

Towards a family justice observatory to improve the generation and application of research

Professor Bryan Rodgers, Australian National University
Professor Liz Trinder, University of Exeter
Teresa Williams, Nuffield Foundation





About the Nuffield Foundation

The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research.

Copyright © Nuffield Foundation 2015
28 Bedford Square, London WC1B 3JS
T: 020 7631 0566
Registered charity 206601 | ISBN 978-0-904956-98-6

Extracts from this report may be reproduced for non-commercial purposes on condition that the source is acknowledged.

www.nuffieldfoundation.org

Contents

Foreword	2
1. Executive summary	3
2. Introduction and background	6
3. Research needs and use in the family justice system	7
4. What already exists to support evidence use?	12
5. Towards a 'family justice observatory'	15
References	18
Annex 1: Roundtable attendees	19
Annex 2: Selected exemplars from mapping exercise	20

Foreword

One of the many problems identified by the Family Justice Review was the limited availability and use of research findings and administrative data in family justice decision-making. The Nuffield Foundation, with its long-established interest in family justice and improving capacity for empirical research in law, has been keen to take the lead in considering how best to address this.

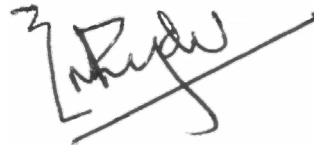
In June 2014 I chaired a roundtable meeting of family justice practitioners and researchers with the aim of identifying how we might facilitate better use of research evidence in the family justice system. It was a fascinating discussion, and there was a consensus that a new infrastructure was required, not only to improve the research base for family justice, but crucially, to improve its integration, communication and application, and its accessibility to practitioners across the board.

This briefing paper sets out what the Nuffield Foundation sees as the fundamental purpose and functions of the new infrastructure. We have provisionally called this a 'family justice observatory', although in reality a consortium of organisations acting collectively is more likely than a single institution. Drawing on the discussions at the roundtable, the authors clarify the need for better use of research evidence, before going on to examine the existing mechanisms for supporting this within the family justice system. They conclude by discussing the key design factors that need to be considered further, and how these will frame the remit of a scoping study, which will be the next stage in the process.

Discussion of the proposals set out in this briefing paper at a seminar on 14 October 2015 – as well as all other

feedback received – will inform the development of a formal specification for the scoping study. We aim to call for expressions of interest by the end of the year, with the scoping study itself commencing early in 2016.

It is an ambitious project and although we have only just begun, we are already indebted to many people for their contribution to it. I would particularly like to thank those who participated in last year's roundtable discussion, members of the development group (which is overseeing the commissioning of the scoping study), and of course, the authors of this briefing paper. I hope its publication will stimulate further debate on this important issue within family justice.



**Professor the Right Honourable Lord Justice Ryder
Trustee**

1. Executive summary

There appears to be a consensus that concerted action is required to ensure better use of research findings and administrative data within the family justice system, with broad agreement that a new infrastructure is needed. This might be a single institution or, more likely, a consortium of organisations that collectively ensure participants in the system have appropriate access to reliable research to inform their analysis of options for specific family cases, as well as system performance data to assist in the allocation of resources and the development of new services and interventions.

This paper is intended to contribute to that process by:

- Summarising recent development work and consultations which have sought to clarify the research needs of the family justice system.
- Examining existing mechanisms for supporting the use of research evidence in the family justice system.
- Setting out the preliminary case for a 'family justice observatory', which would put in place mechanisms to generate more timely, relevant and robust research relevant to family justice; and also ensure that the findings are better disseminated, synthesised and applied. It is important to note that although we are using the term 'observatory', we are open to a range of models and the term is intended to be indicative rather than prescriptive.
- Stimulating debate and eliciting feedback to inform the Foundation's commissioning of a scoping study. The aim of the scoping study is to develop more detailed proposals for the purpose, functions and delivery options for an observatory. An important consideration, particularly in this severely resource constrained environment, is whether the functions of an observatory should be delivered by a bespoke new institution, or whether existing organisations could be adapted to cover the ground in a more coordinated way.

How can research evidence help improve the family justice system?

The family justice system in its broadest sense deals with consequences of relationship breakdown and other difficulties faced by families. Given that anger,

violence, abuse, mental health problems, drugs and alcohol are often implicated, the impact on the quality of parenting and relationships, and access to resources by family members can be severe. The system covers both public and private law, but it is also concerned with a wider set of decisions and interventions made by a range of agencies beyond the courts – including, but not confined to, local authorities, mediation, drug and alcohol services, and relationship counselling.

In thinking about the role that medical, scientific, and social scientific research can play in supporting an effective system, it is useful to think separately about the role of evidence in relation to four 'levels' of influence or mechanisms:

1. Wider policy and legislation governing family law, policy and practice.
2. Professional guidelines, training, and development to assist practitioners to interpret and operate within the policy and legal frameworks.
3. The forensic process in determining facts and arguments relevant to a case.
4. The analysis of options to inform decisions made by social workers, judges and others.

It is also important to draw a distinction between research to support decisions in individual cases, which might be drawn from a wide range of disciplines within and beyond the social sciences, and analysis that improves the performance of the system as a whole, which could draw on administrative data collected and collated as part of case-management, as well as the findings from research studies. In a system that is utilising research evidence to best effect,

there would be feedback loops in which an understanding of the aggregated outcomes of individual cases would inform the design and operation of the wider system.

Robust, accessible and relevant research evidence can help improve decisions about individual children and families in a number of ways, including:

- Developing effective, relationship-based practice with children, young people and families.
- Helping to identify whether specific children and families are likely to be at risk.
- Assessing the nature of that risk, the capacity for change, and whether intervention is warranted.
- Evaluating alternative options for intervention, and the likely consequences.
- Establishing the outcomes of decisions taken and whether further action is needed.

It is only recently – following implementation of some of the key recommendations of the Family Justice Review – that the concept of a family justice system has had any meaningful organisational reality. The creation of the national Family Justice Board and local family justice boards, together with the impact of recent reforms on local authority processes and practice in relation to pre-proceedings work, have stimulated stronger demand for additional ways in which research and other evidence might be helpful, including:

- Understanding how the demand for family justice system intervention is changing: for example the incidence of family breakdown, abuse and neglect, and associated risk factors such as drug and alcohol use and mental health problems, together with the cumulative changes to professional decision-making (as was seen in the wake of 'Baby P'), and the consequences for the size and nature of the caseload.
- More systematic monitoring and evaluative information about outcomes of different 'interventions' could help inform service development and delivery. Examples include the different arrangements for sharing parental care after divorce or separation, interventions with parents subject to care proceedings, and options for post adoption support.
- Information on 'performance' of the court system – including the ways in which cases progress through the court and their outcomes – can help with the

management of cases. Coupled with unit cost data this information could improve resource planning and allocation. Such performance data are already being collected to monitor the timeliness of care proceedings.

