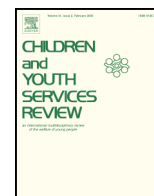


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## Pathways to permanence in England and Norway: A critical analysis of documents and data

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### ABSTRACT

The English language term ‘permanence’ is increasingly used in high income countries as a ‘short-hand’ translation for a complex set of aims around providing stability and family membership for children who need child welfare services and out-of-home care. From a scrutiny of legislative provisions, court judgments, government documents and a public opinion survey on child placement options, the paper draws out similarities and differences in understandings of the place of ‘permanence’ within the child welfare discourse in Norway and England. The main differences are that in England the components of permanence are explicitly set out in legislation, statutory guidance and advisory documents whilst in Norway the terms ‘stability’ and ‘continuity’ are used in a more limited number of policy documents in the context of a wide array of services available for children and families. The paper then draws on these sources, and on administrative data on children in care, to tease out possible explanations for the similarities and differences identified. We hypothesise that both long-standing policies and recent changes can be explained by differences in public and political understandings of child welfare and the balance between universal services and those targeted on parents and children identified as vulnerable and in need of specialist services.

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### 1. Introduction

Child welfare policy makers and practitioners in most high income countries increasingly share the view that an important aim for children who need out-of-home care and are unable to return to their birth parent/s is for them to become members of alternative families (Fernandez & Barth, 2010; Gilbert, Parton, & Skivenes, 2011; Petrie, Boddy, Cameron, Wigfall, & Simon, 2006). Attitudes differ, however, with respect to how they should be enabled to retain meaningful links with their birth families, and to the range of ‘permanence options’ that should be available. Taking a lead from the USA (Maluccio, Fein, & Olmstead, 1986; Rowe & Lambert, 1973), in all four UK nations the resultant permanence policies and practices to achieve a sense of permanence for children and their families have been part of the child welfare discourse since the 1980s. In Norway, ‘stability’ was an aim of the 1992 Child Welfare Act, but permanence outside the birth family was less evident in policy statements there until the early 2000s. Although still having much in common with the other Nordic countries, it has recently adopted policies and entered a discourse on permanence that bring it

closer to the UK and USA and slightly distance it from the other Nordic countries. In this paper we examine the reasoning behind permanence policies and their manifestation in current legislation and recent policy statements in England and Norway, and explore some evidence of public opinion about permanency options for children in care. Judicial decisions are touched on but will be explored in detail in a subsequent paper.

England and Norway are selected because the child welfare legislation of each is closely based on the UNHCR and each has its own version of a ‘needs based’ welfare state. They make for an interesting comparison because there are differences as well as similarities in the way in which each country has sought to operationalize the principles enshrined in the Convention. The differences between Nordic countries and UK nations are often pointed to, especially with respect to the use of adoption from care as a ‘permanence’ option. However, as we shall show in this paper, a growing emphasis on children’s rights in Norway has led to a degree of questioning of the dominance of the family preservation principles that have traditionally informed policy and practice there. In England there have also been moves towards a more diversified understanding of the alternative routes to permanence for children of different ages and with differing needs, as explored in *The Care Inquiry* (2015). Although other commentators on comparative child welfare policies, including the authors of this paper, have included

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Norway and England in their work (Gilbert et al., 2011; Thoburn, Robinson, & Anderson, 2012) this paper provides a further contribution by exploring 'permanence policies' in more detail.

## 2. Differences and similarities in child welfare systems

In both Norway and England, up-dated legislation around the time of the 1989 UNCRC requires assistance (including out-of-home care) to be provided to vulnerable children and their families. The basic presumption in both countries is that universally available child welfare services, supplemented by a range of specialist 'targeted' social work-led services, should provide assistance and support to prevent more serious harm, and thus prevent the need for out-of-home placements. However, when decision-making and practice on the ground are observed, the two countries have developed different child welfare systems.

In the literature on state welfare provision, Norway along with the other Nordic countries, is representative of a typical 'family service system' (Esping-Andersen, 1990; Gilbert et al., 2011), in that legislation and practice aim to promote a healthy childhood and seek to prevent serious risk of harm through the provision of services to the family and the child, based on the therapeutic idea of people's ability to improve their lifestyle and behavior with the help of early intervention (Gilbert et al., 2011). The threshold for access to family support services in order to assist and support children in their own homes is low. The Norwegian child welfare system is surrounded by a generous welfare state with universal public service provision, in particular available to children and families, including heavily subsidized day care for children age 1–6 years old and a year's paternity or maternity leave (Berrick & Skivenes, 2013).

