



Masson, J. M., Dickens, J., Garside, L. B. E., Bader, K. F., & Young, J. (2019). *Child protection in court: outcomes for children: Executive Summary*. (1 ed.) Bristol: School of Law, University of Bristol.

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EXECUTIVE SUMMARY

Child Protection in Court: Outcomes for Children

**Establishing outcomes of care proceedings for
children before and after care proceedings reform**

(Report of ESRC ES/M008541/1)

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2019

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Executive Summary

The *Outcomes of care proceedings for children before and after care proceedings reform Study* (referred to as the *Outcomes Study*) examined the impact of the PLO reforms introduced in 2013-14, which aimed to speed up decision-making in care proceedings. The study examined the impact on the legal process and the outcomes for the children. It compared the process and the outcomes for two samples of children: S1 had proceedings in 2009-10, before the reforms, and S2, after, in 2014-15. Children's outcomes after care proceedings were compared one year after the end of the proceedings, T1; outcomes for S1 were also examined and compared at T2, 5 years after the proceedings. The reforms and other relevant changes to law and social work between the two samples are discussed in Chapter 2. Further developments, which are relevant for the final discussion and recommendations, are brought together in Chapter 13. The theoretical background to examining social work with children and families, family support and state intervention, decision-making in court proceedings and the relationships between law and social work are explored in Chapter 4.

Method (Chapter 3)

The Study used mixed methods and four distinct data sources (court case files, administrative records, children's social care files and interviews/focus groups with professionals) to examine the operation of the PLO and its impact on children's outcomes by comparing two random samples of care proceedings, brought by 6 local authorities in southern England and Wales *before* (S1, 170 cases with 290 children, issued in 2009-10) and *after* the PLO reforms (S2, 203 cases with 326 children, issued in 2014-15). Qualitative interviews with local authority social work managers and lawyers (56), and two focus groups (FGs) with judges provided further information about decision-making under the PLO.

Deterministic methods were used to link proceedings data for each child with their administrative data contained in the Department for Education's Looked after Children (CLA) and Children in Need (CiN) databases (and the Welsh equivalents) up to 31st March 2016, so that children's care and service journeys after the end of care proceedings could be explored. Match rates of S1 90% and S2 98% were achieved. Subsequent proceedings involving the children from England were identified using the Cafcass e-cms database and summarised in the database.

Children's local authority social care files were the source for information on children's lives and wellbeing after the proceedings, using files of a sub-sample of 118 children (S1 58, S2 60), selected purposively by age and the orders made. Researcher ratings of wellbeing were made based on information at T1 (1 year after the final order in care proceedings) for both samples and at T2 (5 years after the order) for S1. Quantitative data were analysed using SPSS v.23; a project was created in NVivo v.11 to facilitate analysis of the qualitative data.

Findings

Applications (Chapter 5)

All the 6 local authorities had developed clear procedures, involving a local authority lawyer and a service manager, to make decisions about using care proceedings and ensure that alternatives had been thoroughly considered. Scrutiny of applications was closer in 2014 than it had been in 2010 but the focus remained on the needs of the child.

There was little difference between the children and families subject to proceedings in S1 and in S2. Overall, more than half the children subject to proceedings were aged under 5 years. The majority of the cases (63%) concerned only one child but only 29% of the children were 'only children'. Most had siblings who were either subject to proceedings with them or already separated from the parents. Over 70% of the families were white British and over 20% had mixed ethnicity.

Children's care was undermined by many problems in their parents' lives with nearly two-thirds of mothers experiencing domestic abuse and a similar proportion of both mothers and fathers viewed as not co-operating with children's services to improve their care. Despite their difficulties more than half the mothers in S1 and more than a third in S2 demonstrated emotional warmth and around half had some support from their extended family. Almost all families were known to children's services before there was any consideration of care proceedings. Nearly two thirds of children had child protection plans at the time of the application and 8% had previously been subject to care proceedings. The period of active social work before proceedings was shorter for S2 reflecting the increased concern with avoiding drift. Protection and support through s.20 accommodation was common before proceedings were issued. There was evidence of more planning of care proceedings and less use of a crisis response in S2 than in S1.

