattern was for the Social Services Department and the Education Department to handle their own cases and only refer "difficult" or "controversial" cases for legal assistance, a practice which incidentally conflicts with the recommendation of the Maria Colwell inquiry.[1] One answer given was as follows:-

> "Theytend to pass on cases which they think will be difficult and these are usually alleging ill-treatment or neglect or moral danger"

and this seemed to exemplify the procedure adopted in these two authorities. In one case, the care cases were dealt with by a liaison officer, in another by unspecified people.

1. Reported p.30 para. 68 l.22

There was considerable variety over all with regard to involvement in Place of Safety applicatiosn, ranging from one authority where each such application was treated as a full Court hearing, to the more usual pattern of occasional lawyer involvement, but Place of Safety Orders normally being obtained in urgent cases by Social Workers or their own liaison staff. This appeared to depend on the attitude adopted by the relevant Magistrates' Clerk.

A further question dealt with lawyers involvement in 1948 Children Act cases. It should be pointed out that the frequency of contested s.11 resolutions in the Juvenile Court seems relatively low. Some respondents mentioned figures, from which it appears that six contested cases under the procedure per year would be exceptional and two or three per year would be more usual.

Of the eight respondents, it appeared that four actually vetted reports recommending assumption of parental rights, to check that the actual evidence existed. In these cases checking of Social Worker's file might be involved. One authority did vet them, but primarily to check that the wording of the proposed resolution was correct. Three respondents did not vet resolutions unless they were actually involved in a particular case. All but one of the respondents dealt with the notice required under the Act and all without exception were responsible for the issue of complaint should that become necessary.

Respondents were also asked about their involvement with wardship proceedings. All respondents acknowledged that if the question arose they would deal with wardship proceedings. Of the respondents, three expressed views which suggest that it would not be a procedure to the forefront of their minds.

"Our department would theoretically handle wardship but have not yet and would try to avoid it."

"Yes, but as infrequently as possible, possibly because of lack of experience, I've had none."

"We would regard it as the remedy of last resort."

Only two respondents expressed positive views of wardship in the sense that it was one of the remedies always in their consideration of cases. The remaining respondents had been involved in wardship proceedings and were therefore familiar with the procedures but whilst aware of the purpose of wardship did not express positive views about it. Overall, all but two of the respondents had direct experience of wardship and four of them had actually instituted proceedings as opposed to being a respondent to somebody else's action.

A more positive attitude to wardship might possibly be expressed if the same respondents were interviewed now because of the report of a wardship case appearing towards the end of 1977 in which local authorities were effectively invited to make greater use of the wardship jurisdiction.[1] It may also be noted that in the present sample, nobody was giving thought to the more esoteric aspects of wardship cases i.e.

(i) Is there any advantage in commencing them in the Principal Registry rather than the District Registry?

(ii) Do London Counsel have better experience than provincial counsel?

Finally, respondents were asked about their departments' involvement, if any, in adoption. In this respect, only one respondent

1. A.E.R. 1977 481 Re. D (a minor)

answered that he had no involvement at all. All the others had some involvement ranging from

"Only in peculiar and very rare cases" to

"Yes, in cases involving step parent adoptions, and adoptions with foreign elements. Our Judge has indicated that he finds such assistance useful if I cross-examine and represent the Guardian and he then makes a specific recommendation."

Three respondents appeared to have specific duties as an advocate in adoption cases, usually infrequently. The remainder advised from time to time on adoption queries. Lack of involvement in this area is perhaos surprising since the law of adoption is somewhat complex and more use could probably be made of local authority lawyers.

(c) Selection and preparation of child care cases undertaken and care conferences

Respondents were asked a series of questions relating to the operation of the case conference system in their authority/area and to their own or their department's involvement in case conferences. As noted earlier, a recent study based on thirteen case conferences showed that a solicitor only attended at one of the case conferences concerned. That level of attendance at case conferences by solicitors is reflected in the responses to this survey. Four of the respondents categorically said they did not attend case conferences.

"I never go. I don't have time. I don't think it's my job to go."

"We are not involved; I have never been invited."

"I am not involved unless it is a very peculiar case."

Of the other four respondents, two indicated regular attendance at case conferences convened in connection with non-accidental injury, neglect or moral danger. Both indicated that the frequency of such case conferences varied, and whereas in one week there might be three, at other times several weeks could pass without any at all. The other two respondents confirmed their occasional attendance at them, but only "in non-routine cases" or "if there is any doubt about evidence." Every possible respondent took the view that it would be a solicitor who attended, with one exception, who hoped eventually to be able to send his articled clerk to the conference. In the positive cases.the view as to whether one person only should attend varied, according to how many solicitors were actively involved in the child care cases generally within the authority.

A further series of questions concerned the ways in which cases were initially referred or brought to the attention of the legal department and in particular whether referrals are received directly from social workers. The question of interprofessional communications has been so much a part of the development of thinking on cases involving children [1] and in particular those cases where abuse, neglect or moral danger are involved, that it seemd valuable to pinpoint this particular aspect and to see what formal structures exist in particular authorities between the lawyers concerned, and the client department. Although the questions did not expressly limit the client department under discussion, in each and every case, it was the legal department ⟷ social services department link that was considered. In particular, it was that initial process of involving a lawyer that was under consideration, and whether the procedures used were sufficient

1. Case Conferences: C. Densborough and O. Stevenson opcit

to ensure that a lawyer would be called in to assist with every case where his expertise might be useful.

In one case, one of the authorities where lawyers only deal with difficult or controversial cases, a system exists whereby the Court Officer of the client department notifies the solicitor both by telephone and memorandum of cases, with no referrals from social workers direct. The preliminary memorandum sets out the basic elements of the case, from there it is for the solicitor to prepare the case. In another authority where all cases were handled by solicitors, the central office of the Social Services Department send an outline report on the background of the case and again there are no direct queries from social workers. In a third authority, a system applies whereby copies of all Place of Safety applications are forwarded to the respondent, and for other cases there is an agreed form of memorandum providing background information. In that authority, queries might come direct from social workers, or the first knowledge of a case might be through a case conference. Incidentally, in that authority, the policy is for the solicitor to read the department file before interviewing the social workers. In the area where "farming out" is used, the instructions are by telephone, followed by an inspection of the file and then handing over the case for preparation and presentation to an outside firm. Again, the referrals are always from the liaison officer.

The remaining four authorities seem to have similar practices whereby the solicitor concerned is available for consultation direct by social workers, and this is acceptable to the department. In those cases, the pattern of preliminary instructions is wide i.e. it can be a telephone call from a social worker or senior: it might be an

invitiation, written or by telephone, to a case conference: a copy Place of Safety application. In that group, however, the dominant preliminary instruction is the telephonecall from the social worker feeling that legal advice is necessary or that ultimately the solicitor will be involved and so might as well be called in at the onset. In every case, it is then for the solicitor to take the statements necessary.

There are obvious advantages in having solicitors readily available at the end of a telephone, able to give spot advice. There are also advantages in having a flexible system of contact, but the danger in such an inform structure is that the system depends on the referrals by social workers. They must know who to contact and in what cases. The success of the system depends on those factors and with changing personnel at both ends, the need for formal guidance on that question appears. This project did not examine whether such formal guidance exists in the departments. It might well be useful to find that out because only if referrals are made quickly in the correct cases will the best use of solicitors be made.

Respondents were asked about their preparation of cases for presentation in Court, on their use of medical evidence and legal counsel, and whether they ever advise against Court proceedings and with what results. To some extent it was hoped that these questions would reveal the flexibility of approach in the process of preparing for Court. It has to be admitted that the only real test of solicitors practices is to observe them, and, in particular, to observe them in the Court room. That was not part of this investigation. The question on medical evidence arose not only from interest

in a matter of particular concern in cases of deliberate injury, but also out of the use of medical evidence in one well-publicised case[1] where a paediatrician failed to give evidence in a case of deliberate ill-treatment. The responses from the authority "farming out" cases are not included here.

