

CARE PROCEEDINGS IN ENGLAND: THE CASE FOR CLEAR BLUE WATER

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SUMMARY

Over the last 10 years in England, there has been a significant increase in the number of families brought into public care proceedings because of concerns about the care and protection of their children. 20% of those children return home on Supervision Orders.

- This policy briefing argues that families subject to *thin, red line decisions*, where the decision to remove a child from his or her parents could go *either way*, should be diverted away from Court. There should be clear blue water between children brought into care proceedings and other children considered to be at risk of significant harm.
- Stronger family focused practice, better decision making and more sophisticated and tailored support services, should create *clear blue water* between the standard of care and protection given to a child involved in public court proceedings compared to the care and protection of other local children considered to be at risk of significant harm.
- The legal principle of No Order should be more readily applied in practice. The use of voluntary accommodation should be reclaimed as a legitimate and respected support service to families for the long term care of children. Shared care should be developed and incentivised, so that where safety allows, parents and extended family in partnership with the State, are fully supported to look after children within their own family networks.
- Great care must be taken not to undermine progress in child protection practice. Where permanence for children can clearly not be secured within family networks, swift and skilful practice must lead to Court action without delay.

INTRODUCTION

Society's ideas about what is considered to be socially acceptable parenting shift sometimes imperceptibly. At other times, these changes are accelerated by a heady mix of political discourse, media interest, community scandal and personal tragedy. On behalf of Society, local authorities in England are charged with deciding which families should receive some level of state intervention, where there are concerns about standards of care for, or protection of children. Ultimately, where there is immediate danger to, or no hope of much needed change for, the children the local authority may make an application to Court. It is the Court who decides what should happen next and indeed what should happen to the child in the long term.

This policy briefing highlights the findings from an exploratory study of care proceedings in 4 local authorities across England. The study found that the vast majority of decisions taken to initiate care proceedings were certainly *reasonable*. The question is whether or not they were always *necessary*.

Over the last 10 years there has been a steady increase in England in the number of local authority applications for Care Orders (Table 1). The proportion of children looked after by the state, who are also subject to a Care Order, has increased too (Table 2). There is also wide variance between local authorities in the number of applications made (Table 3).

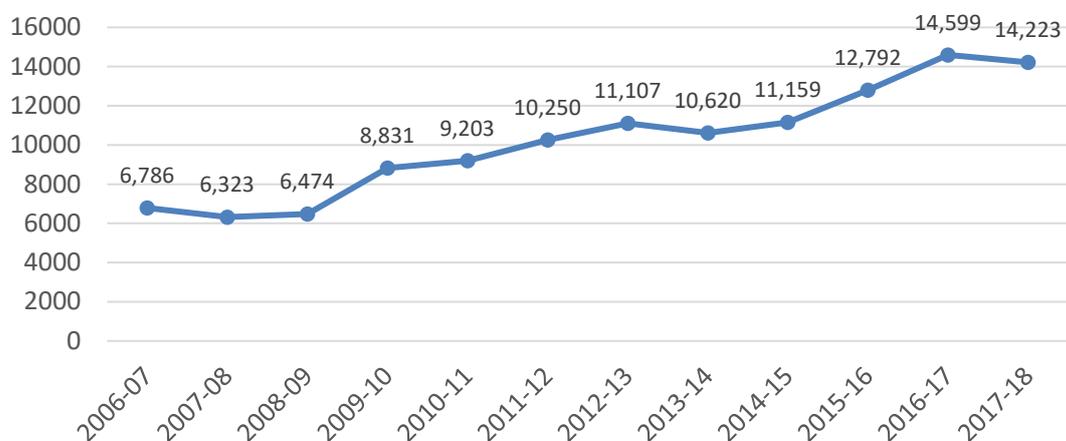


Figure 1: Care Order application numbers from 2006-07 to 2017-18, England.

Source: [Cafcass](#).

