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**Citation for published version:**

Waterhouse, L & McGhee, J 2014, 'Agamben and the political positioning of child welfare-involved mothers in child protective services' *Families, Relationships and Societies*. DOI: 10.1332/204674314X14041323069042

**Digital Object Identifier (DOI):**

[10.1332/204674314X14041323069042](https://doi.org/10.1332/204674314X14041323069042)

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Peer reviewed version

**Published In:**

*Families, Relationships and Societies*

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Agamben and the political positioning of child welfare–involved mothers in child protective services

## **Abstract**

In the UK protecting children from maltreatment is an administrative and juridical system with law as ultimate arbiter of whether a mother may retain care of her child. The primary legal principle is the child’s best interests. This paper draws on Giorgio Agamben’s theory of ‘bare life’ (1995) to examine the identity and the political positioning of child welfare–involved mothers in contemporary western child protection systems to complement the primary focus on their children.

A fundamental underlying issue, namely the control of life and its significance for women involved with state bureaucratic administrative and legal child protective services is examined and its significance for the biopolitical identity of child welfare-involved mothers in child protective services.

## **Keywords**

Child welfare-involved mothers, child protective services, biopolitical, identity, bare life

Child maltreatment poses society with a complex problem with material consequences for the lives of children. In the UK protecting children from maltreatment is managed within an administrative and juridical system with law as ultimate arbiter of whether a mother may retain care of her child<sup>1</sup>. The primary legal principle is the child’s best interests. Any recourse to law is generally preceded by the operation of universal

administrative processes that govern decision-making for individual children. In the context of this paper child protective services<sup>2</sup> refers to state intervention in the lives of families through the child protection system. In most cases child welfare statutes underpin this involvement. The implications for children of maltreatment and the capacity of public institutions to protect their interests continue to occupy a central focus in international policy development and global public imaginations. In contemporary western child protective policies, child welfare – involved mothers are treated both as part of the problem and of the solution to child maltreatment and, arguably, ‘bear the brunt’ of the state’s determination of the acceptable limits of parenting through its attention on their maternal care.

This paper draws on Giorgio Agamben’s philosophical theory of ‘bare life’ (1995) to examine the identity and the political positioning of child welfare–involved mothers to complement the primary focus on their children. The aim is to bring this theoretical perspective to child welfare/protection scholarship and to contribute to wider conversations on the position of women in relation to the institutional power of child protective services. The paper draws attention to a fundamental underlying issue identified by Agamben, namely the control of life and its significance for women involved with state bureaucratic administrative and legal child protective services. It draws on an earlier body of work on child welfare-involved mothers to explore an issue that has long vexed child maltreatment discourse, namely the significance of the complex social institution of child protective services on practitioner-mother relations. The intention is to provide a more expansive reading relevant to relations between child-

welfare involved mothers and child protective services so as to enrich our understanding of their position and the possible implications that follow. Agamben's notion of 'bare life' falling outside the polis or as mere existence (1995) allows a new angle to the examination of the political nature of women's position in contemporary child protective services.

The paper is divided into four parts. These include: first, the reasons for concentrating selectively on women caught up in child protective services; second, a review of an earlier body of work on child welfare-involved mothers; three, an introduction to Agamben's ideas (not only a difficult theorist but also one not well known, particularly in social work) drawing on his original work, *Homo Sacer Sovereign Power and Bare Life* (1995) where he discusses what it is to be recognized as human; and four, the implications and limitations of Agamben's ideas in relation to child welfare involved-mothers in child protective services.

### **Why focus on women?**

Poor women have historically been the subject of state surveillance, some enabling but more often intrusive interventions. Women occupy a particular position in UK child protective services as child welfare-involved mothers, comprising the majority of clients (Howe, 1994) and often constituting a primary focus of attention from the state as well as a primary source of protection (Scourfield, 2001) in the safeguarding of children referred to child protective services (Featherstone, 1999). Masson *et al.* (2008) found over 86% of

children subject to care proceedings in England were cared for by their mothers, of whom nearly 60% were lone parents. By focusing on women this is neither to deny that some children are harmed by the actions and inactions of their mothers nor to minimise professional public duty of child safety surveillance; nor is it to undermine the paramount interests of children to child protective services.

Despite the importance of women to child protective services and the suggestion protecting children from child maltreatment is a gendered activity (Reich, 2008; Howe, 1994), our understanding of how women fit into child protective services is relatively limited (Reich, 2008), including that women's behaviour towards their children may constitute a source of concern in its own right (Taplin and Mattick, 2011). Women's position as child welfare-involved mothers is distinct in one particular respect, namely the role of women's bodies in giving birth to another human life, as bearers of children whose maternal care is subject to state scrutiny, their standing as mothers measured against professional expectations.