Although the England and Wales Children Act 1989 also requires services to be provided 'as of right' to children assessed as 'in need' and their families, in practice the English child welfare system has become progressively more restrictive (Gilbert et al., 2009, 2011; Stafford, Parton, Vincent, & Smith, 2011; Thoburn, 2013). This tension between the mandate to provide a range of supportive services to children and their families who are struggling with adversities (most clearly illustrated by the English *Common Assessment Framework* (Department of Health, 2000)) and a high threshold for the provision of social work services has resulted in a more 'child protection' or 'child rescue' orientation of service providers (Parton & Berridge, 2011). Here the emphasis on community solidarity is less in evidence compared to the social democratic model, and the universally available child and family services are less generous.

Despite these differences, there is more overlap between the principles, theoretical approaches and direct practice underpinning the child welfare systems in the two countries than might seem apparent from the comparative literature. Norwegian legislation was influenced by the English Children Act of 1989 (Skivenes, 2002): legislation in both countries stresses the 'best interest' of the child and the paramountcy of the child's wellbeing, family preservation, stability, and safety.

Legislation and policy documents also mention the principles of least intrusion, and of the formal child welfare and statutory social work systems only having the secondary responsibility for children when compared to that of the family (Children Act, 1989; Department for Health, 2000; Skivenes, 2011). Additionally, in each country, as in the majority of welfare systems in high income countries, and in keeping with the principles of the UNCRC, there has been an increased emphasis on children's rights and children's agency (Gilbert et al., 2011). However, when professional and judicial decision-making in individual cases is examined, it can be observed that the emphasis placed on these (sometimes competing) child welfare principles differs (Berrick, Peckover, Pösö, & Skivenes, 2015; Križ & Skivenes, 2014). The scope for interpretation about what course of action will be 'in the child's best interest' leaves space for courts, child welfare practitioners, and indeed whole countries, to determine the balance between these commonly accepted

principles (Skivenes & Pösö, in press). It is argued in this paper that differences in welfare state and child welfare system orientations are to be observed in the way in which permanence policies are understood and acted upon in individual cases in these two countries.

## 3. The 'permanency' framework in Norway and England

In the context of the family service orientation of the Norwegian child welfare system, three principles are prevalent: the first is the child's best interest, the second, which has a high profile, is family preservation, and the third is permanency for the child (Skivenes, 2011). The best interest of the child is a principle that has a strong standing in Norway and has gained more strength with the more child centrist steam of thinking over the past ten years (Skivenes & Søvig, in press). Despite the fact that the principle of family preservation has had a long historical legacy in Norway and remains significant at present, there are not many explicit statements in policy documents about how family preservation is to be balanced with the child's best interest. Permanency, which is the focus of this paper, is another principle that has also had a strong tradition in the Norwegian child welfare system; it is emphasized in the *Child Welfare Act (NCWA), 1992* in the paragraph on the child's best interest. The terms 'stable' and 'continuity' are used and not 'permanence' as favored in UK guidance:

*'When applying the provisions of this chapter, decisive importance shall be attached to finding measures which are in the child's best interests. This includes attaching importance to giving the child stable and good contact with adults and continuity in the care provided. The child shall be given the opportunity to participate and steps shall be taken to facilitate interviews with the child. Children who have been taken into care by the child welfare service may be given the opportunity to be accompanied by a person whom the child particularly trusts. The Ministry may make further regulations regarding participation and regarding the duties and function of persons of trust.'* (the Norwegian *Child Welfare Act, 1992*, Section 4-1).

The interpretation of the permanency principle has traditionally been related to the family preservation principle and therefore has both encouraged in-home services to secure permanency in the original family as well as a strong symbolic emphasis on the importance of reunification for children that are in care (Skivenes, 2002). However, a tension is built into the legislation as there is also a duty to consider the need for stability for children that have stayed in care for some time. The rule of thumb has been that if a child has lived with foster parents for around two years this would be considered as a stability consideration in favor of the child remaining in care (Ofstad & Skar, 2009; cf. also the *NCWA, 1992* section 4-8(3), and 4-21). The majority of children in care are placed in foster homes, many of which are long-term, and children should only be moved if this is unavoidable, or a planned move is agreed to be in their best interests (cf. the *NCWA, 1992*, section 4-17).

In both Norway and England an adoption order can be made with respect to children whose entry to care results from parental abuse or neglect. Such an order permanently severs the legal connection between the birth parents and the child by transferring all parental rights and duties to the adoptive parent/s. Although there may be an agreement about continuing face to face or indirect links between birth family and child (and in England especially a fairly large proportion of adoptions from care are more or less 'open'), once an adoption order has been made, it is in the hands of the adopters as to whether they adhere to such agreements. However, in Norway adoption has traditionally not been much used as a placement option for children in care, and only rarely after the European Court of Human Rights (ECtHR) judgment in 1996 concluded that the Norwegian state had violated article 8 in the Human Right Convention when terminating a mother's parental rights in an adoption case (*Johansen v. Norway, 1996*, appl. no. 17383/90).