- There is potential to use a more research-based approach to test and learn from changes to policy and practice: for example in the design and evaluation of pilots to test novel operational approaches and procedures which might improve outcomes and make better use of resources.

Why is this not happening at the moment?

In considering the range of factors influencing how research evidence is used within the family justice system, we separate them into those which relate to the 'supply' of evidence, and those which have more to do with the 'demand', although in practice there are interactions between the two.

On the supply side, there is a paucity of empirical research evidence for policy-makers and practitioners. Even where such evidence exists, it does not always reach the courts or other practitioners in a usable format. In addition, there is a lack of consensus within the research community on what the evidence has to say about key issues, and importantly, what the implications are for practice and decision-making. This is true in both public law (dealing with the welfare and protection of children at risk of abuse and neglect), and private law (dealing with the consequences of divorce, which may include child protection considerations).

In relation to demand, there are several key types of research user (as defined below), and it is clear that they are not consistently or systematically trained in how to source, interpret or apply research evidence in particular cases. In addition, there are deeper philosophical, ethical and legal issues to address, especially in the courtroom. The realities of an adversarial system, in which the stakes are high, mean there can be strong incentives for practitioners to use research selectively to support an existing position (e.g. social work), or to suit a client's case (e.g. legal practitioners).

Towards a family justice observatory

As part of its preliminary development work, the Foundation has worked with Professor Bryan Rodgers, Nina Lucas, and others from the Australian National University to map current arrangements for improving the use of research evidence in the family justice system and related

fields, including some international examples. This has informed our preliminary proposals for the functions of an observatory – which we think is unlikely to be a single institution, but rather a constellation of new and existing bodies – and helped identify a number of important questions which will be addressed by the scoping study undertaken in 2016.

The proposed observatory could potentially support at least three key types of research user:

- Practitioners who contribute to decision-making in individual cases – principally local authority social workers, Cafcass officers, legal representatives, expert witnesses, and judges.
- System-wide users who want to understand how well (their bit of) the family justice system is operating and where resources are best allocated, policy makers in central and local government, and the Family Justice Board at national and local levels.
- Researchers and analysts wanting to generate, disseminate and share knowledge and access data.

A fourth potential type of research user is individuals who are parties to a case, particularly – as is increasingly the case following legal aid reforms – those who are not legally represented. These 'litigants in person' are increasingly likely to become consumers of research as they attempt to navigate the system and support their case.

We propose the observatory has four main functions:

1. **Improving the evidence-base:** by working with family justice system users to identify priority research gaps, improving data infrastructure, providing advice on operationally feasible research designs, and undertaking its own research programme.
2. **Synthesising and integrating the evidence:** by undertaking or commissioning systematic reviews on priority themes and topics, and communicating in an accessible way – tailored to the needs of different user groups – what is agreed and what is disputed in the existing evidence base.
3. **Promoting the use of evidence:** by providing access to bespoke advice on the appropriate interpretation of evidence in specific circumstances as well as on adopting and testing wider approaches. And by the development, analysis and interpretation of system-wide performance and outcome data to improve feedback.

4. **Capacity building:** by providing training and development activities for researchers and practitioners to help improve the rigour and relevance of research on the family justice system, and to promote its use.

A more overarching ambition is that the observatory should be a catalyst for a virtuous spiral in which a more systematic approach to the generation and application of research evidence and administrative data fosters greater demand for, and engagement with, research evidence among those operating and using the family justice system.

Our next step is to use the discussion generated by this briefing paper to develop a formal specification for a scoping study, which we aim to issue by the end of the year. We hope the scoping study itself will begin in spring 2016 and make recommendations by the end of 2016.

We welcome feedback on the issues and questions raised in this paper. If you would like to make a contribution, please send it to Ruth Maisey (rmaisey@nuffieldfoundation.org).

2. Introduction and background

This briefing paper has its origins in the Nuffield Foundation's long-established interest in family justice and in improving capacity for empirical research in law.¹ The specific impetus was a set of concerns and propositions articulated by David Norgrove, Chair of the Family Justice Board and Chair of the Family Justice Review² and Sir James Munby, President of the Family Court, about the limited and uncertain place of research evidence in family justice decision-making. These concerns were:

- Practitioners (whether social workers, mediators, family lawyers, or the judiciary) often use an intellectual framework informed by training or reading that may be out of date, too general or vague, or inappropriate when interpreting research.
- Research evidence is available only in a fragmented and ad hoc way: there are few mechanisms for bringing it together in a way that meets the needs of the parties and the courts for understanding issues relevant to a particular case.
- Courts have no direct mechanism for finding out about or accessing the latest evidence on a particular topic. Even where relevant research is known to the court, there is no straightforward way to assess how far its quality can be relied upon, either as an individual study, or in relation to a body of evidence.
- Judges and other decision-makers in the family justice system are uncertain about the extent to which they can rely on research evidence, particularly where it has not been adduced in evidence to the court by parties to the case.
- Consequently research, or the best evidence, has limited influence on practice.

In response, the Nuffield Foundation has taken a lead in considering how this might be addressed. In June 2014 the Foundation convened a roundtable discussion involving a range of family justice practitioners and researchers³ to explore whether and how better

use of evidence in the family justice system might be facilitated. The event was chaired by Lord Justice Ryder and was informed by a short discussion paper presented by Professor Bryan Rodgers from the Australian National University and Professor Liz Trinder from the University of Exeter.

It was agreed that the creation of the Family Justice Board – and the local boards which support it – was a first step in establishing a more coordinated delivery system and therefore an ideal opportunity to stimulate demand for improved evidence. But it was also noted that the fast pace of change of a system in flux meant that it was premature to assess exactly what that new 'approach' would look like.

In light of this, the Foundation decided to commission a scoping study to identify the most appropriate structure, functions, and funding of any new or repurposed organisation(s) designed to improve the application of research evidence in the family justice system. The commissioning process will be overseen by a development group of key stakeholders, who will also provide assurance that the study will ask the right questions and engage with the right people across the family justice system. In the interim, and for brevity, we have called the infrastructure a 'family justice observatory', but that does not necessarily imply that a single organisation is envisaged. Indeed, that is one of a number of questions the scoping study will explore.

The remainder of this paper draws together the core points emerging from the roundtable in relation to the evidence needs of the family justice system and the current barriers to greater research evidence use – in effect 'the problem'. It goes on to examine the existing mechanisms for supporting the use of research evidence in the family justice system, and concludes by identifying a core set of questions to be addressed in assessing the possible role and functions of an observatory.