Note: figures before 2014-15 were provided by Cafcass upon request

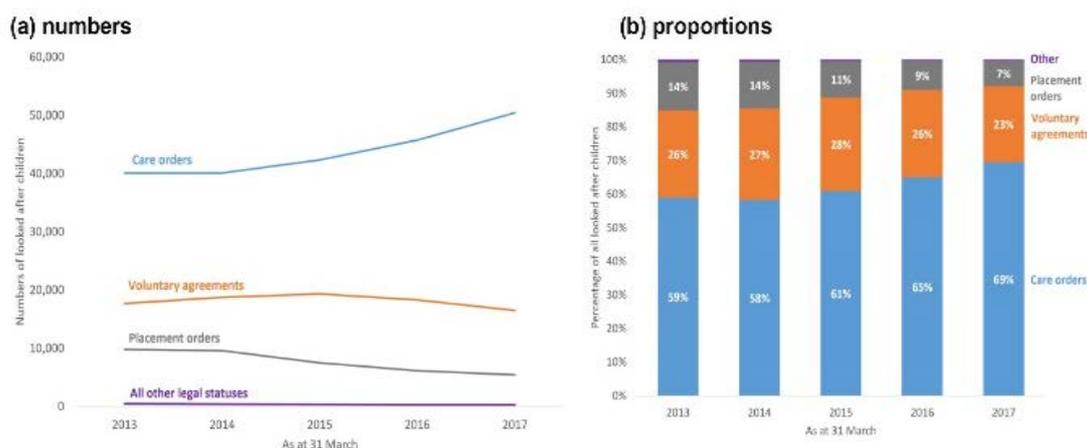


Table 2: Numbers and proportions of looked after children at 31 March, by legal status (England, 2013 – 2017).

Source: [DfE](#), Children looked after in England (Chart 4)

Region	2014-15	2015-16	2016-17
East Midlands	10.0	11.0	11.7
West Midlands	10.2	10.3	12.1
East of England	8.0	9.1	10.3
Yorkshire and The Humber	9.9	11.3	13.1
North East	14.5	18.9	24.7
North West	13.1	13.9	15.8
Inner London	9.7	10.0	13.1
Outer London	7.3	8.0	9.7
South East	7.3	9.4	9.8
South West	9.8	12.2	11.5

Table 3: Rates of care proceedings per 10,000 in the 8 regions of Local Family Justice Board areas over the last 5 years.

Source: [Cafcass](#), ONS.

Note: Regional rates have been calculated using the latest LA Cafcass figures and ONS mid-year population estimates from [DfE](#) looked after statistics summed to the regional level. Population figures used may differ from those used by Cafcass.

FAMILIES IN COURT PROCEEDINGS

Many parents in the study experienced entrenched and serious violence, drug and alcohol addiction or sexual abuse, often over many years and mostly in the context of poverty and deprivation. Similar social circumstances had often been a feature of their own childhoods and indeed across generations. A high proportion of parents also had enduring mental ill health problems and/or learning disabilities. A significant number of fathers or male partners were assessed as “a risk of sexual abuse to children”. A significant number of mothers were assessed as “unable to prioritise their children over their partner” usually in relation to domestic abuse.

In the majority of cases reviewed, the health and social problems experienced by parents led their children, sometimes to experience excessive and continuous domestic chaos and at worst, exposed them to very serious child abuse and neglect. In other cases, the degree of harm, or likely harm, to a child was less obvious. Rarely was there one single cause for concern. New partners often made a difference, sometimes as a catalyst for substantial and much needed change within the family; sometimes new partners were so high risk, that their continued presence meant removal of the children was inevitable. A high proportion of parents had had previous children removed.

The study found that the difficulties facing families in court proceedings today were very similar to 5 years ago. There was little evidence in the records of greater *complexity* of need. Indeed, members of the review team who had been in practice for many years recognised the continuum of needs as the same as 20 years ago. Certainly all the families whose records we reviewed were in need of help from the State.

FROM CLEAR BLUE WATER TO A THIN RED LINE

For families subject to care proceedings, the standard of care and protection they give to a child has to be substantially lower than the standard of care and protection tolerated within society in general. As Judge Hedley said in 2007,

“Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate, and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done”. (Judge Hedley; Re L 2007).