Featherstone *et al.* (2013) suggest that the very language of the child protection system separates the child from her/his family. Reich (2008) argues the family unit, once involved with child protective services, '...dissolves into a collection of individuals, presumed to have competing interests, who are connected by history, biology and tenuous legal ties' (p.901). This recognises that the interests of child welfare-involved mothers and children are not necessarily compatible (mothers may harm their children). Child welfare policy and law in the UK makes children's interests paramount in child

protective decision-making. By virtue of this determination, the interests of mothers are by definition secondary to their children.

This secondary dispositional status of women to their children in child protective services is itself a reason for shifting the analytical focus to them. As Mies (1993) suggests, a conscious partiality brings to the surface important perspectives that might otherwise be overlooked or that might dilute intensity of understanding from a particular point of view. This partiality might be further justified in the case of child welfare-involved mothers by the need to appreciate better what may be at stake for a group of women many of who are already on the margins of society. A number of studies of child abuse and neglect (see, for example, Dumbrill, 2006) do not disaggregate the category of parent in their analysis, minimizing the capacity to differentiate between mothers and fathers and possibly minimizing women's history in the care of children (Ruddick, 1989).

The doctrine of social rights in the United Nations Universal Declaration of Human Rights (GAOR 217A (111) December 10, 1948) under Article 25 grants that motherhood and childhood are entitled to special care and assistance and asserts all children whether born out of wedlock shall enjoy the same protection. Under this doctrine motherhood as well as childhood confer social rights, making both child-bearing women and children worthy of special consideration. All children should have the same protection, irrespective of the social legal status of individual women. For the above reasons a focus on child welfare-involved mothers is adopted in this paper.

## **An earlier body of work on child welfare-involved mothers**

Child welfare-involved women for the most part are categorically unequal in society for their share in its wealth, education, health and development (Baker, 1995, Sheppard, 2004 cited in Katz, 2007), politically positioned on the margins. Marcenko *et al.* (2011) in a statewide examination of the psychosocial and demography of child-welfare involved mothers found ‘impoverished mothers’ (p.436) often struggling with personal trauma and mental health-related difficulties and domestic violence. Kohl et al. (2011) in a USA national probability sample of a 36 month follow-up of mothers referred to child protective services concluded that maternal depression impeded child protective services intervention and their capacity to ensure child safety. The percentage of mothers reporting depression remained relatively stable and relatively high across the time period and yet they were less likely than the general population to be in receipt of mental health services. Broadhurst and Mason (2013) argue for a preventive approach in meeting the mental health needs of women.

The concept of mothering is becoming more complex, differentiated along lines of race and class while the legitimization of different kinds of family form serves to render the position of biological mothers as more fungible (Woodhouse, 2002), in other words able to be replaced by another answering to the same definition (Oxford Dictionary). In principle, any responsible adult may carry out maternal work (Ruddick, 1989), although in practice historically the world-over women bear the main responsibility for the upbringing of children. Reich (2008) in her sociological analysis of the child welfare

system in the USA, argues that the state both reinforces changing forms of family life, through recognition of the separation of biological and social motherhood, in other words differentiating between motherhood and ‘mother work’ and at the same time legitimating non-normative family formations with consequences for biological mothers.

Davies and Krane (2006) identify that the subjective experiences of child welfare–involved mothers are relatively neglected. Several studies explore the identity of child welfare-involved mothers. A two year ethnographic study (Reich 2002) of investigated allegations of child abuse and neglect and agency and court processes associated with outcomes found once mothering was called into question, then the right to mothering became determined against conformity to dominant ideologies of an idealized notion of mothering and womanhood held by professionals in child protective and associated services. Ideal motherhood involved a commitment to their children above and beyond their own sexual relationships with men, where control of women’s sexual behavior and monitoring of women’s sexuality remained a long standing trope in decisions about child welfare-involved mothers. Sykes (2011) in her study of mothers’ responses to accusations of child neglect in a rural Michigan county, found women resisted their classification by the state as ‘neglectful mothers’. They employed a range of strategies in order to protect their identity as good mothers. In a study of Judith Butler’s philosophical writing on the emergence of self, Waterhouse and McGhee (2013) argued child welfare-involved mothers are required to give an account of themselves and their maternal care in circumstance where the exercise of institutional power might act as a means of reduction in their lives (Ojakangas 2005), of a lessening rather than augmentation.