¹ Genn, Partington and Wheeler (2006).

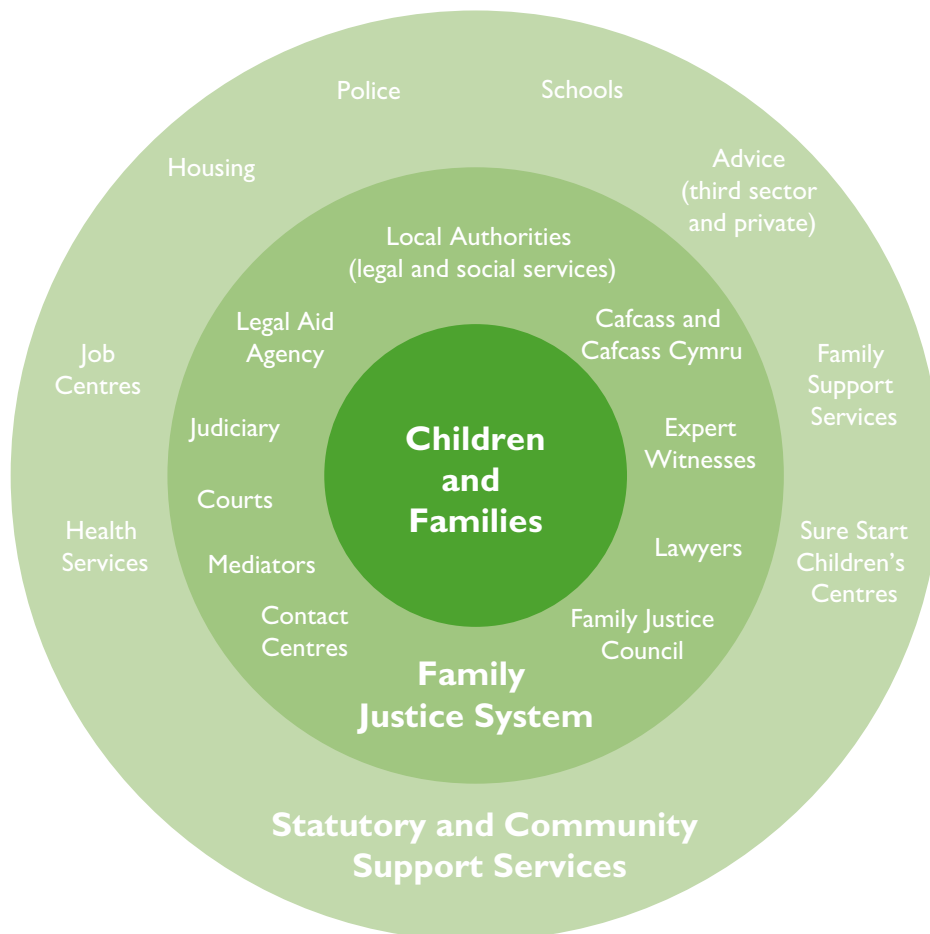
² Family Justice Review Panel (2011a; 2011b).

³ A full list of attendees is provided at Annex 1.

3. Research needs and use in the family justice system

One of the challenges in addressing evidence needs for family justice is that the family justice system is a complex and diffuse set of multiple agencies without clear boundaries. Indeed, as the Family Justice Review famously observed, the family justice system “does not operate as a coherent, managed system. In fact, in many ways, it is not a system at all.”⁴ Some of that complexity is evident in Figures 1 and 2 below, which show the wide range of agencies spanning the public, private and voluntary sectors, as well as those with a social policy or social care orientation and those located within a legal framework.

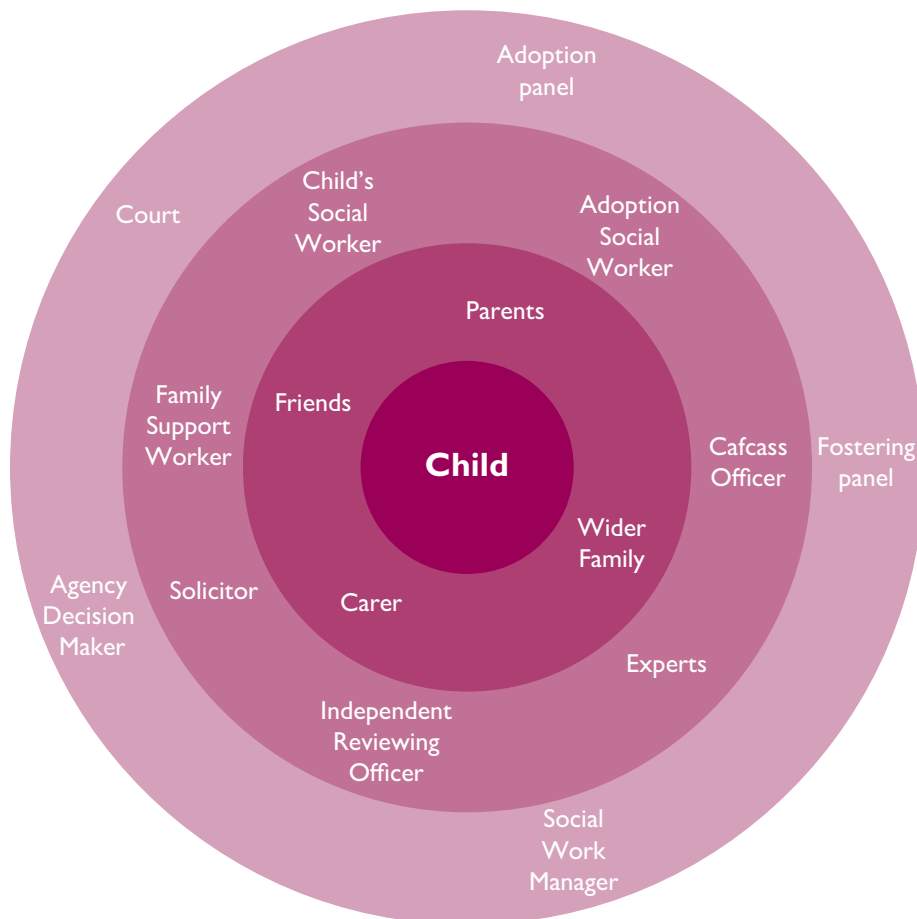
Figure 1: The family justice system as described by the *Interim Report of the Family Justice Review*⁵



⁴ Family Justice Review Panel (2011b), p.44.

⁵ Figure reproduced from Family Justice Review Panel (2011a), p.45. Updated to show the Legal Aid Agency has replaced the Legal Services Commission

Figure 2: The range of actors that may be involved in a particular case as described by the *Interim Report of the Family Justice Review*⁶



What do we mean by 'research evidence' within the context of the family justice system?