Important changes have occurred in both countries from 2005 onwards. In England in the mid-2000s a policy debate on the use of adoptions in the child protection system was initiated by the labour government, and resulted in policy advice to the frontline agencies to give serious consideration to an adoption placement in all cases where a court had concluded that significant harm had occurred or was likely, and it was unlikely that the child could return safely home (Children and Adoption Act, 2002). In Norway, those applying to adopt must have been the child's foster parent and 'have shown themselves fit to bring up the child as their own' (NCWA, 1992 section 4–20(c)). Furthermore, in accordance with the Supreme Court's repeated 'requests' (Skivenes, 2010), the child welfare act was changed in 2010 (section 4–20(a)) so that open adoptions became a possibility. Another change that may have permanence implications is the continuation of child welfare services for children already within the system up till age 23 (cf. NCWA, section 1–3), and this may involve their remaining with their foster families.

In England, the main legislative principles are quite similar to the Norwegian system. The first permanence option has to be for the child experiencing difficulties to remain with or return to their birth parents, and if that is not possible, to be enabled to live with the extended family. According to the Children Act 1989, it is the duty of local authorities:

*'to safeguard and promote the welfare of children within their area who are in need; and so far as it is consistent with that duty, to promote the up-bringing of such children by their families, by providing a range and level of services appropriate to those children's needs.'*

This mandate is balanced by strong powers in the 1989 Children Act, further strengthened by the Adoption and Children Act 2002, to remove maltreated children from the care of their parents. If safe and stable reunification with a parent proves unachievable or not in the child's interest, social services agencies, if necessary backed by a court order, are empowered to place them with a permanent alternative family, including through adoption with or without parental consent.

Statutory regulations and guidance in England are more specific about the requirement to provide permanence for children in care than is the case in Norway. The care planning guidance accompanying the 1989 Children Act was revised in 2010 to further emphasize the right of each child in care to have a permanence plan:

*'Permanence is the framework of emotional permanence (attachment), physical permanence (stability) and legal permanence (the carer has parental responsibility for the child) which gives a child a sense of security, continuity, commitment and identity. The objective of planning for permanence is therefore to ensure that children have a secure, stable and loving family to support them through childhood and beyond. [...] Permanence provides an underpinning framework for all social work with children and families from family support through to adoption.'* (p. 10).

'Legal permanence' (i.e. leaving the formal care system via adoption, guardianship or the repeal of a care order) was a key part of this 2010 definition. The permanence options listed, with the first two being the preferred options (as required by the Children and Young Persons Act, 2008), were:

1. return to a birth parent who has been assessed as able to meet the child's short and long term needs;
2. 'family and friends' care, particularly where such care can be supported by a legal order such as a residence order, special guardianship order or, in a few cases, adoption.

If these were not possible, the other permanence options listed were (in no order of priority and to be decided in the light of the assessed needs of each child):

- 'long term foster care where attachments have been formed and it has been agreed through the care planning and review process that this is where the child or young person will remain until adulthood'. Where appropriate some foster children remain with their foster parents but leave formal state care when the court makes a residence order or special guardianship order;
- the child is placed with an alternative long term foster family not previously known to the child;
- adoption by a current foster carer or (more often) by a family not previously known to the child and recruited, assessed and matched with the particular child by an approved adoption agency.

*'The planning process, informed by multi-agency contributions, will identify which option is most likely to meet the needs of the individual child and take account of his/her wishes and feelings. The child's care plan will set out details of this plan and the arrangements for implementing it.'* (Department for Education, 2010, p.11).

In 2015 the England government made a significant change in the planning guidance for securing permanence for children in out-of-home care. The new guidance seeks to improve stability for children who leave care by being reunited with parents and by improving the status, security and stability of long term foster care. After consulting widely, and in recognition of the evidence that more children are placed from care with long term foster families than for adoption, new Guidance was issued leaving out the word 'legal' from the definition of permanence.

*'Permanence is the long term plan for the child's upbringing and provides an underpinning framework for all social work with children and their families from family support through to adoption. The objective of planning for permanence is therefore to ensure that children have a secure, stable and loving family to support them through childhood and beyond and to give them a sense of security, continuity, commitment, identity and belonging.'* (Department for Education, 2015).

Also of relevance are the 'staying put' clauses in the Children and Families Act, 2014, which provide for, and encourage, young people to remain with their foster families beyond the age of 18 - an opportunity not as yet available for young people leaving residential care on reaching the age of 18. Funding for foster parents to continue to care for care-leaving young adults comes from local government agencies (though most pay at a lower rate than for foster carers of under 18, an young person in employment is expected to contribute).

It can be seen from the published documentation, therefore, that, although the policy platforms for England and Norway are similar, there are clear differences in how detailed legislation and policy on permanence for children are. In essence, in England the concept of permanence is expanded into a range of different statutory and advisory measures whilst in Norway the terms 'stability' and 'continuity' are used in official documentation, but with a comprehensive range of measures and services available in practice to secure permanence for children and their parents living in difficult circumstances and needing child welfare service provisions.