Diversion from care proceedings-follow up pre-proceedings only cases (Chapter 6)

The study found that seven of 29 'pre-proceedings only' cases in England from the earlier study had subsequently gone into care proceedings, reducing the diversion rate to just over 20%. Others remained 'children in need' and more than a quarter had experienced changes of carer without going through care proceedings (i.e. to kinship carers, s.20 foster care or their other parent). These changes involved private law proceedings for some children and long-term s.20 accommodation for others.

The follow-up shows that whilst care proceedings can be avoided, alternative care and support over the longer term are often necessary.

Court proceedings (Chapter 7)

Our evaluation of the operation of care proceedings after the PLO found effective working amongst key organisations within the family justice system. There was case preparation by local authorities, timely appointment of Cafcass/ Cafcass Cymru children's guardians and robust case management, which controlled the appointment of experts, and reduced the number of hearings and case length, compared with S1. Mean case duration for S2 was 26.62 weeks compared with 53.34 weeks for S1. There was more limited success in ensuring

judicial continuity and completing cases at the IRH, both of which impact on case duration. There were wide variations across the sample in the proportion of cases completed at IRH and in judicial continuity. Time constraints and late presentation of potential relative carers also resulted in very limited time being allowed for some kin assessments; a third of children subject to an SGO in S2 moved to their carer only at the Final Hearing.

Judges, local authority lawyers and social work managers who participated in focus groups or interviews, were generally very positive about the PLO. Judges felt it supported their efforts to keep cases proportional, restrict expert appointments and hear from social workers who knew the family; local authority staff welcomed the greater emphasis on social workers' evidence and more timely decisions for children. Both favoured greater flexibility allowing some cases to take longer and agreed on some of the circumstances where this should be allowed.

Care during proceedings (Chapter 8)

A substantial minority (27.5%) of children were accommodated by the local authority (s.20) before the proceedings were issued, with three-quarters of these children becoming looked after less than 4 months before the application. Although the majority of children subject to care proceedings were in care under ICOs, some (S1 8.7%, S2 14.4%) children remained in s.20 arrangements throughout the proceedings; the relationship between use of s.20 and sample was a statistically significant. All but one local authority reported difficulties in obtaining ICOs with permission to remove the child into care from the courts. Where courts refused the ICO or would not allow removal, children were usually made subject to an ISO. As a consequence, 20% of the sample were not looked after by the local authority during the proceedings; the proportion was larger in S2. Children in S2 who were not looked after were significantly older and their proceedings were shorter than those of children in care during proceedings. Being in care during proceedings was also correlated with the order made at the end of proceedings. Children at home with a parent or relative during proceedings did not necessarily remain there after the final order: some moved to their other parent or a different relative, a few entered care.

Children not looked after care during proceedings are absent from the DfE administrative databases and those subject to s.20 are hidden because they are not separately identified as subject to proceedings. This does not help local authorities to understand children's progression through the different levels of intervention for protection or the interaction of court and local authority decisions. The use of care proceedings and SOs would be clearer if recorded in the CiN database, see sections 14.8 and 14.9 for further discussion.

Court Orders (Chapter 9)

There were marked differences in the proportions of Placement (POs), Special Guardianship (SGOs) and Supervision (SOs) orders between the two samples, with fewer POs, particularly for children 1 year of age and more SGOs and SOs in S2. All types of order were made at the IRH in S2 but 'lower tariff' orders were more common at this stage.

The decision in *Re B-S* impacted on legal advice to local authorities, care plans, Children's Guardians' views, contests and on the orders made. Judges saw it as the reasons for the change in orders; local authority interviewees considered that shorter proceedings were also a factor.

SOs were more commonly used with SGOs than previously, at least in part because of the reduced opportunities for thorough assessment and testing placements before orders were made. Most CAOs (Child Arrangement Orders) were made where children were placed with a parent, not for kin care. Contact orders were rarely made where children were subject to COs (Care Orders) but were made with more than half SGOs and more than a third CAOs.