Two types of research evidence might be used to better effect to support decision-making in the family justice system: administrative data and findings from research studies. Some administrative data (for instance volume and timeliness of care proceedings; information about the number of looked after children and the type of placement; or applications for child arrangement orders) are collected by the courts, Cafcass and children's social care services in local authorities. At present these data need to be more comprehensive,

better linked, and set within a clear outcomes framework.⁷ Administrative data are usually the by-product of service delivery, and can be of variable quality and completeness. However, even in their current form they could be used to better effect to monitor issues such as fluctuations in demand, costs of proceedings and timescales for decision-making.

Research findings are collected to: answer questions which might be directly related to the family justice system itself (socio-legal research); assess the effectiveness of different interventions; measure the incidence of issues faced by users of the system (often compared with the general population); or investigate different aspects of the workforce

⁶ Figure reproduced from Family Justice Review Panel (2011a), p.96. Updated to replace 'Guardian' with 'Cafcass Officer'.

⁷ Childhood Wellbeing Research Centre (2014).

and professional practice. Research of this nature is not considered robust unless it meets certain methodological standards to provide assurance that the data are reliable and valid, and that the selected research methods are appropriate to support the conclusions reached.

How can administrative data and research evidence help the family justice system?

Promoting better use of research evidence within a multi-agency system without clear boundaries presents two main challenges. First, there is the practicality of disseminating research evidence to such a large and diverse set of organisations and individuals. Second, is that the multiple types of users will require different types of research evidence, or the same evidence packaged in a different way. In the context of family justice, it was suggested at the roundtable that it is useful to think separately about the role of evidence in relation to four 'levels' of influence or mechanisms:

1. Wider policy and legislation governing family law, policy and practice.
2. Professional guidelines, training and development to assist practitioners to interpret and operate within the policy and legal frameworks.
3. The forensic process in determining facts and arguments relevant to a case.
4. The analysis of options to inform decisions made by social workers, judges and others.

In broad terms, each 'level' is likely to require very different types of evidence at different points in the decision-making process. In relation to individual cases, for example, evidence is used – albeit sporadically – at key decision points in relation to: identifying children at risk (information, assessment, practice activity, referral); evaluating options/resolving disputes; and the making, enforcement, and evaluation of decisions. At the forensic level a decision-maker would want to know whether x did in fact happen, and if so, the likelihood that it was caused by y or z. That is likely to require a different form of evidence from future-oriented decisions about the likelihood of a child's best interests being served by one arrangement above another. The latter decision is likely to incorporate psychosocial research on risks and resilience, and socio-legal research on the outcomes of family justice processes, as well as causal evidence.

Specific ways in which research evidence might helpfully inform individual decision-making include:

- Developing effective, relationship-based practice with children, young people and families.
- Helping to identify whether specific children and families are likely to be at risk.
- Assessing the nature of that risk and whether intervention is warranted.
- Evaluating alternative options for intervention/support, and the likely consequences.
- Establishing the outcomes of decisions taken and whether further action is needed.

Research evidence is also relevant beyond the level of the individual case. Policy-makers and managers increasingly need robust administrative data on system inputs, outputs and unit costs, such as what drives the caseload (e.g. high volume of repeat removals), planning and performance information to manage caseloads, monitor timeliness and costs, as well as outcome data on standard and alternative interventions to inform service planning. For example:

- Understanding how the demand for family justice system intervention is changing: for example the incidence of family breakdown, abuse and neglect, and associated risk factors such as drug and alcohol use and mental health problems, together with the cumulative changes to professional decision-making (as was seen in the wake of 'Baby P'), and the consequences for the size and nature of the caseload.
- More systematic monitoring and evaluative information about outcomes of different 'interventions' could help inform service development and delivery. Examples include the different arrangements for sharing parental care after divorce or separation, interventions with parents subject to care proceedings, or options for post adoption support.
- Information on 'performance' of the system – including the ways in which cases progress through pre-proceedings and court, and their outcomes – can help with the management of cases. Coupled with unit cost data this information could improve resource planning and allocation. Such data are already being collected and used to monitor the timeliness of care proceedings.

- There is potential to use a more research-based approach to test out and learn from changes to policy and practice; for example in the design and evaluation of pilots to test novel operational approaches and procedures which might improve outcomes and make better use of resources.

A key task for the scoping study will therefore be to map the full range of potential end-users and their varied needs in an attempt to prioritise whether and how those needs should realistically be met. A related point raised at the roundtable is that it is important that the key potential consumers of evidence – social workers, Cafcass officers, expert witnesses, advocates, judiciary (including magistrates) and policymakers – are able to understand where the ‘weight of evidence’ on a particular topic lies. This usually involves taking account of a range of studies on a given topic which meet a certain quality threshold, rather than relying on a single study. Balancing those potentially competing considerations will be just one of many challenges faced by any new evidence infrastructure.

Supply and demand factors and the use of evidence

Within and across each of the four levels of influence (policy and legislation, professional guidelines, the forensic process, and judicial decision-making), the use of research can be influenced by factors that relate to the ‘supply’ of evidence by researchers and evidence synthesisers, and factors that relate to the ‘demand’ for evidence from users (policy-makers, expert witnesses, social workers, advocates, judges, and – increasingly – litigants in person). In brief, these factors are:

Supply-side factors

- **Limited evidence base.** The Family Justice Review identified 25 areas where research was needed.⁸ Evidence about outcomes for children, and how these may relate to decisions made in the family justice system, is particularly lacking. Significant areas are not covered by research, or the available studies are not sufficiently robust to draw safe conclusions for practice. The paucity of evidence is the result of a range of factors, including lack of investment, limited capacity of empirical researchers in family law (especially in the UK), and the poor quality of data available about the family justice system. There are also questions about the applicability of evidence available from other

jurisdictions: while care needs to be taken to ensure that findings from other countries can translate, there has been a tendency to dismiss international studies as not relevant to ‘our’ jurisdiction.

- **Lack of feedback.** The family justice system does not provide the feedback that professionals in other systems routinely receive as a means of guiding their future actions. Health professionals, for example, get feedback on the immediate impact of their day-to-day actions from patients. They receive mid-term feedback by witnessing the outcomes of their efforts over time. In the education system, teachers receive feedback through a variety of mechanisms: regular standardised assessments of pupils, data systems that track pupil progress, lesson observations from peers and senior teachers, and visits from local school improvement professionals and inspectors. The family justice system is not set up to provide comparable feedback that facilitates self-evaluation and self-correction of this type. Indeed a recent study by Professor Judith Masson of judicial feedback concluded that there are potential risks to the provision of feedback on individual outcomes to judges – who by the nature of their work tend to hear atypical cases – although she identified other sorts of system level feedback that might be more productive.⁹
- **Pragmatics of access to/delivery of research evidence.** Professionals face multiple demands on their time, can face too little or too much information, are generally not trained in how to judge the quality of research and have little time to read or make sense of it. The increased number of litigants in person has created new types of user who may be even less equipped to assess the relevance or quality of research studies to their case, and have limited access to professional intermediaries. Overcoming these barriers poses significant logistical and technical challenges.
- **Politics of research.** It has to be recognised that even the very best research does not necessarily speak for itself. Even where there are strong empirical studies in a field, there may be disagreement about their implications for practice. This is not unique to the family justice system, although it may be a particular issue where there are often strongly held attitudes and beliefs, combined with a predominantly adversarial system.