The safeguarding system in England operates a triage system reflective of the fact that there are degrees of harm, and degrees of risk. The system is geared towards only the *most serious* situations reaching the threshold for public care proceedings. For the family justice system to work effectively and fairly, there should be *clear blue water* between those children who are brought into public care proceedings, and other local children who have suffered significant harm, or who are at risk of being so.

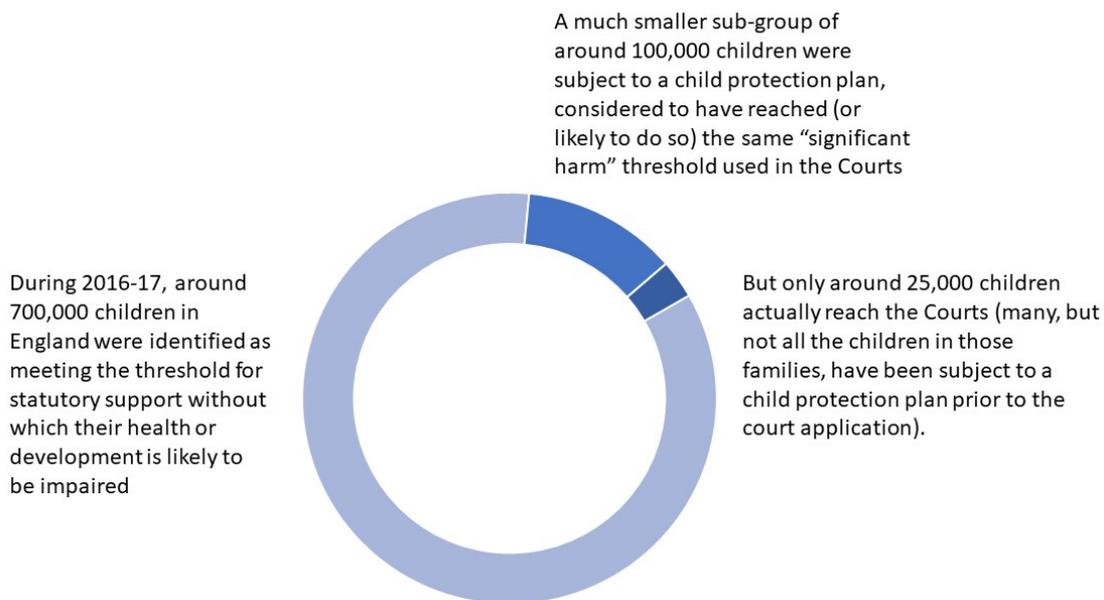


Figure 4: Numbers of children in England subject to Child in Need plans, Child Protection Plans, and Care Order applications in 2016-17.
Sources: [DfE](#), Characteristics of children in need: 2016 to 2017, Tables A1 and D1 (Child in Need and Child Protection plans); Ministry of Justice, Family Court Statistics, [Family Court Tables \(Jan to Mar 2018\)](#) – Table 3 (Care Order applications)

When a child has suffered significant harm, or is likely to, but where concerns are not so serious as to warrant removal of a child from their parents, the Court can make a Supervision Order. The increase in Supervision Orders in England over the period the study covered is very striking. Whilst the proportion has not changed, the *volume* of children and families being brought into care proceedings, only to remain together or be reunited at the end, has increased. Local authorities are making an increasing number of applications for Supervision Orders but they are also making an increasing number of applications for Care Orders to remove children, but which result in the Courts making Supervision Orders. This must raise the question as to whether families subject to these *thin, red line decisions*, because the decision to remove a child from his or her parents could go *either way*, should be diverted away from Court in the first place.