Care after care proceedings (Chapter 10)

Linking the Study court data with the DfE administrative data made it possible to see what happened to children after the Final Hearing but provided very little information for children who were not in care, particularly more than one year after the order. Plans for reunification or kinship care were implemented by the orders made at the end of care proceedings (SO, CAO/RO or SGO). Most children with adoption plans were adopted; most children with plans for long-term care left care at age 18 years. The end of care proceedings is a key point when children leave care; analysing CLA data by the end of care proceedings produces a very different leaving care curve from one based solely on the duration of care.

Fewer S2 children were placed for adoption; the number of children with adoption plans was lower, particularly so for those aged over 1 year when the PO was made; but they were placed for adoption more quickly and a higher proportion of those with POs were placed within 11 months of the order and overall.

Children in S2 had fewer care placements in the year after the order than those in S1. More S1 children aged under 10 years than over 10 years at the end of proceedings had only one care placement in the 5 years after the proceedings ended. Children placed (or remaining with) parents or relatives were more likely to be placed with a sibling than those in adoptive or foster care. 1 in 6 of those who were placed with, remained with or returned to a parent or relative were separated from all their siblings, compared with more than two-fifths of children placed with unrelated carers.

Further s.31 applications were brought in, almost a third of S1 cases ending in SOs. The proportion in S2 was lower (22%) but over a shorter period, two years, rather than 6 years. Contact disputes were the most common private law applications, and more common where there was a CAO with SO than for other private law orders.

How did the children fare? (Chapter 11)

The analysis of local authority case files for selected cases included a researcher-rating of the children's wellbeing one year after the end of the proceedings (T1) and for the S1 children, 5 years after the final order (T2). Children were grouped according to the arrangement for their care after the order – placement with parents, with family or friends or in local authority care. The analysis identified a range of issues relating to changes in wellbeing over time and challenges facing children, their carers and local authorities.

It was more common for children's wellbeing to decline than improve over time, but the reasons for this are complex and cannot simply be ascribed to the quality of care they were receiving – they may be to do with the child's emerging needs, the impact of previous ill-treatment, family circumstances, disengagement from services, or inadequate services (or any combination of those factors). Overall, the S1 children in foster care appeared to be faring better at T2 than the children with other care arrangements who were still in touch with the local authority. Local authority files contained little or no information on a quarter of the children in the kinship care group 5 years after the end of the proceedings, either because they were no longer receiving services, or because they lived outside the authority.

The case study examples included cannot be taken as representative but illustrate the range of issues for the different groups of children and their carers.

Practice Challenges (Chapter 12)

Regardless of the order and placement, caring and providing help for children who have been through care proceedings is likely to present challenges. Moreover, the legal, policy and organisational frameworks differ for children in parental care, kinship care or public care, and these give carers and local authorities very different powers and responsibilities. The case file analysis showed the challenges of sometimes fraught family relationships, uneasy sibling bonds and restricted or delayed service provision; but there were also examples of warm and beneficial family relationships, positive sibling relationships and responsive and timely services. The boxes below give the key messages in each of those three domains – family dynamics, sibling relationships and service provision. One of the core underlying messages is about the importance of realism in the assessments and planning of local authorities and in the decisions of the courts, regarding the needs of the children and the adults caring for them. A second key message is about the importance of social work practice to support the children and their families, both in securing and coordinating services from other agencies, and in direct face-to-face work.

Messages for practice: family dynamics and contact

- Families can be a major source of support for children and for their parents, and the default position, in law and practice, is to try to work with them to help them provide that support.
- Family dynamics are complex, and all the more so where there have been care proceedings and children are placed with kin. Planning and deciding about continued contact require a holistic assessment of its impacts, both positive and negative.
- Special processes - family group conferences and family network meetings - can be effective ways of promoting family involvement but the essential requirement is committed relationship-based direct practice with children, carers, parents and other kin.
- Parents and other family members have their own needs, wishes and interests, and these may not always be compatible with the best interests of the child. Conflicts and tensions are likely, between any of the parties – between the parents, parents and kinship carers, parents and foster carers, between different parts of the extended family. Clear expectations, suitable support and monitoring are essential.