#### **4. Which children in care may need permanence away from the birth family?**

In order to better understand similarities and differences in policy and practice with respect to long term planning for children who may need out-of-home care, and specifically for children who are unable to return to parents, it is first necessary to analyze the data on children in care on a given date and children entering care during a given year in England and Norway. Available administrative data (although their provision in different formats in the two countries presents some



difficulties) are used to assist a consideration of whether any differences can be related to the differences in public and professional opinion about the purposes of out-of-home care.

Table 1 shows that similar proportions of Norwegian and English children were receiving a social work service at the end of 2013. However, in keeping with the Norwegian family service orientation, a Norwegian child, would be more likely than an English child to have had access to both a range of universal family support services before being referred to a statutory social work department, as well as a range of child welfare services after being referred. A study of 109 children aged between 6 and 12 years placed in out of home care found that they had received 3 years of family support services (Christiansen & Anderssen, 2010). Consequently, the Norwegian child coming into the formal system may be less likely to have the sort of problems that can be alleviated by in home family support services (which will already have been made available). This may partially explain why, in 2013, a Norwegian child entering the child welfare system was more likely than an English child to be receiving that service through a formal (court sanctioned) out-of-home care placement. The Norwegian system not only has a lower threshold for providing generally available family support services, it also has a lower threshold for the provision of an out-of-home care placement (Križ & Skivenes, 2013; Skivenes & Stenberg, 2013; Skivenes & Skramstad, 2015; Skivenes & Tefre, 2012). These factors contribute to an explanation of the higher likelihood of a Norwegian child experiencing such a placement (both via a court mandate or voluntary intervention) than in England. Table 1 shows that, although absolute numbers are still not large, an English child is 10 times more likely to be placed for adoption than a Norwegian child.

These differences are reflected in the different profiles of the children entering care, which impact on the ways in which each country seeks to achieve the benefits of permanence for those who cannot return safely to a parent. In Fig. 1 the Norwegian entrances to care for a six years period is displayed (data are not provided in this way by the

England statistics authority). As with other Nordic countries with similar welfare platforms, a much smaller proportion of care entrants is under the age of 12 months than is the case in England, although, as indicated by Fig. 1 the rate per 1000 children entering care through the County Boards in Norway in the youngest age group rose to a greater extent than for the other age groups. Between 2008 and 2012 the rate per 1000 entering care in the 0–2 year age group rose from just over 1 per 1000 to 2 per 1000, before dropping slightly in 2014. In contrast, though age groups reported on are not exactly comparable, in England the rate of children aged less than 12 months entering care voluntarily or via a Court order was 7.3 per 1000 in 2013 (n = 6170). These data show that, over the age of 5, rates entering care in the different age groups in the two countries are broadly similar.

If we consider those in (voluntary and court-ordered) care on a given date, (Table 2), the proportions in the different age groups at any one time for which stable care plans are needed are not very different. In Norway 35% were aged between 6 and 12 and 47% were aged 13 to 17. In England 19% were aged between 5 and 9 and 56% were aged 10 or over – that is, in each country more than eight out of ten children in care at any one time are aged 5 or older.

Given the differences in numbers entering care when under 12 months in the two countries one obvious, at least partial, explanation for the higher 'in care' rate in Norway is directly related to permanence policies. In all high-income countries, the majority of those wishing to start or extend their family via adoption express a preference for adopting young children. As a consequence, the majority of those adopted in England had not yet had their first birthday when they came into care, and were under the age of two at the time of placement with their adoptive family. So, leaving aside government policies or professional practices, it is therefore unsurprising that larger numbers of English children leave care via adoption than is the case in Norway where fewer children enter care when under the age of 2. Young children entering care in England are likely to leave care quickly via adoption, whereas similar children in Norway, who cannot return safely to birth parents, are likely to remain in care for many years, cumulatively adding to the total. Furthermore, a larger proportion enter care in Norway when already of school age and it is more likely that they will have put down roots within their extended families, communities and peer groups which the young people themselves will not be willing to give up. In addition these young persons may also be in need of a range of services that makes it less attractive for foster parents to leave the child welfare system and become adoptive parents.

## 5. Public opinion on the acceptability of different placement options

Politicians are more likely than child welfare professionals to be influenced by public opinion. In England, the generally negative views about care articulated by large sections of the media, together with highly visible campaigns to recruit adopters for children in care, have resulted in strong public support for adoption from care of maltreated children, even if the wishes of parents have to be over-ruled to achieve this. Evidence that there is public support for adoption in Norway and England, is to be found in the results of a recent cross national survey (Skivenes & Thoburn, in preparations). A representative sample of the public in England, Finland, Norway and the USA (California) was asked in the autumn of 2014 to respond to a case scenario involving a two year old child who had been taken into care at the age of 10 months following repeated episodes of neglect and abuse, and lived with his foster carers for around 18 months. The majority of respondents in each country backed the child's right to stable care to be achieved via adoption. 79% of English respondents and 61% of Norwegian respondents chose the adoption option rather than the long-term foster care option. The greater degree of acceptance of adoption amongst members of the public in England may also be linked to high profile media stories about professional system failures linked to the deaths of children at the hands of their parents, and also to there being more media coverage

**Table 1**

Rates per 1000 children (0–18) receiving a 'targeted' social work service in the community or in out-of-home and % in different placement types.