LA Supervision or Assessment	2011	2012	2013	2014	2015	2016	2017
Supervision order	1,236	1,222	1,170	1,231	1,519	2,149	2,597

Table 5: Number of children involved in Supervision Order applications made in Family courts in England and Wales, annually 2011 – 2017.
Source: Ministry of Justice, [Family Court Tables \(Jan to Mar 2018\)](#)- Table 3

LA Supervision or Assessment	2011	2012	2013	2014	2015	2016	2017
Supervision order	5,135	6,681	7,709	6,550	7,485	7,695	8,068

Table 6: Number of children involved in Supervision Orders made in Family courts in England and Wales, by type of order, annually 2011 – 2017.
Source: Ministry of Justice, [Family Court Tables \(Jan to Mar 2018\)](#)- Table 4

In the study, 34% of all disposals resulted in Supervision Orders. Some social workers said that it often takes the symbolism of the Court to strike a strong enough chord with parents and the extended family to accept the seriousness of the situation. However, with such a significant proportion of proceedings in England ending in Supervision Orders and with a wide variance between authorities (from 8% to 36%), the public purse pays a heavy price for taking this group of families into court only for children to remain at home anyway; but families and their children pay the heaviest price of all.

THE CONTEXT FOR THIN RED LINE DECISIONS

In the last few years there has been a much greater and deliberate national focus on: - the early protection of the child, a stronger focus on lower level parenting concerns as signs of cumulative neglect with a risk of future harm, a greater sense of urgency to act and secure permanence without delay, and the need to act on the side of safety. This collective endeavour across children's services, heavily influenced by government policy and inspection frameworks, has created a *different* context in which social workers are making decisions about initiating care proceedings. In line with these expectations, the study found an increasing emphasis on predicting what *might* happen, rather than what *has* happened, and a *lower* (but inconsistent) tolerance of diverse standards of parenting. Replicated across England, it seems almost inevitable, if not intentional, that the rate of applications to Court would rise significantly.

Interview data suggest that social workers were clearly focused on the child, so much so in fact that it was a point of frequent frustration for social workers that the Courts were described as not always being on the same page, describing the Courts as "pro family", "pro Dad", "as if we are working to a Parent Act rather than the Children Act", in which "parents (are) given any opportunity". The study found too that there was far less tolerance of multiple attempts at generating adequate change. Families were given chances to change, but the sentiment was clear: the moral imperative was to safeguard the child, describing much less "messaging about" focusing on "hopeless strategies" to keep families together, commenting too that the expectation "to do everything and anything" to keep families together had really changed.

Many would argue that this earlier intervention and removal, and lower level tolerance, is *as it should be* – a standard of care and protection fit for the 21st Century. But with a higher bar set, the family justice system must remain a fair one.

Trust & confidence

One of the most striking findings of the study was the extent to which families were *expected* to have open and honest relationships with social workers, and that an absence of this trust, was taken as an indicator of increased risk to the child. Parents were described as "not open and honest", having "deliberately misled the authority" or "withheld information", were "being collusive" or "failing to inform", "attempting to manipulate", "failing to be proactive", "breaching working agreements", "lying to professionals and telling the children to lie".

Without trust and confidence that the family is able to work in partnership with the local authority, the social worker may have little choice but to consider care proceedings as the best way of protecting a child. For the system to be a fair one, however, there must be sufficient social work skill and organisational capacity to effectively build those relationships of trust and confidence in the first place.

Availability of effective services

The ability to engage parents sufficiently, and to build relationships of trust is a precursor for change; but so is the suitability, efficacy and availability of the services on offer. Without services sophisticated enough to support both children *and* parents within families close to the thin red line, the study suggests that more families eventually cross it.

The study found that the services available to support families are not always sufficiently tailored to meet the needs of families facing court. Whilst some social workers lamented the historical loss of services such as family wellbeing hubs, youth services and parenting groups and others referenced the need for services used for “propping up” families and “old fashioned support”, it is difficult to see how these types of services could effectively tackle the complexity of need and risk facing the majority of children and parents in the study. Others commented that sometimes referring to services such as domestic abuse perpetrator or addiction programmes had become more of a tick box exercise rather than having confidence that this was the right service or could realistically help. Whilst many parents had specific social and health needs and may have needed for example, treatment for addiction, or therapeutic interventions to help with previous trauma, or to help reduce violent behaviour, there were few examples of working with the family *as a whole*.