The first evidence came from social workers, and that first proof was obtained in four cases in either the solicitor's office, or in the area office, depending upon circumstances, and in three cases, the interview took place in the solicitor's office only. One respondent indicated that some social workers were sufficiently able to draw up their own proofs and did so. The general pattern was to interview with all the available written information, reports, files etc. to hand and use that as the starting point for the enquiry. It proved impossible in the time available to follow the thread of preparation through any further because of the diversity of alternative people who might need proofing.

Attitudes to medical evidence and obviously this related to cases of non-accidental injury and neglect, bore out other research findings.[2] More than one respondent referred to difficulties with general practitioners in particular

> "I have had trouble with doctors. The paediatricians are good, but the general practitioners do not understand. General practitioners try to be neutral if they can."

All respondents appeared to use the same tactics with regard to medical evidence i.e.

(i) obtain a written report

1. Wayne Brewer - Report of the Review Panel Somerset Area Review Committee for Non-accidental injury to Children - 1977
2. opcit. C. Dewsborough and O. Stevenson: Case Conferences p.19 para. 42

(ii) if the contents of the report are agreed, use the report under the Children and Young Persons Act 1963 s.26

(iii) if the contents are not agreed, or the case is otherwise contentious, call the doctor

(iv) proof the doctor if any clarification needed

(v) use specialists where possible

Only one respondent referred to occasions of issuing sub poenas to compel the attendance of doctors.

The involvement of counsel either for advice or to conduct cases in the Juvenile Court seems very rare. Only four cases were mentioned. Two of those dated back to the first involvement of the particular local authorities in such cases and counsel was used because nobody able to do the job was available. The other two cases related to unusual cases with points of general importance where counsel was felt to be appropriate.

With regard to advice not to proceed, the expressed reasons for such advice were common to all. Occasionally, a case would occur where one isolated incident caused alarm, but the whole requirements of proof could not be satisifed; or the alleged evidence was the opinion of a social worker with no solid base, in fact, an instinctive reaction. Again the response to these cases was similar in all cases i.e. keep an interest in the case and if the evidence emerges, then bring it back. Four solicitors said that from time to time, they had agreed to take cases "against their better judgement" because the concern of the social workers was particularly great in the given case, and

this seems to be a reflection of their interpretation of their relationships with the social workers concerned.

(d) Presentation of Child Care Cases in Court and other aspects of Cases in Court

The next set of questions concerned the actual presentation of child care cases in Court, and the speed with which cases are dealt from Court to Court; the degree of investigation; the impact of the attitude of the Court, or the Court clerk. Four respondents appear only in one Court. One not handling cases himself did not appear in any Courts. The remaining three dealt with fifteen, twelve and "several" Courts respecitvely. Obviously, the involvement of those appearing in a number of Courts is different to those appearing in only one, even if only in terms of travelling time.

Even so, the question of procedural variations applies to both groups of respondents because in a one court area, variations might well arise from the different composition of the particular Courts. Six of the relevant sets of answers revealed an opinion that the attitude the Clerk took, significantly affected the conduct of proceedings in which they were engaged. The responses varied:

"Too often they liken them to criminal proceedings."

"We get on well with the clerks, but there are vast differences from Court to Court."

"There are variations. Magistrates Clerks are all powerful. They can run the whole case and vary enormously."

"Practices vary a great deal. Interpretation of the rules varies."

Despite those words, the overall attitude to the Clerks was not hostile, perhaps more a recognition that if rules of Court lend themselves to more than one interpretation, then there will inevitably be more than one interpretation, and the correct way to resolve this variety of practice is to change the rules[1] on which the cases concerned are founded.

Respondents were asked whether any cases could be described as 'consent cases' and this received a mixed reaction. Again, the authority "farming out" is excluded. By the same token, the authority only instructed in complicated cases never deals with consent cases. Of the rest, three always produce full evidence and do not recognise the need for or right to use "consent in any cases.

> "I insist on outlining the facts and call enough evidence to get the order. There are no consent cases. I don't believe in them. I think the responsibility is the Magistrates and I must produce all relevant evidence. I will "water down" my presentation to protect future social work relationships."

In the remaining three authorities apparently some form of consent procedure, however informal, does exist, and again the pattern is similar.

> "The Clerk asks the parties if the application is opposed, and if it is not, I merely prove a prima facie case. That applies in all Courts, but if there is no solicitor involved, then the full case goes on. I don't think consent cases help and I don't think the people concerned understand."

In reality perhaps the difference between the "watered down" procedure referred to in the first quotation, and the prima facie case referred to in the latter quotation may not be very far apart. The question of whether there should be a formal consent procedure in care proceedings

1. See J.C.R. 1970

ought to be examined, rather than leaving it to the decisions of individual Courts.

A further series of questions concerned the incidence of separate legal representation for children in what circumstances, such representatives are appointed by the Court, the method of their selection and the relation of local authority lawyers with solicitors acting on behalf of children. These questions are considered together because they are obviously closely inter-related, but also because in the event the answers provided were not as full as had been anticipated. The question of separate representation does not appear to be one which is dominating the thoughts of the people interviewed. The question of a child's point of view requiring distinct presentation of its own, removed from the views of the parent has recently been emphasised in a reported case.[1]

It is a significant finding of this survey that the response to questions of separate representation were widely different. It is difficult to see any justification for divergence in practice on this point from one area to another. Nevertheless, the responses do show clear differences, and some confusion in practice.

Four respondents expressly referred to the problem of solicitors acting under a legal aid certificate in the name of a child, putting forward the views of the parent. Even in these cases, the feeling was that not all solicitors fell into that category. Five respondents indicated experience of cases with three or more solicitors involved. Three of those described their occurrence as "rare" or "infrequent".

1. See A.E.R. 1977 R.D.J.M.S. (a minor)

Two seemed to have them more frequently and clearly in such cases the solicitor's problem of identifying his client could not exist in the same way.

In those cases where it arises, the appointment of a separate solicitor appears to come at the suggestion of the Court, although in one case, a parent appointed solicitor pointed out the problem and was asked to continue. In three cases, the Social Services Department might actually approach a solicitor for the child, either at the outset of the case if the parents did not appoint one (or by recommending solicitors to the parent), or by approaching solicitors after the Court had suggested the need for a separate solicitor. These approaches were with the express approval of the Court. Nevertheless, it might well be in the interests of ensuring that justice was seen to be done, to keep the whole process of appointment of separate solicitors to the Magistrates themselves via their Clerk, who could well have a list of solicitors willing, and above all, able to act for children in such cases.

The question of supply of information to solicitors for the child in care cases received the following replies:-

"I don't have a set practice. I take each request on its merits".

"I've never been asked for any."

"Separate representation is not considered so selecting information doesn't arise."

"The provision of information to solicitors depends on the solicitor. I give all to some, but some will abuse disclosure."

"I give none unless requested but I have shown statements."

"I provide all information to solicitors for children if possible treating them as analagous to guardians ad litem in unopposed applications to discharge care orders."[1]

It proved impossible to assess the impact of separate representation on those cases because of the relative infrequency with which it occurred, throughout the group as a whole. The consensus of those experienced in such cases, and that was only three solicitors, was that cases where three solicitors were involved were more likely to result in the fullest possible picture being presented to the Magistrates.

(e) General Questions

Finally, respondents were asked a series of questions designed to elicit information on the perceived relationship with Social Workers and on their own commitment to and interest in child care. Respondents provided the following descriptions of the relationships with Social Workers:

(i) "I'd never thought of it. It is not strictly solicitor and client. There are elements of mutual decision making. It depends on mutual confidence."

(ii) "It's a combination of professional relationship and team work."

(iii) "I'd describe myself as the extra team member readily available."

(iv) "Professional. They are my clients."

(v) "It starts as solicitor, client, but as you get to know them, it changes. I know them all well."

1. Rules

(vi) "It's not solicitor, client. More Officer/officer. I am ruder to social workers than I would be to private practice clients."

(vii) "I view it as teamwork."

(viii) "When it comes to the crunch, they have to be able to reply on accurate answers on legal questions, without discussion."