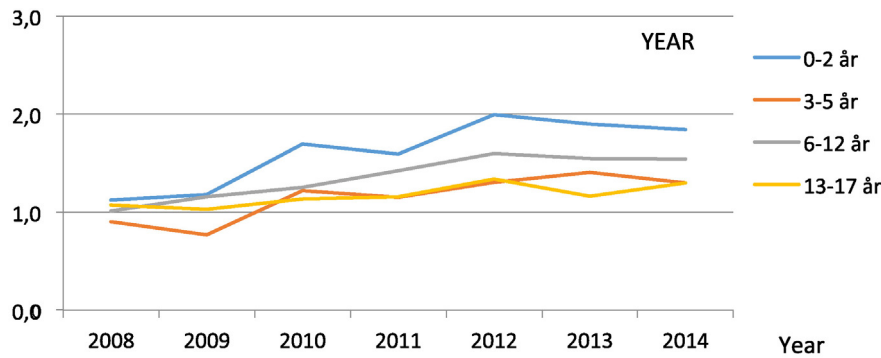
Sources: Statistics Norway, 2012; Skivenes and Søvig (2016); Department for Education: Children looked after by local authorities in England, including adoption, 2014.

	Norway 2012–13	England 2012–13
Rate per 1000 children with identified needs receiving social work/social care services (including in parental and out-of-home care) end of year 2013	29.7	33.1
Children in out of home care end of year, number and rate per 1000 children	11,404 10.0	68,060 5.8
Children starting an out-of-home care episode during year (N and rate per 1000)	<sup>a</sup>	28,970 2.5
Children with a formal court-ordered care decision, end of year, per 1000 children	7.2	4.2
Children in out of home care without a formal care order decision, end of year, per 1000 children	2.9	1.7
Adoptions of children in the child welfare system, N = children (in brackets, rate per 1000)	36 (0.03 per 10,000)	4010 (3 per 10,000)
% of children in care placed with an adoptive family prior to legal adoption <sup>b</sup>	–	4%
% in care placed with a foster family (in brackets % in care placed with a kinship foster family)	72% (17%)	74% (11%)
% placed in a children's home or other group care setting including hostels, and in 'emergency shelter homes' <sup>c</sup>	28%	12%

<sup>a</sup> Comparable data for all entrants not available. In Norway data on entrants to care are only recorded with respect to those entering via a Court order so no comparable data are available.

<sup>b</sup> Not available for Norway but less than 1%.

<sup>c</sup> In England 5% were living with a parent but still under a Care Order. Others were in independent living, in custody as offenders, or missing from their care placement. In Norway, most young offenders are within the child welfare system and likely to be in a group care placement.



Source: The Norwegian Directorate for Children, Youth and Family Affairs. År=years.

Fig. 1. Norwegian entrances to care by decision in the county board. 2008–2014. Per 1000 children within age group (not including 'voluntary' admissions). Source: The Norwegian Directorate for Children, Youth and Family Affairs. År = years.

in England than Norway of adoption as a placement of choice for children in care. This usually presents a positive picture since it is often aimed at recruiting adopters.

## 6. The influence on permanence policies of judicial thinking and court decisions

Permanence policies in the two countries may also have become closer together following a series of court cases and developing jurisprudence in national and the European Courts, tapping into the relationship and power balance between law and politics. We are seemingly witnessing an influential voice from the courts in this area of politics. The reluctance in Norway in the last decades to use adoption as a child welfare measure to secure permanence for children in care may in particular be due to the judiciary. As noted above, Norway has an ECtHR judgment in an adoption case from 1996, stating that Norway violated article 8 on the mother's and child's right to respect for their family life. The Supreme Court of Norway has repeatedly mentioned this in their decision making (Skivenes, 2010), and the expressed concern for the court is that termination of parental rights leaves the birth parent powerless and thus without any (legal) means to insist on contact with the child. This has led the Supreme Court of Norway to suggest a change in legislation towards open adoptions, and possibly as a result of this, in 2010 a new section 20a was made in the NCWA. Furthermore, a 2007 Norwegian Supreme Court judgment encouraged a greater use of adoption for children in care, resting on a strong argument for children's rights and interests. In this adoption case the child's right to permanency through adoption was prioritised over the child's and parents' Article 8 rights to family life including parents' continuing legal links with their child in care. This ruling was heard at the ECtHR, and the Norwegian court decision was proven sound (Aune v. Norway, 2010). However, the Supreme Courts of Norway's judicial decisions are not all in the same direction. In a recent judgment of January 30th, 2015, an adoption from care was sanctioned, whereas in a decision of Oct. 12th, 2015, biological ties were again emphasized. This case concerned a birth father who had never been living with the child and had supervised contact

only four times a year who was opposing the making of an adoption order. The court ruled that the child had a strong need for permanency and should not be moved from her placement in care, but, contrary to the 2007 case, that adoption was not considered in the child's best interest (Supreme Court of Norway HR-2015-2041-A., case no. 2015/824, 2016).