A national focus over the last 10 years on lower level early help services for lower level social problems, with the honourable aim of trying to stop the trajectory of families into high level need further down the line, has meant too little time, focus or resource has been spent on developing services sophisticated enough to meet the needs of the families who do find themselves at the sharp end of the family justice system. By design, services are often neither a) sophisticated enough to tackle the entrenched violence, addiction or family dysfunction (often across generations) which characterises many family problems which result in care proceedings; nor b) designed to support parents with learning disability or enduring mental ill health, very often present in families who face care proceedings. The study found that it is not that these types of services are no longer commissioned; they rarely existed in the first place. For this high need group of families, we need to urgently identify and test promising, or new, approaches to support families and secure lasting change.

In 2017 the Early Intervention Foundation concluded in a study of the use of evidence in child protection services in England, that there is “a significant gap between ‘what is known to be effective’ from peer-reviewed studies and what is actually delivered in local child protection systems”¹. In their forthcoming publication “Realising the potential of early intervention” (2018, www.EIF.org.uk), EIF emphasise the importance of careful matching with well-assessed needs of children and families and links some of the recent disappointment about the impact of early help strategies, to implementation flaws: low intensity parenting advice and family support for example, is unlikely to make much difference for highly vulnerable children and families.

As well as investing in community based universal and more targeted family welfare services families for lower level need, families that face court must have access to sufficient and effective services for high level need and risk. Without these services, social workers have few options but to initiate proceedings; the thin red line is crossed and families find themselves on a *conveyer belt* into court.

¹ Early Intervention Foundation, Improving the Effectiveness of the Child Protection System, June 2017

EXTENDED FAMILY AS A SOURCE OF SUPPORT

In the study, 25% of the children remained within their own family networks *at the end of proceedings*. This concurs with national data showing 26% of children return to family members².

Historically and in line with the principles of the Children Act 1989, care arrangements within family networks would often be facilitated by the local authority when parents agreed that they were not in a position to look after their children (of course many families did and still do make their own private family arrangements). Public proceedings were often avoided altogether. Local authorities saw this kind of facilitation as their core business and in line with the practice of partnership with parents and the No Order principle enshrined within the Children Act 1989.

Concern has been raised for many years about children languishing in inappropriate care arrangements often facing sequential disruption and even further neglect and abuse. Most recently concerns have been raised about the possible inappropriate use of section 20 voluntary accommodation for care arrangements (both because there has not always been true consent of parents and there is not consensus that permanence can be properly established for a child through voluntary arrangements).

These growing concerns plus increasing political, public and regulatory scrutiny of children's social care and the care arrangements provided for very vulnerable children, has led to a different (if not deliberate) expectation: that court is frequently seen as the *only* natural home for negotiations between family and state, with families legally represented and no stone left unturned.

Local authority negotiations with families about alternative care arrangements can be messy, the finer detail sometimes left to chance, and inconsistent levels of financial and other support for families between and within local authorities frequently viewed as unfair. By addressing these important concerns, resurrecting the principles of No Order and partnership with parents, and viewing long term voluntary accommodation and shared care (between extended family and state) as a valuable alternative to Court, the number of applications to court might be significantly reduced.

THE POINT OF HOPE

With 20% of applications leading to return home on Supervision Orders, and a further 26% of applications leading to return home to extended family, the system must be sure that all applications to Court are indeed, necessary.

The pre-proceedings period offers a final and vital opportunity to explore with (extended) families how best to resolve concerns about the care and protection of children, without going to Court. This is a formal and most serious process, and is designed to offer absolute clarity to families about what needs to change to avoid proceedings. For all but the most dangerous situations in which emergency procedures apply, the pre proceedings period is *the point of hope*: every family gets this final chance.

Whilst this pre proceedings period is meant to focus on trying to *prevent* care proceedings, some social workers in the study said that the original purpose is

² Figure provided by Cafcass upon request

somewhat lost and it is now used as a process primarily to *prepare* for court proceedings. Once subject to a pre proceedings plan, families and practitioners alike find it very difficult to get off what sometimes turns out to be, a conveyor belt into the court arena. It was perceived by some practitioners as a compliance tool with a focus on the ability and willingness of parents to follow the plan, with often too little reflection about progress in addressing parenting concerns, whether the plan was the right plan and whether a different plan might work better. Social workers also said they felt that changing the plan half way through could be perceived as a weakness of the local authority position later in the Court.