It is fascinating to see the view that most solicitors take of their role and function in these cases. Only one regarded it as professional, only, while the words "team", "mutual", "officer/officer" are perhaps surprising ones to find solicitors using in this context. However, these responses can be contrasted with those to the question of whether they ever advised against proceedings on grounds which were not purely legal. Here six respondents said purely legal one of them allowing for the possible effect of publicity. Of the other two, one said occasionally he might spot a non-legal reason for example at a case conference i.e. an alternative remedy. The other took the same view but also allowed for the possibility of protecting future social work relationships. The answers to this question seem oddly out of line to the last set of answers quoted above in their seemingly rigid position.

When asked about their membership of outside bodies concerned with child care, four respondents quoted membership of the Association of British Adoption and Fostering Agencies. One of that group quoted membership of the Area Review Committee as did one other. The remainder belonged to no other bodies. Similarly, three respondents said they read no relevant periodicals other than legal journals. Two quoted Social Work Today and Community Care, two quoted Family Law and

one said that anything which was available was read, where with a legal or social work bias.

Five respondents said that they did not regard their involvement with child care as a longterm one. The reason in all cases related to the local government promotion structure, particularly the feeling that if one seeks promotion, one will be removed from the litigation. Of the ones who replied they would remain involved in child care work in the long term, one referred to it as follows:-

> "Yes, I will keep in touch but moving up will make me more remote."

The other two regarded such work as a permanent part of the job.

The pattern appears to be that local government solicitors in this sample, spend time acquiring expertise in the presentation of cases involving children, usually starting with minimal training or experience, and then in the natural search for promotion leave the work behind them for new solicitors to take over, probably starting from the beginning.

3. The National Survey

This part of the study is concerned with the response to the questionnaire circulated to all those authorities which did not particulate in the face to face series of interviews referred to in the last part of the study. It may be recalled here that responses were received from a total of 63 Authorities, 24 of these being County Councils, 21 Metropolitan Districts and 18 London Boroughs. Inevitably, the information collected by way of a postal questionnaire is more limited than that obtainable in face to face interviews, and this is reflected below in the predominance of

quantitive as opposed to qualitative material presented. For ease of reference, much of the information resulting from the postal survey is collated in tables which are referred to in the text.

The actual respondents were predominantly assistant solicitors or senior assistant solicitors with only two examples of respondents being apparently departmental heads and only two examples where the respondent was not a solicitor but a clerk or an articled clerk. With 38 out of the 63 respondents being assistant solicitors or senior assistant solicitors, it seems a reasonable assumption to make that in those cases the questionnaire reached its expected respondent i.e. that solicitor most frequently involved on behalf of his or her authority in the field of child care law. Table 1. does, however, reveal an interesting matter in that the category child solicitor/head of litigation provided ten respondents, all from the County Council sphere. It would be a fascinating exercise to make a comprehensive study of the significance of the titles given in relation to the sphere of work undertaken. That, however, is not within the terms of reference of this study.

Table 1

Title of Person Completing Questionnaire

	County Councils	Metropolitan Districts	London Boroughs	All Respondents
Not ascertained	-	1	1	2
Assistant Solicitor/ Senior Assistant Solicitor	11	14	13	38
Solicitor/Senior Solicitor	1	5	3	9
Chief Solicitor/ Head of Litigation	10	-	-	10
County Secretary/ Controller of Legal Services	1	-	1	2
Clerk/Articled Clerk	1	1	-	2
TOTALS	24	21	18	63

(a) Numbers of lawyers involved in child care

It would appear that the departmental complient of lawyers (the words used in the question) varies between four and twelve with the most frequently recurring compliment being seven (see Table 2.). No doubt departmental size varies according to the size of the authority and presumably for historical reasons to some extent as well. The average number of lawyers in the department was slightly higher in the County Councils, with an average of 8.9 and less in the Metropolitan Districts and London Boroughs with respectively an average of 7.7 and 7.2 lawyers. It is, of course, possible that there was some variance in the categories of lawyer referred to by the respondents.

Of the compliment of lawyers employed, 22 authorities revealed that two of those lawyers were involved in child care work on behalf of their authority. (See Table 3.). In only one case was there no qualified lawyer involvement, and in that case the matters were dealt with by a law clerk. Although there is a relatively high number of authorities employing either three or four lawyers engaged in child care work, it is suggested that a substantial proportion of those lawyers are only engaged in such work in a broadly supervisory role in respect of assistant solicitors operating within their department and the evidence for this is to be found in Table 6.

The number of personnel engaged in the field of child care work in particular legal departments is perhaps a reflection of the attitude found in the face to face survey that this field of work is one where professional consultation and support between colleagues is essential if the work is to be undertaken effectively.

Table 2

Departmental size by Type of Authority

No. of Lawyers	County Councils	Metropolitan Districts	London Boroughs	All Respondents
Not ascertained	1	-	-	1
4	-	1	2	3
5	2	1	2	5
6	3	7	3	13
7	2	2	2	6
8	2	1	5	8
9	3	5	1	9
10	8	1	2	11
11	3	2	1	6
12	-	1	-	1
Total Lawyers	198	162	130	490
Average number of Lawyers	8.9	7.7	7.2	7.9

Table 3

Number of Lawyers Involved in Child Care Work by Type of Authority

No. of Lawyers	County Councils	Metropolitan Districts	London Boroughs	All Respondents
Not ascertained	1	-	-	1
1	3	4	8	15
2	8	7	7	22
3	10	6	2	18
4	1	3	1	5
5	1	-	-	1
(Law Clerk only)		(1)		(1)
Total Lawyers	58	48	32	138
Average number of Lawyers	2.5	2.4	1.8	2.3

(b) Experience, qualifications and background of child care lawyers

One of the principal purposes of this study was to assess the length of professionally qualified service and thereby the experience of the solicitors actually presenting child care cases in Court. Table 4. demonstrates the broad outlines of the findings in this connection and, in particular, it will be noted that there is a marked predominance of those who have been qualified for periods of less than three years at 41.3% overall. There can be little doubt that stated baldly, these statistics perhaps give a slightly misleading picture of the situation. For example, it is quite possible that one Metropolitan District which reported employing two assistant solicitors in the field of child care, both of whom have less than one year professionally qualified experience, actually has a supervising solicitor taking a role with greater experience but who was perhaps not referred to in the response. By the same token, it seems logical that at least some of those solicitors referred to as being involved and having, for example, the title assistant town clerk with 19 years professional service or assistant borough secretary with 20 years professional service, would be playing a predominantly supervisory role as opposed to an active role on a day to day basis. Generally, in this connection, it is significant to note the substantially greater proportion of assistant solicitors with less than three years experience were employed by County Councils than by the Metropolitan Districts and London Boroughs. Such solicitors appear to account for 46.6% of the child care lawyers employed by County Councils as opposed to 37.5% in both the other two categories of authority.

Cross tabulation of the information relating to the volume of

child care work undertaken and the levels of experience of individual solicitors indicates that whilst newly qualified solicitors might not generally carry the highest volume of child care workload, in a number of cases, wolicitors in their first three years are carrying very significant workloads in this field. Within the County Council respondents, were examples of a solicitor of two years' experiences with a 90% workload of child care law and a solicitor of one year's experience with a workload quoted at 110%, which was either a humorous expression of exasperation or a reflection of that solicitor's need to allow this work to overlap beyond his normal hours of work. Both of these examples appeared to be solicitors working alone in the field, despite their paucity of background experience. Within the Metropolitan Districts, there was one example of an authority employing two solicitors with six months or less experience and engaged in child care law for 60% of their time. In this case there was also a senior assistant solicitor of three and a half years' experience, engaged in child care law work for 40% of his time. There was also the example of the two solicitors with a zero rate of qualified service respectively carrying 20% and 30% child care law work volumes. This juxtaposition of short qualified service, large work volume and isolation was not found in the same way in the responses of the London Boroughs.

This process of cross tabulation does tend to suggest that a high proportion of the work undertaken in this field is so undertaken by solicitors of the senior assistant category and no doubt the availability of such solicitors of experience renders the task of their less long qualified colleagues easier. Perhaps this situation reflects an ideal of an experienced solicitor to undertake the complex cases but ready and willing to pass less complex matters to his colleagues to

deal with and for them to develop their experience without substantial risk to the subjects of the proceedings in question.