Despite the rhetoric of family support, child care policy provides a limited time for so-called 'failed mothers' to improve their child rearing or face the loss of their child. Douglas and Walsh (2009) found that Australian child welfare-involved mothers lacked sufficient advocacy in their dealings with child protective services (as did Featherstone and Fraser 2012 in an in-depth exploration of the experiences of three women participating in a parental advocacy scheme in England) and sufficient information to participate fully in proceedings. Child protective services were experienced as adversarial in their relations with child welfare-involved mothers.

### **Giorgio Agamben's philosophical theory of 'bare life'**

Giorgio Agamben is a legal philosopher educated at the University of Rome. *Homo Sacer: Sovereign Power and Bare Life* (1995), the theory at the heart of this paper, is concerned with a key problem of our modern social existence, namely the State's production of 'bare life' or life as mere existence in its exercise of power over citizens. The work is rooted in the traditions of European philosophy and seeks to reformulate ideas to take account of scientific advances and the political treatment of human subjects. Drawing on historical examples of internment in concentration camps from Cuba in 1896 to the former Yugoslavia in the early 1990's and the Nazi German concentration camps in between, Agamben argues, the State is exposed as depriving individuals in the camps of very basic human rights and of disposing of them rather than protecting them against such an outcome. The State is implicated in the production of 'bare life', mere existence,

constituting a key problem in modern western societies when it comes to the just and unjust treatment of individuals in the governance of biological life. Of fundamental concern is the question what is it to be human, its true ethos. While the examples appear at first in their historical context, their salience for contemporary society is articulated in the idea that the camp is not only an historical fact but is present today as ‘the hidden matrix and *nomos* of the political space in which we are still living.’ (pp.166). Although the camp is not the only kind of case to illustrate this idea, its selection is no accident since it is seen to represent the most extreme form of the destruction of human experience, where life suffers a very great loss, when life at best can be merely undergone (Mills p.466). The premise that life as mere existence becomes the human condition in the absence of government, is turned on its head when Agamben argues mere existence can be found in the presence of government which is no guarantee of protection for its people against extreme misfortune from other than natural causes. It is in the exercise of control over the collective lives of all individuals the key characteristic of the modern period is found (Ross, 2007), life as a politically determined concept within modern western societies. Further to the question of what is it to be human and to be part of human society lies another uncertainty - whether there is anything sacred about life?

This question of sacredness of life is approached through the figure of homo sacer, an enigmatic figure of archaic Roman law who has existed from pre-social time ‘in which the character of sacredness is tied for the first time to a human life as such’ (Agamben p.71). Homo sacer represents ‘sacred man’, a life signified by being outside human

/natural and divine law (ibid. p. 82) or put another way life as an accursed 'man' outlawed, an outcast. A life outside human and divine law is a life that is expendable may be eliminated, killed without human punishment, without attracting an accusation of homicide; and at the same time is a life deemed unworthy of the rituals of sacrifice in divine law. For example, certain individuals historically who became subject to the medieval ban with return on pain of death and the bandit as a figure of a 'man' who can be killed without normal consequence - accursed and outlawed, homo sacer.

Of central importance to this paper are the consequences of this potential position for indigent citizens that, by definition can only leave them exposed and subject to Sovereign power in its supreme and unmitigated capacity. Sovereign power, while it may be rarely used, grants the sovereign (the ruler) absolute judicial power to suspend the normal rules of law governing people lives where the spirit of law and the regulation of law no longer apply. This in effect produces a formal ban, an authoritative prohibition (Oxford Dictionary, 1976) where citizens are treated as if exiles through physical or mental containment and exclusion from society either as individuals or as a group. The banned individual is left without recourse to the normal expectations, rights and legal rules associated with human existence. The imposition of absolute sovereign power constitutes an exception, a state of exception that may begin as a temporary measure in extreme circumstances of supposed need but may become normalized, creating a new set of normative expectations regarding human life affecting everyone inside and outside the new dispensation.

The consequences of this suspension from the normal rules and exclusion from society are captured in the concept of bare life, life as mere existence where individual life may be extinguished without punishment and death not represented as sacrifice as exemplified in the concentration camps. In bare life the biological being, the human body is separated from its normal political status, is treated as if not fully human and is abandoned under a new prevailing norm (state of exception) to extreme misfortune (p.159). The rights and expectations normally associated with human existence are stripped away while the body remains alive and subject to complete political calculation (Ross, 2007). For those individuals outside the ban who are not subject to living their lives as mere existence, the fact that some individuals may be treated in this way means that all citizens have the potential to become an excluded class of people. This lies at the root of the fragility of humans to the potential suspension of judicial order even in non-totalitarian states (Arendt 1958), when law is made irrelevant for some despite it remaining in force for others. When what began, as a state of exception becomes a permanent structure, a new set of rules, grounding principles and assumptions come to dominate the ordering of political power, a new 'nomos' emerges - a fundamental ethical and political problem arises for the treatment of human life.