The pre-proceedings period should be resurrected as the key point of hope at which local authorities can work with (extended) families to develop long term, sustainable plans for the children of concern. Particularly in circumstances where the decision to go to Court would be crossing the thin red line, every effort should be made to avoid the truly burdensome and costly action of initiating court proceedings.

RECOMMENDATIONS TO GOVERNMENT

1. The principles of the Children Act 1989: the primacy of family, the principle of partnership with parents, the use of voluntary accommodation and the concept of No Order, should be reasserted *in policy* by Government, upheld *in practice* by local authorities and examined for impact *through inspection*, by the Regulator.
2. The use of voluntary accommodation should be reclaimed as a legitimate and respected support service to families for the long term care of children. Shared care should be developed and incentivised, so that where safety allows, parents and extended family, in partnership with the State, are fully supported to look after children within their own family networks.
3. A national programme of work should begin to test if and how we can divert away from court proceedings, those families who have the greatest chances of staying successfully together for the long term. Building the evidence base more broadly, about most effective support for families, to be provided at the earliest point possible, is essential. It is equally imperative that this does not distract from recognising families where children are being seriously harmed, and where the prospect of sufficient change is unlikely.
4. A targeted improvement fund should be made available to local authorities who have yet to develop their practice system sufficiently well, and in line with best evidence, for social work practice to be consistently good. This is a pre-condition for more effective support and protection of high risk families and their children.
5. A national learning programme should be developed, to help calibrate senior social work leaders' decision making within and between local authorities across England. There is currently no systematic mechanism through which those who make final decisions about care proceedings can test their professional judgement against those of their peers, outside of their own authority.
6. The pre-proceedings period should be resurrected as the key point of hope at which local authorities can work with (extended) families to develop long term, sustainable plans for children of concern. Particular emphasis should be given

to families where the decision to go to Court would be crossing a thin red line – where the decision to remove a child, could go either way. These circumstances, every effort should be made to avoid the truly burdensome and costly action of initiating care proceedings.

7. Finally, great care must be taken not to undermine progress in child protection practice. Where permanence for children can clearly not be secured within family networks or without Court involvement, swift and skilful practice must lead to Court action without delay.

ANNEX A: THE STUDY

This policy briefing highlights the findings from a pilot scoping study of care proceedings in 4 local authorities across England. An exploratory qualitative study was undertaken alongside analysis of national and local data. Case files relating to families subject to proceedings were reviewed. The focus was on professional reasoning and how decisions were justified and explained in the written records. In each of 4 authorities, 10 families in court proceedings were reviewed which were concluded in the courts within the 1st quarter of 2018 to capture current practice in that local area. In addition, in order to explore if and why there had been any significant change in recent years in the rationale behind decisions to go to court, we reviewed a smaller sample of families whose proceedings concluded 5 years ago, in the 4th quarter of 2012 (n=5 in each authority). Families whose story was extreme in some way (for example, involving a child death or with a high public profile), were removed from both 2018 and 2012 cohorts; we wanted to look at routine *patterns in practice*.

The study has been conducted under the academic supervision of Professor Sue White and a team of colleagues at Sheffield University as part of the Crooks Public Service Fellowship. The fieldwork was undertaken between April and July 2018 and the final report completed in September 2018. A small group of senior social workers (n=5), most of whom are still in practice and all who have been involved in child protection practice for many years, formed the core of the review team; on each site visit additional local social workers and social workers from outside the authority joined the team. On two sites, lawyers from the authority participated in at least some of the review. The composition of the review team was a great strength of the study, bringing in different challenges and perspectives at every stage, and with a core group providing a consistent and focused approach to the work. This builds on a growing commitment to sector-led improvement. In addition, the team interviewed social workers on each site to explore what organisational or broader contextual factors may have influenced their decision making.

THE LOCAL AUTHORITIES IN THE STUDY

The authorities chosen are geographically spread across England: the North East, South West, Midlands and South East of England. Each authority is linked into a different regional Local Family Justice Board. All authorities were “Requires Improvement” authorities in steady state. There was a range of deprivation scores, spend on safeguarding services and rates of applications to Court.