For ease of reference, the information relating to the solicitors titles, length of service, is collated in one table contained in Appendix IVA and dealing with all categories of authorities.

Table 4

Child Care Lawyers by Type of Authority and Length of Qualification

	County Councils		Metropolitan Districts		London Boroughs		All Respondents	
	No.	%	No.	%	No.	%	No.	%
Not ascertained	-		5	10.4	1	3.1	6	4.4
0-3 years	27	46.6	18	37.5	12	37.5	57	41.3
4-6 years	14	24.1	18	37.5	10	31.3	42	30.4
7-9 years	12	20.7	3	6.3	3	9.4	18	13.0
9+ years	5	8.6	4	8.3	6	18.7	15	10.9
TOTAL	58	100.0	48	100.0	32	100.0	138	100.0

When considering the experience of the particular category of solicitors in question, it is obviously of interest to attempt some assessment of the breadth of their background and the information collated in this regard is contained in Table 5. Obviously, the current analysis of experience is superficial only and in no sense is it possible to postulate as being preferable any particular category of background. Nor indeed is it possible to say with any reasonable degree of certainty from the expressed background exactly what the particular solicitor achieved at the time. It is quite clear that what, on the face of it, might appear to be a background giving breadth of involvement in relevant areas of law, might in many circumstances be less useful background experience for child care law than an apparently static experience with one particular authority. Nevertheless, it was thought useful to ask the question and the response is certainly interesting.

In particular, it is interesting to note the rather higher proportion of solicitors with backgrounds entirely in local government service to be found in the County Councils whereas, on the other hand, in the Metropolitan Districts there is very little difference between the number of solicitors exclusively experienced in local government and those experienced in both local government and private practice. Overall, only 2.9% of the solicitors referred to had backgrounds in anything other than local government or private practice. However, the overall picture is indicative of a relatively even spread as between those with purely local government backgrounds and those with private practice backgrounds as well.

In Chapter 2 the case of the child Wayne Brewer was referred to and it was in that case that the inquiry referred to the distinction

in practice between the way in which a case was presented in Court by respectively a private practice solicitor and the more restrained approach of the local authority solicitor. Whether that difference actually exists in practice, of course, is a question which this study does not attempt to answer. Nor indeed does this study attempt to decide whether or not a more robust local government approach in care proceedings etc. is desirable. But if the premise is that care proceedings would be better handled in Court if local authority solicitors were more robust in their attitude to the proceedings, then there can be little doubt that the local government legal service will benefit from its proportion of solicitors with private practice backgrounds.

Table 5

Background of Local Authority Lawyers involved in Child Care by the type of Authority

	County Councils		Metropolitan Districts		London Boroughs		All Respondents	
	No.	%	No.	%	No.	%	No.	%
Not ascertained	2	3.5	4	8.3	-		6	4.4
Local Government only	36	62.0	22	45.8	19	59.4	77	55.8
Private Practice only	5	8.6	-		-		5	3.6
Local Government and Private Practice	13	22.4	21	43.8	12	37.5	46	33.3
Local Government and other	2	3.5	1	2.1	1	3.1	4	2.9
TOTAL	58	100.0	48	100.0	32	100.0	138	100.0

(c) Time allocated to child care matters

Table 6 demonstrates the diversity of volumes of child care work undertaken by particular solicitors with an overall average of 13.8% of the respondents describing their child care workload as being less than 10% of their total workload. On the other hand, 2.1% of the respondents describing their child care workload as being 90% or more of their total workload. Overall, the two most popular categories were between 10% and 24% of workload attracting 26.8% of the respondents and 25% to 49% of the workload attracting 25.4% of the respondents.

To an extent, the varied workload suggests the differing demands of very different categories of authorities, but it also reflects differing attitudes to the question of work allocation in different authorities. It would be most interesting to pursue this issue further to analyse in accurate detail the extent to which these quoted levels of child care workload are actually assumed in the decision making process as to staff levels in the particular legal departments concerned and the extent to which they are undertaken merely because the work is there to do.

Table 7 sets out the total amount of lawyers' time actually spent on child care work in the different types of authority, taking into account the numbers of solicitors employed in particular authorities. It would appear that the average amount of lawyers' time allocated to child care law is 0.78%, being in County Councils on average 1.04%, in Metropolitan Districts 0.54% and in London Boroughs 0.59%, thus clearly indicating that County Councils allocate a substantially larger amount of lawyer time to child care law than the other two categories of authorities. No doubt this is the result of their rather higher

staff levels which in turn is caused by the great geographical extent of the County Council areas.

Table 6

Local Authority Child Care Lawyers by type of Authority and Proportion of time spent on Child Care Work

	County Councils		Metropolitan Districts		London Boroughs		All Respondents	
	No.	%	No.	%	No.	%	No.	%
Not ascertained	1	1.7	6	12.5	-	-	7	5.1
Less than 10%	5	8.6	10	20.8	4	12.5	19	13.8
10% - 24%	18	31.0	11	22.9	8	25.0	37	26.8
25% - 49%	12	20.7	12	25.0	11	34.4	35	25.4
50% - 74%	13	22.4	8	16.7	6	18.7	27	19.6
75% - 89%	6	10.4	1	2.1	3	9.4	10	7.2
90% or more	3	5.2	-	-	-	-	3	2.1
TOTAL	58	100.0	48	100.0	32	100.0	138	100.0

Table 7

Types of Authority by Total Lawyer's time spent on Child Care Work

	County Councils	Metropolitan Districts	London Boroughs	All Respondents
Less than .25	2	2	3	7
.25 - .50	1	5	5	11
.50 - 1.0	5	8	7	20
1.0 - 1.5	10	2	3	15
1.5 - 2.0	3	2	-	5
More than 2	1	-	-	1
Not ascertained	1	2	-	3
TOTAL	23	21	18	62
Average total Lawyer's time	1.04	.54	.59	.78

(d) The Use made of Non-qualified Legal Staff

A commonly heard complaint against solicitors in private practice is that clients pay for the service of the solicitor but are given the service of an unqualified clerk. In relation to child care law in the local authorities, this does not appear to be the case. Work is undertaken almost exclusively by solicitors once the legal department is involved and the clear implication of most replies is that even where non-qualified staff are used, their role is generally a small one. It is a reasonable assumption to make that a solicitor who has prepared a case and interviewed all the relevant witnesses will normally be more conscious of all matters involved in the case than one who merely acts as advocate and to that extent it would appear that the authorities are being given the most appropriate form of legal service in this regard. Forty-three of the respondents to the National Survey intimated that no non-qualified legal staff were involved in child care work at all, which supports the above contention.

There is, however, one area of concern in relation to the use of non-qualified legal staff and that is the low usage of articled clerks indicated by the respondents. Only eleven articled clerks were referred to as having any involvement in this field at all and bearing in mind the high usage of solicitors within their first three years qualified, it is disconcerting to see that there is little training before qualification in the particular field. Taking into account the demanding nature of the work andthe complexity of the law relating to children, it would obviously be a sensible area for articled clerks to be involved in and given some training in. Many of those involved in the field might well think that to give an articled clerk experience of this field would be to give him a taste of a particularly rigorous

area of local government work and training beyond the purely legal.

(e) Cases which are undertaken without Lawyer involvement

Only four County Councils, four Metropolitan Districts and six London Boroughs reported that there were no cases involving children handled exclusively by non-legal department staff. Of the remaining authorities, eleven of the County Councils, nine of the Metropolitan Districts and eleven of the London Boroughs reported that some cases were handled by Social Workers and eight of the County Councils, six of the Metropolitan Districts and two of the London Boroughs reported that education cases were handled by Education Welfare Officers.

There was no indication as to the extent to which lawyers would be involved in place of safety applications and the respondents indicated that the involvement of non-lawyers tended to be in the less complex cases, such as non-controversial variations or discharges or care orders and such emergency applications as might, from time to time, be made too quickly to allow time for a solicitor to be instructed. There are, however, exceptions to this basic principle of general involvement of the legal departments, such as the County Council whose policy it is for the legal department only to become involved in cases which involve instructing Counsel to appear in the High Court.