Agamben argues the Camp represents the fundamental biopolitical paradigm of modern western society where decisions on the value and non-value of human life are made and acted upon. The Camp is a total institution, a political organisation of human life founded

solely on bare life where every aspect of physiological and (mental) life is regulated (Agamben, 1995:135). It is achieved through interference (suspension of law for some) with the rights of citizenship (political life) and may be taken to the very limits of biological existence (bare life). The Camp, characterized by the suspension of law and the condition of bare life is seen as the hidden matrix (Agamben, 1995:166) of current political life.

### **The implications of Agamben's ideas for the political and social position of child welfare-involved mothers**

What can we learn from this reading of Agamben when it comes to the example of child welfare-involved mothers in contact with child protective services? The intention here is to provide a fresh reading of the political position of these child welfare-involved mothers. In child protective services control over the life of the child is disputed for humanitarian reasons of child welfare and safety. At the same time to effect child safety, control over the women's lives becomes an inevitable by-product bringing consequences for their identity and political position as mothers. This analysis seeks neither to privilege the interests of mothers over their children nor to imply that child protective services act in bad faith. Women in contact with child protective services are not randomly drawn, instead their lives dominated by poverty and restricted life chances. Smith (2010) argues that Agamben pays insufficient attention to the specific and stratified characteristics of individuals subject to state intervention, for example class and gender. This paper considers Agamben's ideas in relation to a group of individuals where gender and class

frequently intersect. The discussion begins with implications of Agamben's ideas, followed by consideration of the particular procedure of pre-birth decision-making in child protective services for illustrative purposes.

Agamben's interest to sociologists and other social scientists lies in two main areas. Firstly, his contribution to social theory where the character of Western democratic governance is examined to reveal the importance of the 'Camp', concentration camps as the prototype of timeless examples, as the underlying hidden principle of sovereign power, namely the absolute right to do anything to anyone (Agamben *ibid* p.106) (Smith 2010; Mills 2011). Secondly, his claim that in public institutions of a certain complexity professional disciplines may exercise control over the definition of life, and in so doing biopolitical power passes through them. Prisoners held on death row in the United States, an example provided by Agamben, were used as subjects of an experiment in the 1920's when 800 people were infected with malaria plasmodia to combat an infectious agent. Scientists and physicians took control over life that was previously reserved for sovereign power whereby these prisoners entered an indeterminate zone between life and death, a 'no-man's-land', their human rights abandoned, their lives reduced to mere existence (bare life). In Agamben's terms Sovereign power is passing through physician and scientist exercising control over the definition of life. As in concentration camps, Agamben argues these prisoners were assimilated to the status of *homines sacres*, a life that can be killed without constituting homicide because the prisoners were already sentenced to death.

These two dimensions, the Camp as the underlying principle of social governance and the passing of biopolitical power through professionals challenge the status quo (Smith 2010) of our apparently Western liberal governance structures. The range of examples Agamben provides together with the suggestion of an incursion into the professional domain leaves an uneasy prospect that abandonment by and to the state and its officers may be more routinely present in the exercise of institutional power over citizens than meets the eye. The governance of exclusion made apparent through Agamben's examination of extreme cases is the more telling because it suggests the State is implicated in the production of 'bare life', the mere existence of its citizens. The point he is making is that bare life is present in democratic (non-totalitarian) societies and is not confined to the extreme example of concentration camps. This is brought into sharp relief when exposure to death and abandonment by law is found in other institutions, for example in prisons and the experiments on death row prisoners. It is the treatment of certain groups of people by public institutions that is of particular concern to the discussion of child welfare-involved mothers in child protective services. These women can be seen as an extreme case of a particular kind.

There is no suggestion that contact with child protective services whose purpose is intended as humanitarian reduces child welfare-involved mothers to a form of 'bare life' – a mere existence as happened in the concentration camps. Child welfare-involved mothers are not deprived of the right to live, retain legal rights and may lay claim to certain social rights. They are not sequestered in physical space nor excluded from every aspect of society. The State can lay claim to legitimate authority in safeguarding the

interests of children. Yet Agamben gives us reason to question the character of the exercise of control over life even in humanitarian institutions.