Differential interpretations of the 'best interest' principle are also being played out in English High Court and European Court judgments. The government in England continues its drive to increase the numbers leaving care via adoption alongside judicial controversies on how the best interests principle and Article 8 rights should be interpreted. In a European Court of Human Rights judgment, *R. and H. v. United Kingdom* (2011), on a case involving adoption from care and possible human rights violation of respect of family life, the court did not find reason to criticize the English authorities for placing the child for adoption. The considerations that the ECtHR judgment emphasized on balancing parental rights, children's rights and article 8 of the EHRC, were:

*'As to the first submission, it is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that she be placed permanently in a new family. Article 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents ... Equally, the Court has observed that, when a considerable period of time has passed since a child was originally taken into public care, the interest of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited ...'*(para 88).

Then on the other hand, in a very detailed 2015 published judgment from the England and Wales Court of Appeal Sir James Munby, President of the Family Division, summarized the recent judgments and restated that non-consensual adoption is only permissible if less legally intrusive alternatives are not able to meet the child's needs. He cites Baroness Hale of Richmond: *'...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where*

Table 2

Proportions in care in the different age groups<sup>a</sup> at year end 2013<sup>b</sup> (ages in brackets).

Sources: Statistics Norway, 2015. National Statistics: Children look after in England, including adoption, 2014, Department for Education.

	Infants	Pre-school	Middle childhood	Middle childhood/young teens	Adolescents
England	6% (under 1)	18% (1–4)	19% (5–9)	36% (10–15)	20% (16 and over)
Norway	18% (0–5)		35% (6–12)	47% (13–17)	

<sup>a</sup> The different age groups for reporting make exact comparisons difficult.

<sup>b</sup> Statistics from England based on the year ending 31 March 2014.

motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do.' (re B (A Child) (Care Proceedings: Threshold Criteria) (2013) UKSC 33, [2013] 1 WLR 1911, [2013] 2 FLR 1075 para 198).

The controversies on adoption in England have been brought forward by a series of publicised individual cases when parents have been found at the end of lengthy court cases not to have maltreated their child (see for example, article in *The Guardian*, 2009; Turner & Fenn, 2015), only to find that the child had already been adopted and their links with them irrevocably severed. This has coincided with concern in EU institutions about the UK practice of placing children in care for adoption without parental consent following high profile ECtHR cases. This has led to the Citizen's Rights and Constitutional Affairs Directorate of the European Parliament setting up the Petit Committee to look into non-consensual adoption.<sup>1</sup>

## 7. Discussion

Differences in policy and practice in England and Norway suggest several reasons that may help to explain and shed light on differences but also changes in the child welfare services, and especially the 'permanence policies' and out of home placement services, in the two countries.

### 7.1. Political and professional attitudes towards the potential of the care system to have positive outcomes

In both countries, a factor unrelated to achieving good child welfare outcomes, is the drive to reduce public expenditure. Caring for children away from home, especially troubled teenagers placed in residential care, is extremely expensive and one should anticipate much attention being paid to how to reduce costs without any noticeable drop in quality. One strategy in many countries is evident in the increasing outsourcing to charitable sector or private companies of the provision of residential care (Gilbert et al., 2011) and to private (for profit) fostering agencies, on the assumption (as yet unproven) that competition will reduce costs (Parton & Berridge, 2011). An option likely to be even more attractive, especially to finance ministers, is to have more children leave care via adoption or other guardianship options, placing them informally with relatives, or sending them home, even if the care they receive is barely 'good enough' (Farmer, Sturgess, O'Neill, & Wijedasa, 2011; Wade, Biehal, Farrelly, & Sinclair, 2011; Thoburn et al., 2012). In Norway, it is still not politically appropriate to link discussion of child protection services with the state of the economy, as illustrated by the following quote from the parliamentary debate on the use of adoption in child welfare "The members of Progress Party, Conservatives and Liberal Party has also noted that the bill says that if more adopt foster children, this will help to bring costs in child welfare down. These members find this argument very startling and unfortunate." (Familie- og kulturkomiteen, 2009).