(f) Lawyers and Case Conferences

Since the case of Maria Colwell, the importance of the case conference as one of the means of ensuring the best care for children particularly those at risk of violence or neglect has been increasingly recognised and it is therefore a matter of interest to assess the degree of

Table 8

Attendance of Lawyers at Non-Accidental Injury Case Conference by Type of Authority

	County Councils		Metropolitan Districts		London Boroughs		All Respondents	
	No.	%	No.	%	No.	%	No.	%
Lawyers attend								
Always/normally	9	37.5	10	47.6	8	44.4	27	42.9
Occasionally	6	25.0	4	19.1	5	27.8	15	23.8
Lawyers do not attend	9	37.0	7	33.3	5	27.8	21	33.3
	24	100.0	21	100.0	18	100.0	63	100.0

involvement in such case conferences of local authority lawyers. As was seen in the previous part of this study, the pilot sample revealed a varied approach to the question of case conferences and as has been pointed out in the study by Miss Desborough and Professor Stevenson, no great lawyer participation was found. However, the National Survey does not really bear out Miss Desborough and Professor Stevenson's findings in this regard, as Table 8 reveals. Admittedly, the average of 33.3% of respondents who stated that they did not attend case conferences is a relatively high one but it is very significant to note the proportion of lawyers attending case conferences as being 66.6%. It is particularly significant to observe that 42.9% of respondents stated that they would normally or always attend non-accidental injury case conferences.

Taking into account the observations of Miss Desborough and Professor Stevenson's study and the reports on the various cases referred to earlier which tended to indicate non-lawyer participation in case conferences, these figures suggest a considerable growth in the involvement of local authority lawyers in case conferences and tend to point to an increasingly important role being played by those lawyers in those case conferences. As noted previously case conferences are often the decision making body as to whether or not particular proceedings should be taken or as to whether or not there is sufficient evidence to support a particular type of intervention by the local authority. It is most important that lawyers should be involved in the case conference process, not only in exercise of their role as professional legal advisers but also in exercise of their role which applies in many cases as representatives of the Chief Executive of a particular authority able, to an extent, to stand aside from the particular case

and hopefully offer objective judgments to other more closely involved with particular cases. Whilst it is encouraging to see an overall two thirds involvement of lawyers in non-accidental injury case conferences, it surely ought to be the case that lawyers are so involved as a matter of policy in all cases except those where, by reason of particular circumstances, it proves impossible to attend.

(g) Experience in Courts

The respondents were asked to express their views on variations in procedure found from court to court. Many respondents noted variations in procedure from one court to the next and many respondents described the differences which they found as substantial. Respondents were particularly concerned over the interpretation in court of the rules on admissibility of evidence and to find that these rules were interpreted in different ways from court to court. Although one respondent described the differences which he found as alarming and another referred to the more robust approach found in rural courts, others expressed admiration for the adaptability of the courts in applying the rules of procedure to the particular needs of juvenile cases.

The ambiguity surrounding the procedures involved in care proceedings and related child care matters in the Juvenile Court is a matter for concern and requires clarification. The rules governing care proceedings in the Juvenile Court should be sufficiently simple for the parents and older children to understand and should be designed to expressly protect the juvenile magistrates from being barred from receiving relevant evidence. To some extent, the case of Humberside v. DPR (AER 1977) has assisted in this regard but the position can only be properly improved with the application of clear rules.

Questions were also put in the questionnaire with regard to the degree of parent representation found in practice and the frequency of problems arising for solicitors representing either children or parents over the question of identifying who their client properly was. The responses indicated that the position was as confused as indicated by the regional survey. Whilst many respondents refer to the developing awareness of lawyers in private practice of the need to represent the children in care proceedings, many others refer to the difficulties other solicitors clearly had in resolving how best to represent those children. If the first hurdle to overcome is the danger of representing the parent rather than the child, there is the subsequent doubt as to how to seek out the interest of the child concerned. The methods of representing children have already been alluded to but the inference of the respondents to this part of the survey was that the position required clarification so that there could be no role doubt for solicitors in such proceedings.

Questions were also asked to assess the relationship which the lawyer respondents had with Social Workers with whom they worked and the variety of response was not unexpected. However, by far and away the most common response was that the relationships were generally good. Whilst the number conceded that there was some degree of conflict, usually when particular Social Workers were advised that their case was inadequate for presentation in Court, and whilst there was some suggestion of "scepticism of each others roles" and of Social Workers' "failure to accept the requirements of the law", others spoke of senior Social Work staff well recognising the important role of solicitors in the field. A number of respondents indicated that they held themselves instantly available to give advice to Social Workers

on the law and its implications for their day to day practice and that the Social Workers found this helpful and were appreciative of it.

Generally, therefore, it would appear that relationships are good and that whilst there are, from time to time, problems between the two professions, that these are the exception and genrally lawyers are accepted and see themselves as part of a team seeking to resolve the problems in this particular area of local government work.

(h) Miscellaneous Matters

Respondents were asked to which outside bodies they personally belonged. The intention behind this question was to a degree to assess, if possible, whether or not respondents were interpreting their role in a narrowly legal way or as demonstrated by involvement in a wide range of "social work" outside bodies were spreading into the field of social work. In this regard, it was disappointing to see that 25 of the 63 responding lawyers intimated no membership of outside bodies. Of the rest, 32 referred to membership of the Association of British Adoption and Fostering Agencies and four others mentioned involvement in the Legal Action Group, one in a Family Rights Group, one in a Community Relations Committee and others in both the Area Health Authority and the Area Review Committee and others in both the Area Health Authority and the Area Review Committee for Non-accidental Injury to Children. Of course, it is quite possible that some respondents did not regard such bodies as the Area Review Committee for Non-accidental Injury to Children as an outside body and consequently the picture is perhaps distorted. By the same token, it would seem likely that in referring to membership of outside bodies, a number of those who referred to the Association of Adoption

and Fostering Agencies were referring to their Authority's involvement in that organisation which is, of course, not quite the same thing as individual membership of the Organisation with its great implication of personal interest in the field. If the response to this question accurately reveals the extent of involvement in outside bodies then there is a disappointing lack of wider interest among solicitors in the broader field of social work and child care generally and this lack is a surprising one, bearing in mind the most satisfactory level of response to the questionnaire as circulated.

With broadly the same intention, a question was asked as to the non-legal reading habits of the respondents and in this connection 17 of the respondents mentioned Family Law and nine mentioned the Adoption Magazine and Adoption Guardian. Social Work Today and Community Care were also referred to along with four references to miscellaneous non-legal reading. It is impossible to draw any conclusions from the response to this question, but it would certainly be interesting to know accurately and in detail, the methods by which child care lawyers educate themselves in the field in which they operate. It must be the case that the child care lawyer is better equipped to do his job if his reading is wider than the purely legal journals and perhaps there is a place for recommending such wider reading to local authority lawyers and perhaps lawyers in general.

Fifty-three of the respondents answered the question put as to whether they intended to, or desired to continue in child care work. A heartening forty-one indicated that they would wish to stay in this field, and only twelve indicated that they would not be continuing in the field. On the assumption that many of the solicitors hoping to continue in the field of child care work would have to move on to

other fields because of career progress requirements, it is regrettable that there does not appear to be a generally built-in structure for career development as advocate in local authority work. As mentioned earlier in this study, career progress takes the local authority lawyer, in general, away from advocacy and towards administration and this is not in the interests of the provision of an improving quality of child care legal service.

C H A P T E R I V

LOCAL AUTHORITY LAWYERS IN CHILD CARE - ASSESSMENT AND CONCLUSIONS

The purpose of this chapter is not to make a detailed and comprehensive assessment and comment upon each and every matter considered in the body of the paper. Its purpose is to consider the broader implications of the research and suggest some ways in which improvements could be made to the role which lawyers play in relation to child care, in the hope that such an improvement would contribute towards a better service for children in need of local authority intervention.