- Local authorities should be cautious about too quickly leaving contact arrangements down to the family (or indeed, leaving too much of this down to foster carers or kin carers).
- Courts need to be mindful of the ‘mixed messages’ that judgments might sometimes give about contact and possible reunification.
- Skilled social work, and specialist help if necessary, can help parents to build good relationships with their children, even when the children do not live with them, and can help children to understand things better and carers to support them.
- Social workers have to be mindful of the wishes and autonomy of children and young people around family contact, but also aware of their safety and wellbeing.
- Agencies need to support social workers to work in skilful and sensitive ways, in these demanding cases.

Messages for practice: sibling relationships

- Sibling relationships are usually important and beneficial for children, but for those who have been through care proceedings (whether they are now in public care, kinship care, adopted or with their parent/s) it is important to recognise the impact that backgrounds of adversity are likely to have on those relationships; ongoing and skilful support for carers may be necessary.
- Separation of siblings may take place at various points in time. It may occur before children come into care, because of families having made their own decisions about who should look after the children; or at the point of entry to care, perhaps based on the size of the family and the availability of carers at the time; or later, if it becomes apparent that the children’s needs are not compatible in the same placement.
- The CoramBAAF ‘Together or Apart’ guidance is a well-known framework for assessing sibling relationships. Social workers should consider the quality of the relationship, the support that is necessary and available, and the likely consequences of separation.
- Timeliness is crucial: assessments should not be rushed, and it is important to recognise that relationships may change, for better or worse, as time goes on; but equally, undue delay can hinder the chances of the children ever reaching a stable placement.
- Local authorities should plan ahead, in their recruitment of foster carers and prospective adopters, to find suitable placements for sibling pairs or groups.
- Local authorities may not always have legal powers or responsibilities to specify what contact should take place; in these cases, social work skills of discussion and support come to the fore.
- Direct work with the children can have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships (by living in the same placement or by contact arrangements).
- Direct work with the carers, parents and other members of the child’s family may also have a vital part to play in helping them understand and, if/as appropriate, maintain sibling relationships.

Messages for practice: services

- Children who have been through care proceedings are likely to have suffered significant harm from abuse, neglect, and other forms of adversity. One can anticipate high levels of need. They may also have genetic conditions and complex health needs. For younger children, these may become more apparent over time.
- Whoever has care of the children are likely to need ongoing support (whether parents, kinship carers, foster carers or adopters) in a variety of forms. They may need parenting advice and emotional support but also practical help (e.g. with housing, finances, day and respite care, contact arrangements).
- Support always has to be assessed and planned on an individual basis, recognising the legal context and the specific needs, strengths and wishes of the children, their carers and families.
- Local authorities should be cautious about closing cases too soon, although there may be little they can do if families or young people refuse services and there is no court order; but the case file study shows powerfully how needs can develop or re-emerge at any time. There could be a system for regular 'no obligation' checking-in contact, and clear routes for carers and young people to re-refer themselves.
- Services and support are often provided by other agencies, notably health, education, and independent foster care agencies. They too are likely to be under pressures of high demand and limited resources. Local authorities need to ensure good links with these providers, at policy and practice levels; and ensure they have effective processes for commissioning and review of services. In some situations they may need to develop their own parallel or alternative service (as with the CAMHS examples described in Chapter 12).
- Services are under great strain, but there are examples of positive help and good outcomes, sometimes against the odds. Local authorities need to learn from and promote these stories, as they argue for better resourcing.

Recommendations for policy reforms and practice improvements

Further details and discussion of the rationale for these proposals are contained in Chapter 14.

The use of care proceedings

The use of care proceedings should be considered in the light of the following findings:

- Continuing purposeful social work within the pre-proceedings process may achieve as much in terms of protection from risk and improved care as bringing proceedings where children remain at home during the proceedings and become subject to supervision orders at their end.

- Unless there is a good case for removal under an ICO or parents agree to the child being in care, the local authority cannot expect to obtain orders which allow for permanent care or adoption at the end of care proceedings.
- Courts making final orders should consider the parents' history of engaging with services and maintaining improved care before concluding that a supervision order is a proportionate response, particularly where a supervision order has been made for the child in the previous two years.