⁸ Family Justice Review Panel (2011a), p.209.

⁹ Masson (2015).

Demand-side factors

- **Relevance and applicability of research evidence.** Research is not always readily applicable in specific decision-making contexts. This can include the difficulties of applying aggregate data to individual cases, or applying or translating research evidence generated in one jurisdiction, context or case type to another; whether in clinical or judicial decision-making, or when developing policy or practice guidelines.
- **Other forms of 'evidence'.** In all fields of policy and practice, empirical research is not the only form of relevant evidence. At a policy level, research evidence often needs to compete with other considerations such as politics, stakeholder interests, legal parameters and available resources. At a practice level, professional judgement is also crucial, not least in interpreting whether and how empirical evidence might be relevant. The views, wishes and feelings of children, young people and families are an important factor too. There are further considerations in relation to family justice. The predictive nature of family justice decision-making encourages greater reliance on social science than many other fields of law. However, the primary authorities remain statute and case law, with the (social) scientific evidence occupying a more uncertain position. Indeed the Family Justice Review noted that this uncertainty can extend to what weight can be given to evidence not adduced in court.¹⁰ This issue has been subject to extended debate in the Family Court of Australia.¹¹
- **Issues of competence and confidence in using research findings by court professionals.** Social workers can be reluctant to cite research studies for fear of being undermined in cross-examination. It seemed clear from discussion at the roundtable that in the UK (and more recently in Australia as we've seen from Rathus's work), the risk of evidence being challenged means it is often safer not to use it at all. In an adversarial system, advocates (and indeed litigants in person) are likely to be selective in their use of evidence, regardless of research quality. Neither judges (lay or professionals), nor social workers, are typically trained in research skills, particularly in critical appraisal skills enabling them to assess the relevance and rigour of empirical research. Nor do they necessarily have easy access to trusted experts who can advise across the full range of research approaches, with the result that there is a tendency to rely on 'who you know'.

The supply and demand factors identified above are not static. Demand is getting stronger with the increasing availability of research evidence and administrative data, and some progress in the creation of a 'system' infrastructure. While the current administrative data are not perfect, there is potential for making much better use of them especially through data linkage. A more overarching ambition for an observatory, whatever form it takes, is that it could be a catalyst for a virtuous spiral in which a more systematic approach to the generation and application of research evidence and administrative data fosters greater demand for, and engagement with, research evidence among participants in the family justice system.

At the same time any solutions must take account of continuing changes within the family justice system. The use of experts is an obvious way in which the research evidence base can be applied to individual cases, carrying the implication that their role – which is in any case being refined as part of wider family justice reforms – needs to be integrated with any broader utilisation of research findings. Reforms to legal aid have also resulted in an increase in litigants in person, especially in private family law cases. This has two relevant implications: parties themselves may need or wish to refer to research evidence in support of their case; and the judge (lay or professional) must be sufficiently research aware to appraise the relevance and quality of the research put before the court.¹²

¹⁰ Family Justice Review Panel (2011b), p.61 paragraph 2.104.

¹¹ Rathus (2014).

¹² For a recent discussion of some of the potential pitfalls when litigants in person instruct expert witnesses, see Solon (2015).

4. What already exists to support evidence use?

In preparation for the roundtable, Professor Bryan Rodgers and Nina Lucas from the Australian National University conducted a preliminary mapping exercise of what organisations or interventions exist to support the use of research evidence in the family justice system in the UK (in effect England and Wales), and in relation to family justice internationally. These initiatives fall into three main types:

- Systematic approaches to improving the evidence base (including administrative data about the system). Studies (AIFS) and its research programmes has been federally-funded for many years.
- Reviewing and synthesising evidence.
- Improving access to and use of research evidence.

We have summarised some of the key approaches in Table 1, with further detail on some of the exemplars included in Annex 2. One aim of the scoping study will be to undertake a more comprehensive mapping exercise.

Improving the evidence base

There have been concerted efforts to make better use of administrative and other data in the family justice system and, in particular, to link data sets held by different agencies. These aggregated data can be used to describe trends over time and differences between population sub-groups (such as regional variations). At present, however, this potential has yet to be fully realised.

The overall spend on family justice research in the UK is unknown but is likely to be low, at least relative to other fields such as criminal justice, health, and education. In addition, there is little coordination of what funding is available to ensure that it addresses the priorities of research users. The Nuffield Foundation has been one of the major supporters of family justice research for many years but even so it is not the Foundation's biggest programme.

While there have been a number of interesting individual studies in recent years, there has not been a coordinated and comprehensive programme emerging from systematic analysis of research gaps and priorities. There is no government research programme equivalent to the Department of Health's work on child placement in the 1990s for example, or the Department for Education's programme on adoption in the 2000s. This is in contrast to Australia, where the Australian Institute of Family

Reviewing and synthesising evidence

One of the key challenges is ensuring that decision-makers have appropriate access to research evidence, something that is particularly difficult within the family justice system where research is often multidisciplinary and reported through diverse sources and media. There have been steps towards synthesising research evidence, for example through research bulletins (e.g. the MoJ knowledge hub), and thematic reviews of the kind undertaken by Research in Practice and the Childhood Wellbeing Research Centre. To date there has been greater focus on public rather than private law, and on the needs of social workers and voluntary sector organisations rather than those of legal audiences. These are gaps that need to be filled.

In addition to the technical difficulties of summarising a broad and diverse literature, the mapping exercise and roundtable discussions also highlighted the potentially contentious nature of the synthesis process and the need for a trusted and authoritative voice or organisation in areas where there is limited consensus, or where positions are highly politicised and where any review may be subject to challenge.

Improving access to, and use of, research evidence

In the event that research evidence is synthesised, there remains the challenge of how to ensure it is utilised in practice. Domestically, a range of organisations, including the Judicial College and Research in Practice, disseminate research to practitioners (principally judges and social workers respectively) via various media. Overseas, the Child Family Community Australia and the Association of Family and Conciliation Courts are useful examples of organisations

that provide an extensive range of resources delivered through a wide range of media for practitioners. Evidence use can also be promoted via the use of guidelines, as in the Canadian Spousal Support Advisory Guidelines, or the Cafcass assessment toolkits. And the Social Care Institute of Excellence has developed an online training programme to develop research awareness and critical appraisal skills.