Turning specifically to child welfare policy makers, in the past Norwegian politicians, the courts, and practitioners have seemingly been less negative about placement in care as a way of helping parents and children in difficulty than is the case in England. Across the UK, for many years, and despite the 1989 Act, which saw a place for out-of-home care as a family support measure, politicians and public opinion have, in large part, been united in viewing the care experience itself as damaging to children's welfare and life chances (House of Commons Children, Schools and Families Committee, 2009). The 'received wisdom' of politicians and the media in England (as exemplified in the evidence to this committee and in many media stories and speeches by politicians) has been - keep them out of care if you can, and get them out of care as soon as you can, either through return to parents,

placement with relatives or adoption. However, in the past few years there have been changes in England. Despite this continuing drive to get the numbers in care down, social workers and judges having to make day to day decisions continue to place children in care in increasing numbers,<sup>2</sup> and professional opinion is moving closer to the Norwegian practice. There is, therefore, a growing tension between, on the one hand, much professional opinion backed by research findings, and on the other hand views expressed by politicians and the popular press which still comment overwhelmingly negatively about the ability of placement in care to have a positive impact on the lives of children who cannot remain safely with their families. A series of reports has concluded that, although the experience of being in care cannot be relied on to 'cure' early harm (especially for those, still the majority, who enter care past infancy), nor, for the majority, does it 'cause' further harm. Specifically with respect to stability, national data and research reports indicate that the emphasis on permanence for all children in care has coincided with a reduction in unnecessary placement moves. (Boddy, 2014; Bullock, Courtney, Parker, Sinclair, & Thoburn, 2006; Children's Commissioner for England's, 2015; O'Higgins, Sebba, and Luke (2015); Sebba et al. (2015); Thoburn & Courtney, 2011). The respective places and appropriate share of limited resources to be devoted to family support, reunification, services for children in care and adoption continue to be hotly contested in English academic, professional and political spheres (Cameron, 2015; Featherstone, White, & Morris, 2014; The Care Inquiry, 2013; Tickle, 2015).

The higher rate of children in care in Norway on a given date is in part because, not only do fewer leave care via adoption, but, since comprehensive in-home services have already being tried and failed, fewer return to a parent before they reach adulthood than is the case in England. Thus, permanency is to be achieved, first by supporting children in-home with their natural parents, and second by moving them to care, usually a foster home, from which there are few cases of reunifications. The blind spot of the Norwegian system, it has been argued, is that permanency for children in care has not been sufficiently high on the policy and practice agenda. Concern has been expressed by researchers, professionals, politicians and the media that, all too often, placement breakdown leads to multiple moves in care (Skivenes, 2009). Too little attention has been paid to producing reliable data on moves in foster care and to the impact of instability on the lives of children whose placements break down. This is likely to have contributed to the relatively poor outcomes for children from the child welfare system reported by researchers (Backe-Hansen, Madsen, Kristofersen, & Hvinden, 2014; Clausen & Kristofersen, 2008, p. 82), findings that are also evident in the other Nordic countries (Pösö, Skivenes, & Hestbæk, 2013), and to the lack of policy development around the different aspects of permanence, as so clearly illustrated in the English policies.

Undoubtedly a push towards a more positive view of the potential benefits of a high quality out-of-home care service, followed up by an improved leaving care service, has come from the increasingly powerful voice of care experienced young people, both as reported by researchers (Schofield & Beek, 2009; Stein, 2012; The Care Inquiry, 2013) and through the increasingly powerful voice of 'in care' and 'leaving care' groups (Children's Commissioner for England's, 2015). Although a minority continue to recount distressing experiences from unplanned moves and poor quality care, the message of the majority is that, whilst they regretted that coming into care had been necessary, they considered that it had enhanced their life chances, and were broadly satisfied by their experiences (Children's Commissioner for England's, 2015; The Care Inquiry, 2013). Overwhelmingly, the call from young people and professionals alike has been for the learning from the research, and young people's experiences to lead to improved in-care services to achieve greater stability and family membership for those (the

<sup>1</sup> The briefing report for this Committee (Fenton-Glynn, 2015) provides a detailed description and comparative analysis of adoption policies and practice and court decisions within other European jurisdictions, focusing particularly on cases involving parents who are foreign nationals, but having more general implications.

<sup>2</sup> Since the 2012 data used in Table 1 (a date used for purposes of comparison) the rate of children in care in England has gone up by 6% from 68,060, a rate of 58 per 10,000 to 69,540, a rate of 60 per 10,000.



majority) for whom adoption or return to relatives is not appropriate, desired, or achievable.