Care proceedings under the PLO

- Timely decisions in care proceedings make substantial demands on practitioners including judges but are largely positive for children, parents, local authorities and courts. Effective use of the IRH is crucial, changes to listing practices, judicial training and control of expert appointments are required to achieve this.
- Proposals to extend the timetable (other than for individual cases) require clarity about what this aims to achieve.

Care proceedings and using s.20

- Judges need a better understanding of local authority work in children's social care, and about how this interacts with their role hearing care proceedings. The Judicial College should develop a programme which provides a better introduction to the local authority processes and social work approaches to protecting children and supporting families.
- Revaluing s.20 will not be achieved through aggressive criticism of local authority decision-making outside the court arena, nor by further prescriptive guidance on its use. Rather, this requires respect for the division of responsibilities between courts, local authorities, children's guardians and IROs, recognition of its benefits and a commitment to resolving disagreements through discussion.

Support after care proceedings

- Where SGOs are made in care proceedings, distinguishing between children according to whether or not they were looked after before the order was made is indefensible.
- The current system for financial support for kin carers is not fit for purpose. It is too complex, and risks leaving children and their carers in poverty.

Understanding outcomes

- Accurately predicting the longer-term outcomes for individual children is impossible, but trends and patterns can be identified. Awareness of these from judges, children's guardians and local authorities provides a useful frame of reference for

assessing cases and making care plans that are attuned to the likely future needs of the children and their carers.

- Non-blaming and non-defensive discussions between judges, children’s guardians, local authorities and other agencies can be an effective way for all to learn from cases that do not turn out well.

Improving outcomes

- Policymakers, agencies and courts need to appreciate that good outcomes for children cannot be guaranteed; but the chances are increased by realistic assessments that address what the history means for the likely future needs of the children and their families; by timely and effective services from all agencies; by sustained, skilful direct work with the children and families; and by well-supported, committed carers.
- When planning reform in children’s services and the courts, policymakers have to anticipate the likelihood of ‘pendulum swings’, and the dangers of change in one part of the system having unplanned consequences elsewhere.
- The core requirement to improve the outcomes for children is for national government to increase substantially the funding for local authority child and family services, and their partner agencies.

Improving data on family justice

- Linking care proceedings and children’s services data demonstrates how use of local authority services and use of care proceedings interact and allows a deeper understanding of both.
- Both the Department of Education and the Ministry of Justice could enable this improved understanding by making changes to, respectively, the CiN data collection and the Ministry of Justice Datashare. Changes are also required in Welsh government data.
- The Nuffield Family Justice Observatory should build promoting data linkage into its development programme.

Using data to support and improve practice within local authorities

- Local authorities should consider including care proceedings variables in their own analysis of children’s services and the provision of care. Where local authority data systems are being changed, legal departments should adopt the same system as used in children’s social care.
- Patterns of service use comparing cases which enter proceedings and those that do not are valuable for informing service provision and the use of care proceedings. Analysing cohorts of cases based on the date of starting the pre-proceedings process or care proceedings can be used to monitor the impact of policy or practice changes relating to care proceedings.

- Information on patterns of outcomes 1 year after orders were made can enhance family justice professionals' understanding of the effects of care proceedings, including their limitations, and demonstrate the local authority's involvement with children continues after the end of the proceedings.

Transparency in family justice

- Improving data on court process can make family justice more transparent without risking identifying individuals.
- Transparency by numbers can avoid the distortions arising from the selective publication of judgments, provide the basis for clear accounts of court practice and contribute to the reduction in unwarranted differences in process or outcome in different courts.
- The insights from large numbers and broad patterns are further enhanced by in-depth, qualitative analysis of case records and practitioners' accounts of practice. Such a mixed methods approach, as used in this study, offers a nuanced picture of different experiences and perspectives, and insights into the positives and negatives of policy, practice and outcomes.

The Full Report, *Child Protection in Court: Outcomes for Children* is available at <https://bit.ly/2qseLT8>

Three summary Reports:

Reforming Care proceedings 1: Court Outcomes

Reforming Care proceedings 2: Children's Outcomes

Reforming Care proceedings 3: Insights from data linkage

Are available at <https://bit.ly/2BFLBVK>