It is clear from both the regional and national surveys and, indeed, from the cases discussed in Chapter II, part 3 of this study that there is at least some cause for concern over the lawyers to whom child care matters are allocated in Local Government. Whilst consistency is not intrinsically of merit, it would appear that the most consistent feature in regard to the allocation of this type of work is its allocation to inexperienced solicitors in a number of cases with inadequate support control or advice. Clearly, that is an organisational matter for local authorities to take into account. But, if local authority lawyers are to be made competent in the field of child care, then surely it is necessary for child care to be considered before the particular lawyer embarks upon his qualified career. In this regard, the respondents to the questionnaire indicated that articled clerks were not receiving training in this sphere. That is an important deficiency within the local Government context which ought to be made good and could be made good without cost to the authorities.

However, although it was not the purpose of this project to consider this matter, it is possible that the problem of the inexperienced local authority lawyers involved in child care requires consideration at an earlier stage than during articles. Is child care adequately covered in the academic stages of legal education? Is there not a risk in the

universities and colleges that child care law falls between traditional family law courses with their emphasis on divorce, family property and private custody and the newer welfare law courses with their emphasis on social security and income maintenance? By the same token, bearing in mind the difficulties which both the regional and national questionnaires demonstrated, in the Court room when dealing with care proceedings, both from the point of view of the local authority lawyer and other lawyers involved, is there not a place in the legal education system for specific teaching on the procedural/evidentiary facets of care and related proceedings?[1]

This project has demonstrated that local authority lawyers engaged in child care do frequently read non-legal journals relating to care and do belong to organisations other than legal organisations relating to care. Nevertheless, if care proceedings are to be best used to the best advantage of the children involved, then it is clear that there should be a degree of overlap knowledge between lawyers and social workers with regard to their respective specialisms. Richard White in his article "The Relationship of Social Worker and Lawyer"[2] said

> "Whilst it is undesirable to teach the social worker the lawyer's job, a better basic knowledge of the essential legislation is necessary so that knowledge can be employed in the day to day work. At the present time, basic training for social workers appears to be inadequate in this respect, as it is for the lawyers involved there."

It is suggested that an increase in the number of combined degree courses involving both law and social administration would assist in

1. Care Proceedings - Report of the ABAFA Legal Group Working Party Page 30
2. Children Adoption page 232

preparing individuals for the sometimes complex and difficult problems which face local authority lawyers when advising on matters involving the care of children.

Improved training will assist the new solicitor beginning his local government career and working in the field of child care. Is it right, however, that a new solicitor should begin his career in child care? Are there not other areas of local authority legal work where less harmful consequences will flow from the inevitable errors made by any person at the beginning of his or her professional career? This study has demonstrated that the present career structure of local authority lawyers is such as to tend to concentrate child care work, which is one of the most sensitive and demanding areas of local authority legal work among the least experienced lawyers, and the least senior lawyers. The proportion of lawyers involved with less than three years' service and particular examples of lawyers with virtually no experience and no support are a cause for concern. It is a dilemma facing all local authority lawyers that if they wish to advance their careers then they will inevitably tend to cease being advocates and practising laywers and progressively develop into senior policy advisers and committee secretaries. That is the nature of local authority Chief Executive departments as they presently stand. Is not the way round this to create specialist legal sections within Chief Executives' departments handling all categories of litigation and within which a proper career structure exists, allowing those lawyers who are interested in advocacy an opportunity to develop their career without necessarily moving out of the arena of the Courts. Until that situation applies generally, there can be little expectation other than that the present situation will continue i.e. lawyers when newly qualified will be given the care proceedings to deal with.

They will continue to deal with them throughout the early part of their career and may continue to handle them at a more senior level, perhaps in their increasingly advisory capacity into their third, fourth, fifth and sixth years of qualified service. Thereafter they will tend to mo e higher up the hierarchy and more remote from the day to day conduct of such proceedings.

As things presently stand, the local authority lawyer's role in relation to child care and in regard to his relationship with social workers has not been analysed and considered and made the subject of recommendations. As a consequence of this, the whole approach of local authorities to the role of their lawyers in regard to care proceedings is dependent upon the particular circumstances of the particular authority and the particular interests of the lawyers involved and their departmental heads, and, to an extent, the interests of the social workers and their senior officers. Whilst the research reveals an interestingly high level of lawyer participation in case conferences, there is a substantial minority of lawyers who are not involved in case conferences. In the absence of guidelines, possibly from the Department of Health and Social Security, it seems likely this inconsistent approach will continue. It will clearly not help in the provision of adequate care for children in need. The constant theme of the cases referred to in Chapter II, part 3 of this study, is the need for good communications and for those communications to be founded upon sensibly thought out procedures. It is a pity, therefore, that the lawyers' role is not one which has been the subject of advice from the Department, because it may be in the next case resulting in a public inquiry that it is that very inconsistency which has led, in the particular case, to the difficulties requiring the inquiry to take place. If local authorities have improved in their provision of child care since the tragedy of Maria Cawell, it is because of the progressive

improvement of their procedures. The ad hoc individual nature of the approach of legal departments in this field is a cause for concern, further than that, it is not merely a question of applying a consistent approach throughout the nation; that is not enough. This study reveals the need for an increasing role for lawyers in the field of child care. Lawyers are best equipped to advise on law. The law relating to children is complicated. Mistakes will continue to be made even if lawyers have an increasing role but hopefully, some mistakes and deficiences will be avoided if lawyers are progressively further involved in the field by their local authority employers.

A number of questions were asked during the course of this study with regard to matters of procedure in Court and variations in practice between one Court and another. Those questions were founded upon the belief that a number of anomolies existed in the present law and that the way in which particular sections were interpreted in Court varied from area to area. It is quite clear that improvements are needed in the procedural rules governing care proceedings in Court. Since the commencement of this study, the Association of British Adoption and Fostering Agencies legal group have published a report on care proceedings which at Appendix 'D' contains a schedule of 32 recommendations for improvements which could be made in the law and procedure relating to care proceedings. The sooner that those recommendations are implemented, the sooner a comprehensible procedure will apply in the Juvenile Court in care proceedings and the easier it will be for all concerned to participate in what is always a traumatic situation.

The major concern resulting from this study is that however many conscientious, competent lawyers of what ever degree of experience are representing local authorities in their child care proceedings in Juvenile

Courts across the country, the fact that they are competent and conscientious appears to be rather more the result of particular local authorities' good fortune than the result of a system and management technique designed to promote the same. The nature of the lawyer best suited to this role in Local Government is ill-defined. The nature of his role once he has it is ill-defined. As things stand at present, his role and ability to assist in this field appear to be under valued and under used. It is important that his education should be improved to assist him. His career structure should be improved to give him an opportunity of remaining in the field. His role in regard to matters of child care should be enhanced to reflect the important contribution the lawyer has to make, and the part he has to play should be the subject of guidance from the Department of Health and Social Security to ensure that Local Authorities and the children whom they are there to assist, receive the maximum benefit from a potentially valuable resource.

APPENDIX 1

Case Notes

Case One, Assumption of Parental Rights. Case Conference October, 1976. Application for Care Order previously dismissed before solicitors involved. Social Workers arguing for proceedings to be taken despite their admission that evidence was "flimsy". In fact, evidence non-existent for 1969 Act purposes. They were obviously concerned at repercussions if child injured and they had not acted. Analysis of case revealed reception into care under Section 148 Act appropriate course, but Committee cycle made passing resolution difficult. Therefore, necessary to convene emergency meeting of full Committee to pass resolution. Thereafter Sub-Committee empowered to act in urgent cases.

Case Two, Fear for two children's development. No "hard" evidence. Case Conference adjourned for six weeks. In meantime doctor to visit and assess the position. Resumed case conference. G.P. had visited and was emphatically satisfied that the children were not at risk, but agreed to keep an eye open. All other files to be closed. Father refusing to allow anyone into the house except the G.P. and concern over what was happening without Social Services knowledge. Information that in the absence of G.P. involvement, I would have been asked for advice on wardship.