In Norway there have been moves in the opposite direction, with professional and legal opinion and child welfare researchers initiating discussions on securing permanence for children in care through adoptions. Although for some years there has been recognition that for some care entrants, especially maltreated infants, placement for adoption might be the best alternative (Author, 2009; Grinde, 2004; NOU, 2012: 5, 2012), adoption is still considered a controversial option—even in cases where there is minimal contact between birth parents and their child in care as the mentioned Supreme court judgment of 2015 indicates. However, there has been some shift in placement practice and currently more children are adopted from care in Norway than in the other Nordic countries. In 2012 an expert report on child welfare (NOU, 2012: 5, 2012) made a clear and unanimous recommendation for the use of adoption as a measure to secure permanency, especially for young children. This report argues that the biological principle should be replaced with an ‘attachment principle’, i.e. examining whom the child is attached to instead of examining blood ties (Hagen & Rønbeck, 2011). However, as noted in Table 1, the possibility of an English child coming into care and being adopted is still ten times that for a Norwegian child.

Frequency apart, another difference is that the usual route to adoption from care in Norway has been via an adoption application by foster carers with whom the child is likely to have already been living for some time. This sometimes happens in England, but more often the child moves from a temporary foster family to a previously unknown adoptive family. Since the ‘pool’ of prospective adopters in Norway is restricted to those who are already (or are willing to become) foster carers, many of whom are content with their foster carer status and do not seek to adopt, the numbers leaving care via adoption in Norway, age at entry to care considerations apart, are therefore likely to be lower than in England. The reality is that for most care entrants in each country who cannot go safely back to birth parents the major route to stability and family belonging is through long-term foster care. During 2015 3320 children in care in England were living with prospective adoptive families whilst there were over 17,000 children in foster family placements recognized as long-term (Office for Standards in Education, Children’s Services and Skills, 2015).

A further contribution by professionals and academics to the permanence debates in both countries, is being made by scholars in the field of child development. A factor which has strengthened the direction of travel across high income countries including England and Norway relates to advances in child development knowledge and neuroscience which point to the long term harm of maltreatment, and especially prolonged neglect in the early years. The impact of this is most apparent in England in the rise in the numbers of children taken into care when under the age of 12 months and the government backed policy for early placement with adoptive families. The response in the Nordic countries has been rather to improve the quality and availability of family support and remedial services within the home, but this medical research, coupled with research on the negative outcomes when children experience multiple moves in care, may also have influenced the move in Norway towards more 0–2 year old children being placed in care. This is a move away from the very strong emphasis on family preservation that has characterised Norwegian child welfare policy and may represent a greater emphasis on the child’s right to experience good quality parenting (by long term foster or adoptive families) at the expense of the birth parents of children taken into care retaining legal rights and choices about placement decisions.

## 8. Conclusions

In this paper we have noted that the policy aims and underlying practice principles espoused by child welfare managers and workers in Norway and England have many similarities. Both countries aim to

ensure that children as they grow up experience stability and continuity, and that those who need out-of-home care and cannot return safely to their birth parents have a sense of permanence and belonging in alternative families. Our exploration of the influences on policy and practice in this area, and especially on the use of non-consensual adoption as a route to permanence for maltreated children, has also shown that there are ambiguities and contradictions in the ways in which welfare laws in the two countries are interpreted. Against this background of policy ambiguity, it has become clear from the statistics and longitudinal research (Backe-Hansen et al., 2014; Biehal, 2014; Boddy, 2013; Schofield & Beek, 2009; Sinclair, Baker, Lee, & Gibb, 2007; Sinclair & Wilson, 2009; Statistics Norway, 2015) that the majority of children and young people who are placed in care in England and Norway and achieve a permanent place in an alternative family do so through a long-term placement with a kinship or non-related foster family, and in Norway more so since adoption is still a rarely used placement option.

Debates, sometimes heated, continue about the place of permanency and adoption as a response to child maltreatment, mainly in the media and amongst politicians and the judiciary in the UK but now spreading to European Courts and institutions, adding to the tension between national and supranational sovereignty. In England there remains a tension within government policy between viewing care in negative terms, and enacting legislation and child welfare practice to improve it. In Norway a dichotomous understanding of permanence as either staying with natural parents, or staying in care, overlooks other permanence dimensions important for children. In general terms, the attention of policy makers and practitioners in both Norway and England has focused on improving placement stability, greater normalization of the family lives of foster families, and better support and services during the transition to adulthood, especially support for young adult to remain in foster families after the age of eighteen.

Although we have cited a wide range of sources that have informed this paper, it is also clear that there are still important gaps in the knowledge base on placement processes and longer term outcomes for children in different age groups with different care needs in a range of ‘permanent’ placements. This is especially the case with respect to longitudinal studies on cohorts of care entrants in Norway, and from our review of the literature, in other high-income countries. The cross-national collaborations we have cited are making inroads in these deficits. This review has focused in on how permanence policies have evolved and how permanence is understood in two similar but also contrasting jurisdictions. Our aspiration is that it will contribute to the increasingly loud debates amongst jurists, policy makers, researchers, practitioners, and especially care-experienced young people and their parents and carers, on how policies and practices can evolve that respect cultural and contextual differences whilst meeting the needs of all children in out-of-home care for the safety, stability and family and community membership which are essential components of their long-term wellbeing.

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