There is much to be welcomed in these initiatives but they do not yet offer a systematic and coordinated response to meet the evidence needs of the family justice system. And there is little evidence of how successful such initiatives are in effecting change, either in terms of better use of evidence or better outcomes for children and families.

What Works Network

Outside the specific field of family justice, a network of What Works Centres was launched in 2013 to fulfil some of the functions identified above. This initiative was coordinated by the Cabinet Office and largely funded by the research councils and government departments. Examples include the National Institute of Clinical Excellence, the Early Intervention Foundation, and the Education Endowment Foundation. The centres help to ensure that thorough, high quality, independently assessed evidence shapes decision-making at every level in the following ways:

- Collating existing evidence on the efficacy of policy programmes and practices.
- Producing high quality synthesis reports and systematic reviews in areas where these have not previously existed.
- Assessing how effective policies and practices are against an agreed set of outcomes.
- Sharing findings in an accessible way.
- Encouraging practitioners, commissioners and policymakers to use these findings to inform their decisions.

The initial focus of the What Works Centres has been on synthesising a particular type of research evidence: intervention studies (including randomised control trials of manualised programmes). More recently, the What Works Centres have been developing a deeper understanding of the needs of the users of their research, although they are still establishing themselves beyond the policy communities in central and local government. They are also turning their attention to other sorts of

research evidence which address the complexity of the delivery systems in which interventions may be applied, and exploring different models of funding, as sustainability is a key consideration.

In summary, there are some promising initiatives to develop, synthesise and promote greater use of research both in the UK and internationally. But in relation to family justice these initiatives are not sufficiently coordinated or systematic, and a more comprehensive and planned approach is required.

TABLE 1: DOMESTIC AND INTERNATIONAL INTERVENTIONS TO PROMOTE BETTER USE OF EVIDENCE

DOMESTIC FAMILY JUSTICE SYSTEM		
Improving evidence base	Evidence synthesis	Promoting utilisation
<ul style="list-style-type: none"> • Research funding – government, research councils, foundations, Family Justice Council. • Increasing development and testing of interventions. • Improved administrative data (with developments to improve linking) increasingly being made available. 	<ul style="list-style-type: none"> • Ministry of Justice Knowledge Hub Research Bulletin. • Research in Practice (RiP). • Systematic and narrative reviews (e.g. Childhood Wellbeing Centre at IoE/ Kent/Loughborough). 	<ul style="list-style-type: none"> • Judicial College training and e-newsletter. • Research in Practice (RiP). • Cafcass toolkits for assessment. • Social Care Institute for Excellence (SCIE) online tools on Research Mindedness.
FAMILY JUSTICE SYSTEM INTERNATIONALLY		
Improving evidence base	Evidence synthesis	Promoting utilisation
<ul style="list-style-type: none"> • Australian Institute of Family Studies' (AIFS) major research programme, including longitudinal studies. • AIFS Information Exchange. 	<ul style="list-style-type: none"> • Child Family Community Australia (CFCA) – summaries of legislation, research, statistical data. • Association of Family and Conciliation Courts (AFCC). 	<ul style="list-style-type: none"> • CFCA – coordinated multi-channel activity on specific topics (email notifications, social media, webinars, helpdesk). • AFCC.

5. Towards a family justice observatory

So far in this briefing paper we have discussed the need for a better infrastructure to support the use of research evidence in the family justice system, as well as what initiatives currently exist in this area. In this section, we set out the preliminary case for a ‘family justice observatory’, and the questions we think should be addressed by the forthcoming scoping study. It is important to reiterate that our use of the term ‘observatory’ is intended to be indicative rather than prescriptive. In practice this might be a single institution or, more likely, a consortium of organisations.

Who is the observatory for?

There is a need to support at least three key types of user:

- Practitioners who contribute to decision-making in individual cases – principally local authority social workers, Cafcass officers, legal representatives, expert witnesses, and judges.
- System-wide users who want to understand how well (their bit of) the family justice system is operating and where resources are best allocated: policy makers in central and local government, and the Family Justice Board at national and local levels.
- Researchers and analysts wanting to generate, disseminate and share knowledge and access data.

A fourth potential type of research user is individuals who are parties to a case, particularly – as is increasingly the case following legal aid reforms – those who are not legally represented. Consideration of the needs of these ‘litigants in person’ and the extent to which they might be addressed through any new infrastructure will be explored in the scoping study.

As discussed in section 2, the list of organisations identified by the Family Justice Review as part of the family justice system is large and diverse. Meeting the needs of this diverse audience in terms of research evidence will require a range of solutions and, inevitably, some degree of prioritisation. Key questions to explore will be:

- Should the observatory focus in detail on a narrow core audience (e.g. social workers and judges), or take a more expansive approach delivering the same

or similar information for a wide range of groups, including litigants in person? Is there an automatic trade-off between specialisation and impact?

- Where should boundaries be drawn? Our initial hypothesis is that it should include both public law and private law, but is this an issue for further exploration? What types of case or issue are in scope – should the focus be on those where children are involved, or should adult disputes be included? Would cases on the ‘edge of care’ but where no formal proceedings have been issued be in scope? Our starting position is that it will be important to include the trajectories and outcomes after formal court proceedings, as well as those of quasi-legal, alternative dispute resolution processes and interventions outside of court.
- How could any new infrastructure, under the umbrella of a family justice observatory, build on and interact with other initiatives, such as work by the Family Justice Council to improve access to aggregate outcomes data by lay judges? What existing and planned research evidence centres are there in related fields (for example the proposed centres for excellence on child sexual exploitation and child protection)? How could the remits of each centre (and any new infrastructure) be delineated, and any overlaps be avoided?

What should be the observatory’s core functions?

Similarly, the roles and functions that an observatory could undertake are potentially very wide-ranging. Decisions about the core functions will clearly relate to decisions about the target users and vice versa. An ambitious set of possible

functions includes the following:

1. Improving the evidence base, directly or indirectly

- Highlighting research and evidence gaps.
- Building data infrastructure by linking administrative data for use in evaluation, and to better understand the system.
- Providing advice on what other data might be needed.
- Undertaking bespoke analysis as requested or to showcase possibilities.
- Assessing the role for, and feasibility of, formal intervention studies to develop and test new ways of working.
- Providing a specialist advisory role in design and recruitment for evaluations, including facilitating access to the family justice system for research purposes.
- Acting as a gateway for access to linked data on the family justice system.