Case Three, Case Conference, September, 1976. Children had disappeared with mother. They were the subject of a Supervision Order. Children found in London in October. Deposited with D.H.S.S. by mother. Father willing to take them, but Social Services object because of father's background. Issue as to how care proceedings should be handled bearing in mind the children's location in London and ordinary residence in Wolverhampton. Decision made to take proceedings for variation under Sections 15 and 16 C.Y.P.A., 1969, conducted interviews. November,

interim care order granted. Children represented by solicitor. Vociferous objection from unrepresented father. January, case to Court, called four witnesses, two Social Workers, two Probation Officers. Evidence did not appear so substantial in Court as in interview. Care orders made. Discussion with solicitor for hildren afterwards. General agreement on sympathy for father who, despite criminal record and evasiveness had put in considerable effort to have children back.

Case Four, Care Proceedings Commenced on grounds of moral danger. Dropped when it emerged the alleged father was not the father, and the children were received under the 1948 Act. One child abducted by alleged father. One Social Worker assaulted by father.

Case Five, Case of Second Child removed from mother very shortly after birth because of concern that the same might happen as to first child who had been injured and neglected. No evidence relating to new child because child removed so quickly. Child represented by solicitor opposing care. Parents represented as well. Procedural points noted:

1. Paediatrician used considerable hearsay evidence without objection from solicitors or Court.
2. Court did not require strict proof of photographic evidence.
3. The question arose as to whether I had right to address Court before they decided which order to make, as well as at the opening of the case. That question arose in private conversation between solicitors and clerk, and was not exercised in practice.

Case Six, Two children already in care, parents moved to new town. Children had been battered and seriously undernourished two years previously. Parents now sought to have children back. No evidence to suggest mother had changed sufficiently to warrant children going back. November 1976, decision made to oppose application. Notice served in name of father for application to revoke. Case adjourned sinedie to

allow detailed investigation. Experienced Social Worker in case who had been involved from the outset and expressed no ambivalence at all. After psychiatric investigation, parents decided to withdraw application.

Case Seven, Case Conference convened re. small girl, history of N.A.I. Some years ago, broken skull, probably by father figure. Then twelve months later N.A.I. bruising. Now in hospital after swallowing chlorinal poison. Paediatrician firm belief it was deliberately administed, but would not express expert opinion relating to the poison. Child had leg bruises, the result of gripping, but paediatrician felt it could have been done in hospital. Case conference considered the household had changed radically since the time of injury; the extended family were offering considerable opportunities for observation and support; there was no evidence on the current accident unless it was called neglect. On balance, consensus was strongly against care proceedings.

APPENDIX II

Regional Survey - Interview Schedule

General Staff Structure, etc

1. Could you describe briefly the staff structure of your department (in terms of persons employed, their positions and general responsibilities) and tell me, roughly speaking, where you personally fit into that structure?

2. How many of the persons mentioned above are involved in Child Care work? Is anyone specifically allocated to such work?

3. Of those involved in child care work, could you say how much of their time is devoted to such work? What do their other duties (if any) consist of?

4. Again, of those involved in child care work, could you briefly describe their qualifications, experience, etc? In particular, what prior experience have they had of advocacy in general?

5. (If not already ascertained) are any clerks specifically assigned to the preparation of child care cases?

6. In general, what types of cases involving children/child care does your department deal with?

7. Does your department handle all proceedings under 1969 Act?

(probe on particular categories)

8. Of those types of case under the 1969 Act which your department does not deal with, could you tell me how they are handled within the authority?

9. Is your department involved in the preparation of resolutions under Section 11 of the 1948 Act? If so, at what stage and in what ways are you involved?

Does your department vet these before committee approval?

Is your department involved in serving notices after committee approval?

Is your department involved (only) where it is necessary to issue a complaint (over parental objections)? How often?

10. Would your department handle Wardship proceedings? If so, in what circumstances, and how often?

11. Would your department be involved in adoption proceedings? If so, in what circumstances, and how often?

12. I would now like to ask you some questions concerning that way in which the child care cases you handle are selected and prepared within the authority? Could you tell me, first, whether there is a case conference system operating within the authority? If so, how long has it been in operation?

13. Are representatives of your department involved in case conferences? If so, in what types of conferences is your department involved? How often?

14. Does the same person from your department attend all case conferences? If so, who? If not, how is it decided who, from within the department, should attend a particular conference?

- probe solicitor/non-solicitor attendance

15. Taking cases which are likely to involve court proceedings under the 1969 Act, can you tell me how these cases initially come to your attention? In particular, who in the Social Services Department is responsible for referring cases to you?

16. Do you ever receive, whether formally or informally, referrals directly from (a) social workers (b) area social service department offices?

17. What form do your initial instructions take? (Probe various forms)

18. Can you describe to me, in general, how you go about preparing cases for court?

Do you interview the individual social worker involved in the case? If so, where and when do you conduct the interview?

In what circumstances do you use medical evidence? How is such evidence handled? (Probe report only/call doctor/prior interview with doctor)

19. Generally in child care matters, do you ever use counsel for (a) advice (b) representation? If so, in what circumstances?

20. Do you ever advise that there is no case? (Probe : at case conference stage or later). If so, can you give me some examples.

21. In such cases, what (9f any) would be the nature of your further involvement?

22. Which juvenile courts do you present cases in?

23. Are there any variations in procedures within the different courts in your area? If so, what? (Probe magistrates/clerks as factor in determining nature of procedures)

24. Are cases ever presented as "consent" cases? If so, in what circumstances?

25. How often do you find that your application is turned down? In general, what factors do you think are most important in leading to a rejection of the authority's application?

26. Where the court turns down your application, what do you do?

27. There is particular interest at the moment in the question of separate representation for children in such cases? Could I ask, to begin with, how often parents themselves are professionally represented? Does the fact that the parents are represented make a difference in how you present the case?

28. In your experience, in what circumstances do the courts appoint a solicitor for the child? Are there variations between the courts in this respect?

29. Where does the suggestion for separate representation emanate from?

30. Who actually selects the child solicitor? How is this done?

31. What information do you supply to solicitors acting for (a) parents and (b) children? At what stage do you supply it?

32. In your experience, what is the effect (if any) of separate representation for children? (Probe : child solicitor identification with parents/authority)

33. There are some questions I would like to ask with regard to your general role as a local authority solicitor in child care matters. How would you describe the nature of your relationship with social workers? (e.g. is it one of a solicitor/client)

In this connection, do you find that social workers approach you/your department for advice prior to the initiation of formal legal proceedings? (Probe : through case conferences or otherwise).

Are such queries channelled through any one person in the department?

34. Does your department ever advise against the taking of care proceeding on grounds other than legal ones. If so, in what circumstances, and at what stage? Can you give me some specific examples.

35. Are you, or any of your colleagues in the department, members of any outside bodies, associations, etc concerned with the general field of child welfare?

36. Speaking for yourself personally, do you regularly read journals, etc relating to social work and child care? If so, which?

37. Again, speaking for yourself, do you regard your involvement in child care matters as something you would expect/would wish to continue over the long term?

General questions on working of CYPA 1969

38. Finally, there is some statistical data I would like to collect in connection with your child care work. Taking any convenient twelve month period, could you tell me

How many cases (per family) were handled by your department under Section 1, CYPA 1969?

How many separate court appearances did this caseload involve?

What were the results of these cases in terms of

(a) number of care orders (only) obtained

(b) number of supervision orders (only) obtained

(c) number of combination care/supervision orders

(d) number of cases dismissed

(e) number of cases withdrawn

APPENDIX III National Survey - Postal Questionnaire

The University of Birmingham

FACULTY OF LAW
Chancellor's Court, The University of Birmingham, P.O. Box 363,
Birmingham B15 2TT
Telephone 021-472 1301

15th March 1978.

Dear Sir,

I am a solicitor working for Wolverhampton Borough Council. One of my areas of work is the field of child care and in my own time I am preparing a paper for Birmingham University Faculty of Law on the role of local government lawyers in child care.

I would be very pleased if you could assist me by arranging for the enclosed questionnaire (~~starting on the reverse of this letter~~) to be answered by the solicitor of your authority who actually presents child care cases in Court or who is primarily involved for your Department in that field of work. The questionnaire results from a series of face to face meetings with West Midlands solicitors in local government who kindly co-operated by answering in excess of 30 questions each. It has now been sent to the legal department of every Council with a Social Services function and I hope that everyone will be able to find the time to reply to it.

The answers should provide some very useful information on the importance of local government solicitors in this field and I hope you will be able to assist me by asking the relevant person to reply by means of the enclosed S.A.E. as soon as possible.

I should add that no answers given will be published in such a way as to identify the authority or individual from whom they emanate. I will, of course, be happy to answer any questions you might have about my research or to deal with any specific problems that may arise in completing the enclosed questionnaire. I may be contacted at Wolverhampton 27811, ext121 or through the above address.

Yours faithfully,

Paul C Tain

Paul Tain.

1. Please indicate position of person completing this questionnaire.

2.(a) How many lawyers are employed in your Department?

(b) How many lawyers are engaged in child care work?

For each person, please indicate:

	1.	2.	3.
(i) Position held			
(ii) Qualifications			
(iii) How long qualified			
(iv) Experience (ie.litigation/ other; private practice/local authority).			
(v) Proportion of time spent on child care work.			

Please use additional sheets if necessary.

(c) Are any non-qualified persons (eg. legal executives, articled clerks) specifically assigned to child care work?

3. Apart from members of your Department, are child care cases presented in court by anyone else on behalf of your Authority? If so, who and what type of cases?

4. (a) What categories of child care cases does your Department deal with? (Please state relevant Statute, section or sub-section or general title).

(b) Are there any types of case which your Department does not deal with? If so, why.

5. Please state how many applications in the following categories your Department has dealt with in the last 12 months (if approximate, please asterisk)?
(a) s.1. 1969 CYPA

(i) interims

(ii) finals

(b) Adoption (please state who represented)

(c) 1948 C.A.s.11.

(d) wardship

(e) other (please specify)

6. (a) Does a case conference system for non-accidental injury cases operate in your authority?

(b) Is a lawyer always/normally invited to such case conferences?

(c) Does a lawyer always/normally attend such case conferences?

(d) Is it always the same lawyer who attends such case conferences?

(e) Do lawyers ever attend case conferences in other types of case? Please specify.

7. (a) How many different courts do you operate in?

(b) Do you find any marked differences in practice or procedure? If so, please describe briefly.

8. (a) In approximately what proportion of s.1. 1969 CYPA cases are parents separately represented?

(b) In your experience, are solicitors appointed to represent the child, expressing the view of their client/the parents/other (please specify)?

9. How would you describe briefly your relationship with the social workers in the cases you handle?

10. Do you or other members of your Department belong to any outside bodies relevant to child care? (Please specify).

11. Do you or other members of your Department regularly read legal/non-legal journals relevant to child care? (Please specify)

12. Do you personally expect to continue your involvement in child care work?

13. Please use the space below for any additional comments you wish to make on your Department/Authority's work in relation to child care.

Please return in enclosed S.A.E. to: Mr. Paul Tain, c/o Faculty of Law,
University of Birmingham, Birmingham B15 2TT.

Thank you very much for your co-operation.

APPENDIX IV National Survey - Data on Child Care Lawyers

Authority	No. of lawyers	Length of qualification (years)					% of time on child care					Work done (No. over 12 months)					
		A	B	C	D	E	A	B	C	D	E	CYPA Int	CYPA Finds	Adoption	Children Act 1948	Ward-ship	Other
County Councils																	
1	2	3½	1½				45	5				10	25	0	2	1	1 Domestic
2	3	4½	3	1			80	20	10			44	76	0	9	0	1 Domestic
3	3	7	5	2			70	60	80			400	200	10	10	12	15 Domestic
4	3	8	20+	1½			High	30	60			10	50-60	1	3	3	1 Domestic
5	1	2					90					41	101	3	4	2	2 Domestic
6	2	3	4				50	50				-	18	2	2	3	2 Domestic
7	4	9	5	2½	½		15	25	65	25		40	30	0	9	5	Variation of care orders
8	2	3½	½				80	20				92	53	1	11	5	4 Domestic
9	3	5	3	½			5	10	5-10			29	45	0	0	2	Variations
10	1	1					110					40	35	0	-	1	3 Domestic
11	3	5	4	3			40	50	47			85	73	0	7	8	4 divorce 1 appeal
12	2	½	2				50-75	50-75				0	0	0	0	0	2 Domestic
13	2	10	5				2	10				78	37	0	1	3	-
14	2	14	3				10	10				400	200	0	3	2	Domestic
15	2	2	4				95	25				2	10	0	0	0	0
16	3	11	7	8			40	55	25			5	36	0	3	3	-
17	5	7	5	2	1	3	30	30	30	30	30	128	-	0	4	2	-
18	2	10	3				90	10				50	100	6	6	0	30 Domestic
19	2	7	2				30	60				90	90	2	4	4	-
20	3	7	7	7			20	75	75			33	56	0	11	0	0
21	3	9	4	3			30	10	40			100	-	-	10	6	6
22	2	1½	½				25-30	25-30				40	25	0	2	0	3
23	2	5	7	1			40	70	70			60	65	4	4	2	6 Divorce

Authority	No. of lawyers	Length of qualification (years)					% of time on child care					Work done (No. over 12 months)					
		A	B	C	D	E	A	B	C	D	E	CYPA Int	CYPA Finds	Adoption	Children Act 1948	Ward-ship	Other
Metropolitan Districts																	
47	3	8	4	1			5	25	0			96	33	2	1	1	Sec. 15 2 discharge compensation 8
48	2	4½	2½				-	-				144	83	1	35	0	-
49	4	10	4	19	5		1	3	0.5	10		12	23	1	2	2	Sec. 15 - 1 Sec. 32 - 2 educ 3
50	2	3	2				15	10				8	20	0	0	1	-
51	1	-					15					60	20	2	0	2	0
52	1	3					40					14	22	0	3	1	3 mats.
53	3	7½	6	1			5	5	60			-	-	0	2	2	0
55	3	2	4	4			30	40	20			35-40		6	10	0	0
56	4	-	-	-	-		-	-	-	-		-	-	-	-	-	-
58	3	3½	½	½			40	60	60			35	23	0	4	7	10 divorce etc.
59	4	4	-	5	4		60	30	30	30		1	39	-	5	3	11 divorces
62	2	4	3				25	5				100	80	0	0	0	0
65	1	5					50					5	39	0	3	2	3 discharge
67	2	0	0				30	20				32	15	0	-	0	0
69	1	8					25-30					34	14	0	0	0	educ. 12 mat 2
70	3	5	3⅓	2⅔			20	20	20			25		-	10	1	compensation
74	2	4½	3½				50	75				25		0	5	1	-
71	2	2	2				50	10				25-30		0	1	3	-
54	1	28					80					100		1	15	2-3	2 divorce
60	3	21	6	3			30	7½	5			4	20	0	0	0	1 divorce
73	2	2	1				60	40				20	20	0	10	0	-

Authority	No. of lawyers	Length of qualification (years)					% of time on child care					Work done (No. over 12 months)					
		A	B	C	D	E	A	B	C	D	E	CYPA Int.	CYPA Finds	Adoption	Children Act 1948	Ward-ship	Other
London Boroughs																	
83	1	4½					25-33					12	10	0	3	3	-
82	2	4	1				50	25				48	21	0	1	1	1 discharge
78	1	6½					40					-	-	1	6	6	-
77	1	1					25					-	6	0	1	2	3 discharge
80	2	2	5				75	50				-	-	-	-	-	-
84	2	5	5				20	20				-	-	0	-	5	-
85	2	7	1½				10	50				55	15	0	15	2	comp. juv ct. 6
95	4	6	4	7	27		33	33	33	33		105		2	-	20	-
89	1	14					50					40	52	0	0	3	2
92	3	20	2½	-			10	40	10-20			50	30	4	4	6	guardianship 2
103	1	2½					80					57	15	6	4	5	discharge 6
90	2	0	18				15	5				4	4	1	0	0	0
100	1	5					10-15						12	1	3	2	discharge/various
106	2	3	1				35	20				1	6	0	3	4	-
98	1	39					75					25-30		0	4	8	-
104	3	3	2	1			50	20	50			100	50	1	3	6	discharge 12
99	1	4					40					6	8	0	2	2	3 mca 73
76	2	19	4				5	5-10				7	15	38	0		

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