2. Evidence synthesis and integration

- Establishing a trusted and replicable methodology for synthesizing and integrating research findings with clear standards of evidence across a range of science and social science disciplines, including medicine, so that conclusions can be quality assured.
- Undertaking thematic research synthesis so that main conclusions about what is agreed and what is disputed in the existing evidence base is available in an accessible and trusted format.

3. Promoting the use of evidence

- Dissemination to policy-makers and practitioners so that high-quality research evidence is easily accessible.
- Developing mechanisms for system-level feedback.
- Providing tailored advice for users of research (e.g. what questions to ask experts; brokering access to research experts on particular topics; and application of research in specific cases).

- Wider advice on trialling new interventions or approaches (including associated evaluations) for which there is at least evidence that outcomes may be more promising than the status quo.

4. Capacity building

- Expanding and up-skilling the research field e.g. promoting Masters courses and PhDs that focus on empirical, and especially quantitative, analysis in family justice.
- Encouraging researchers in related disciplines to work in family justice research.
- Increasing the capability of research users to appraise and utilise research e.g. through training events and continuous professional development.

Although ambitious, this list is not necessarily comprehensive. A key task for the scoping study will be to establish which of these tasks a) are most in demand by potential research users, b) would deliver most impact, including on child outcomes, and c) are achievable within a limited resource framework, and over which timescales. There is likely to be tension between these factors, and the scoping study will need to consider what the appropriate trade-off might be, and the potential for fulfilling some of these functions through partnerships.

How would an observatory be delivered?

Assuming that an observatory undertakes more than one function, decisions will need to be made about the options for delivery and sequencing. Our thinking on this aspect is least well developed, not least because it would be premature to draw even preliminary conclusions about 'form' before 'function' has been properly scoped, and before existing infrastructure is properly mapped.

It might be wise to start small, identifying the most easily achievable tasks that could serve as 'quick hits', and then expand functions over time. Alternatively, starting more ambitiously with a range of functions may be the most effective way to generate long-term interest and impact. Either way, our starting hypothesis is that a system-wide understanding of the need is required to create the 'road map' for an observatory, even if the creation of new infrastructure to respond to those needs is subsequently pieced together in a more organic fashion.

Our initial assessment leads us to three broad conclusions, which will be explored further in the scoping study:

1. There needs to be improved coordination of the embryonic infrastructure that already exists, and that this is likely to require either a new institution or an expanded function for an existing one.
2. Research users will need a single point of access to the new set of functions, even if these are delivered by more than one organisation.
3. If access to linked administrative data is a crucial component (as proposed), then this will either require a new secure access function, or it will need to draw on the existing infrastructure being set up by the ESRC as part of the Administrative Data Research Network.

Proposed remit of the scoping study

Following publication of this briefing paper, the Foundation will commence a competitive tender exercise, overseen by the development group, to select a contractor to undertake the scoping study. The study will extend the preliminary analysis presented in this briefing paper to provide more comprehensive answers to the following questions:

- **Need:** Is there sufficient demand from potential users for improved research evidence to support the family justice system? How do the primary users prioritise the proposed range of functions and would others be helpful? What is the relative importance of evidence to support decision-making in specific cases as opposed to system-wide data? And should an observatory cover medical evidence as well as social science research?
- **Remit:** to what extent can and should any solution cover the whole of the UK (given the remit of the Family Justice Board to cover England and Wales only), and to what extent should its focus be confined to children and families involved in the court system.
- **Delivery models:** in particular whether to conceive of the observatory as an integrated network of specialist organisations, or a single institution; and whether to grow it organically or to start from scratch (although in the examples we looked at these were not necessarily mutually exclusive). A key question is how data access and management should be handled in the light of the development of the Administrative Data Service and Research Centre spearheaded by the ESRC.

- **Funding and sustainability:** including the balance between core- and project-based funding and the potential for self-sustaining funding in future; the interface with other organisations; governance arrangements; and how the impact of any new observatory should be evaluated.

The scoping study is therefore expected to:

- a. **Map** the main user and research provider groups and further develop understanding of their needs and priorities.
- b. **Refine** the proposed functions that might be offered by a family justice evidence service.
- c. **Identify** what sorts of data and research are likely to be in scope.
- d. **Assess** the extent to which existing organisational infrastructure fulfils functions, and to identify key gaps.
- e. **Appraise** different organisational models for delivering the proposed functions and develop recommendations for sequencing.

Timetable and feedback

The Foundation aims to issue the formal specification for the scoping study by the end of 2015, with the expectation that the study will begin in spring 2016 and make its recommendations by the end of that year.

The Foundation is keen to encourage the active involvement of a wide range of stakeholders in this exciting initiative: its success is dependent on it. We welcome feedback on the issues and questions raised in this paper. If you would like to make a contribution, please email Ruth Maisey (rmaisey@nuffieldfoundation.org).

References

- Childhood Wellbeing Research Centre. (2014). *Towards a Family Justice Outcomes Framework: A Working Paper 25*. London: CWRC. Available at: [www.lboro.ac.uk/media/wwwlboroacuk/content/ccfr/publications/FamilyJusticeCWRCworkingpaper%20\(2\).pdf](http://www.lboro.ac.uk/media/wwwlboroacuk/content/ccfr/publications/FamilyJusticeCWRCworkingpaper%20(2).pdf)
- Department of Health. (1991). *Patterns and outcomes in child placement: messages from current research and their implications*. London: HMSO.
- Family Justice Review Panel. (2011a). *Family Justice Review Interim Report*. London: Ministry of Justice, the Department for Education and the Welsh Government. Available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/217357/family-justice-review-interim-rep.pdf
- Family Justice Review Panel. (2011b). *Family Justice Review Final Report*. London: Ministry of Justice, the Department for Education and the Welsh Government. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf
- Genn H. Partington M. Wheeler S. (2006). *Law in the Real World: Improving Our Understanding of How the Law Works*. London: Nuffield Foundation. Available at: www.nuffieldfoundation.org/sites/default/files/Law%20in%20the%20Real%20World%20full%20report.pdf
- Masson J. (2015). *Developing Judgment: the role of Feedback for Judges in the Family Court*. Bristol: School of Law, University of Bristol. Available at: www.research-information.bristol.ac.uk/files/45213553/FINAL_REPORT_pub.pdf
- Rathus Z. (2014). 'The Role Of Social Science In Australian Family Law: Collaborator, Usurper Or Infiltrator?' *Family Court Review*. 52(1): 69–89.
- Solon M (2015). 'LIP Service'. *New Law Journal*. Vol 165, Issue 7665.

Annex 1: Better use of research evidence in the family justice system – roundtable attendees, 5th June 2014

Susannah Bowyer	Research and Development Manager, Research in Practice
Julia Brophy	Principal Researcher in Family Justice
Alex Clark	President's office/secretary to the Family Justice Council
Anthony Douglas	Chief Executive, Cafcass
Gillian Douglas	Professor of Law at Cardiff Law School, Cardiff University
Rebecca Endean	Director, Ministry of Justice Analytical Services
Richard Green	National Child Care Policy Manager, Cafcass
Judith Harwin	Director of the Child Focused Research Centre, Brunel University
Darren Howe	Member of the Family Law Bar Association and Recorder in the Family Court
Rosemary Hunter	Professor of Law and Socio-Legal Studies, Queen Mary University of London
Brigitte Jordaan	Head of Service at London Borough of Hackney Children's Services
Angela Joyce	Team Leader – Adoption and Family Law, Department for Education
Caroline Little	Solicitor and Member of the Family Justice Council
Mavis Maclean	Senior Research Fellow in the Faculty of Law and St Hilda's College, University of Oxford
Judith Masson	Professor of Socio-Legal Studies, University of Bristol
James Munby	President of the Family Division of the High Court
David Norgrove	Chairman of the Family Justice Board
Bryan Rodgers	Professor of Family Health and Wellbeing, Australian National University
Ernest Ryder	Senior President of Tribunals and a Trustee of the Nuffield Foundation
Emma Seagreaves	Chair, West Yorkshire Local Family Justice Board
Jane Sigley	Ministry of Justice
Liz Trinder	Professor of Socio-Legal Studies, University of Exeter
Harriet Ward	Research Professor at the Centre for Child and Family Research, Loughborough University
Sally Williams	Judge, Central Family Court
Teresa Williams	Director of Social Research and Policy, Nuffield Foundation

Annex 2: Selected exemplars from initial mapping exercise

This annex summarises examples of international organisations that provide a range of functions that a UK-based observatory might undertake. These examples are intended to highlight a variety of organisational functions, rather than provide a comprehensive list. Within each organisation we identify activities that serve to: 1) synthesise evidence, 2) promote the use of evidence or 3) improve the evidence base.

Child Family Community Australia (CFCA; Australia)

The CFCA information exchange is hosted by the Australian Institute of Family Studies (AIFS) and funded by the Australian Government Department of Social Services. It was formed from the amalgamation of three clearinghouses (The Australian Family Relationships Clearinghouse; National Child Protection Clearinghouse; and Communities and Families Clearinghouse Australia).

CFCA's goal is to be a primary source of quality, evidence-based information, resources and interactive support for professionals in the child, family and community welfare sectors. It provides a number of publications that **synthesise evidence**, such as resource sheets and practice guides which focus on issues such as summaries of legislation, key messages related to good practice, and overviews of statistical data. It also publishes long papers written by expert researchers and service providers, which are often policy and practice case studies.

CFCA plays a further role in **promoting the use of evidence** in Australia. Its news and discussion arm provides an interactive source of recent information. It encourages discussion, comments and reader contributions through fortnightly email notifications, online forums, Facebook and Twitter. It also provides news about latest research, publications, seminars and webinars, conferences and other events. For instance they ran a webinar exploring what works to engage fathers in family support services in March 2015. The CFCA library collates the latest research. The Research and Information Helpdesk provides telephone and online assistance with enquiries, including research findings.

A key factor in the success of CFCA is the use of multiple formats, for example a series of resources on supporting families where a parent has a mental illness. Activities on this topic included: a review article of key issues about

fatherhood and mental illness; a series of short articles to inform professionals and stimulate discussion; two webinars focussing on best-practice for these families; and a series of videos in which fathers discuss their experiences. The website link for this topic also linked to other related resources available from CFCA and elsewhere.

Association of Family and Conciliation Courts (AFCC; USA)

AFCC is an international, multidisciplinary association of professionals dedicated to the resolution of family conflict. Its members are largely practitioners and policymakers, with a small number of researchers. Local 'chapters' of AFCC members in US states, Canadian provinces and Australia coordinate local activities and conferences. Membership requires an annual subscription. Activities include:

- Quarterly publication of the Family Court Review journal, containing original research, reviews and discussion papers (**improving the evidence base**).
- AFCC's Center for Excellence in Family Court Practice provides the latest research, ideas and practices from leading professionals via resources such as practice guidelines and model standards. They run conferences, think-tanks and task forces on specific issues. Examples of the latter include a 2011 think-tank on the future of alternative dispute resolution in court, Closing the Gap: Research, Practice, Policy and Shared Parenting, which involved 32 researchers, legal scholars, practitioners and policymakers examining issues related to parenting time and decision-making after separation and divorce. And the AFCC Task Force on Guidelines for Court-Involved Therapy, which was intended as a best practice guide for therapists, attorneys, other professionals and judicial officers when there is a need for therapeutic intervention with court-involved children or parents (**synthesising and promoting the use of evidence**).
- Training opportunities for professionals, such as Nuts and Bolts of Parenting Coordination: Helping High Conflict Parents Resolve Disputes, an event held over two days in March 2015 (**promoting the use of evidence**).
- Production of resources for families, such as information pamphlets (**synthesising and promoting the use of evidence**).

- Monthly e-news providing members with practice tips, research updates, relevant news and information about current events and initiatives (synthesising and promoting the use of evidence).

Centre on Children, Families and the Law (CCFL; USA)

CCFL is a multidisciplinary centre based at the University of Nebraska with a focus on **synthesising and improving evidence** that is relevant to child and family policy and services. Projects include programme evaluations and applied research relevant to the family justice system, such as exploring the way that mental health and substance abuse screening information is integrated into juvenile justice rulings.

Within CCFL, the Supreme Court Commission on Children in the Courts makes recommendations to the US Supreme Court to ensure that the court system is responsive to children's needs. Examples of the Commission's past and present priorities include:

1. Researching and making recommendations to expedite the appellate process.
2. Developing guidelines and training recommendations for lawyers who represent children in cases involving abuse and neglect, juvenile law violations, and family dissolution & child custody.
3. Developing recommendations for court practices to provide greater oversight over children's educational needs.
4. Developing recommendations and protocols for collaborative practices, including pre-hearing conferences, mediation, and family group conferences.
5. Studying and making recommendations regarding inconsistencies in guardianship laws and practices.

To **promote the use of evidence**, CCFL also undertakes community outreach to provide information, advice and support to parents and care givers. An example is 'Answers4Families' – an online support and information service for families with special needs. The website facilitates discussion groups, an 'ask an expert' service, and email discussion groups.

Published by the Nuffield Foundation, 28 Bedford Square, London WC1B 3JS
Copyright © Nuffield Foundation 2015
ISBN 978-0-904956-98-6

This briefing paper is also available to download at www.nuffieldfoundation.org