Mothers stand to lose the care of their children when deemed by child protective services to be in the child's best interests, whatever the potential significance of their dispossession and attendant loss. This possible outcome affects the identity and political status of women as mothers. Many child protective decisions occur outside legal arbitration. Errors made in judgment against child welfare-involved mothers are unlikely to attract much attention or redress. Attention is primarily reserved for any state failure in the detection of child maltreatment and errors in professional judgement (Munro, 2011). Child welfare-involved mothers may have little leverage in a system of governance that is more or less free to do with them what they will so long as the system can claim the child's best interest principle as the basis for child protective decision-making. They may fear that to challenge decisions about their care of their child lest separation is precipitated. At the same time they may consider themselves subject to negative perceptions of their mothering they are unable to alter (Sykes 2011).

Many child welfare-involved mothers are poor and lone parents, leaving them exposed and inherently vulnerable when face-to-face with child protective services, an increasingly powerful arm of the state. Compromised by their social position, their capacity to negotiate child protective intervention and to defend their maternal interests is weakened. Child welfare-involved mothers may lose their identity as mothers with limited protection and the loss of their child is unlikely to be constituted as a sacrifice as



it would be in the case of sons and daughters lost to war. In Agamben's terms the women could be seen as in a *homines sacres* like position in circumstances when control over life, child and mother, is contested with the consequence that women may be stripped of their identity and political position as mothers.

In child protective services bio-political power passes through professional disciplines that exercise control over life, self-evident for the child but less so for the women whose identity and political position is simultaneously affected. The risk here is the ever-present potential of what could amount to an essentially dehumanising treatment of child welfare-involved mothers in contact with these services. Given the dual professional responsibility not only to take account of the child's best interest but also of women in their own right, the treatment of child welfare-involved mothers is of critical importance. Alertness to the identity and political position of women in contact with child protective services is a necessary counterweight to a risk of dehumanising women, of treating child welfare-involved mothers as non-persons, set outside the polis and reduced to 'mere' bearers of children.

In UK child protective services pre-birth child protective decisions have become a more common practice, partly influenced by high profile inquiries into the fatal non-accidental injury of children (see, for example, O'Brien 2003; see also Dale's 2013 commentary on restricting natural parent-infant contact in care proceedings in England; care applications increased by 75% between 2007-08 and 2012-13, Cafcass 2012, see note<sup>3</sup>). Pre-birth multi-agency interdisciplinary conferences decide if a child should be removed at birth

from the mother's care, subject to legal provisions, based on a prediction of the likelihood of child maltreatment. Legal outcomes may be temporary or permanent: to return the child home or to seek permanent alternative care for the child<sup>4</sup>.

Pre-birth conferences can be seen to exemplify a procedure with the potential for exclusionary governance. There is a risk that child welfare-involved mothers may become 'mere' bearers of their children, their lives as mothers made spare. In biopolitical terms child welfare-involved mothers subject to pre-birth conferences can become reduced to a body that has hosted the development of another body - a kind of bare life. The emergence of pre-birth case conferences demonstrates the capacity of the institution to compromise the political identity of child welfare-involved-mothers. Once deemed a 'bad' mother, it is difficult to prove the converse. Resistance to their child's removal at birth may be interpreted as further evidence of compromising the well being of their child. While child welfare-involved mothers retain some rights to due process, the State's capacity to control life sanctioned by law and procedure remains evident.

Applying Agamben's arguments to child protective services and one procedure (pre-birth case conference) may seem a far-reaching interpretation. Nevertheless there are other examples where the political position of child welfare - involved women is compromised. Smith (2010) found that some welfare applicants, not even in contact with child protective services (in three American States), were required to go through pro-adoption counselling to be eligible for welfare means-tested aid. These child welfare-involved mothers were encouraged to relinquish custodial rights of their children, potentially

becoming mere bearers of life. A recent court case in Scotland convicted two social workers of contempt of court following their failure to implement a court order requiring a certain level of access between a mother and her separated children in public care (The Scotsman 2013). These institutional actions could be considered a suspension of law passing through the professionals that in this case was checked through recourse to law, reconstituting the political position of the welfare involved-mother. A final example involves two court cases of forced caesarean sections in England where maternal mental health was deemed incapacitating for maternal decision-making regarding birth (BBC 2013, 2014). These latter cases do not involve suspension of law, although illustrate State control over life, both mother and unborn child. The examples cited above are not intended to suggest that the physical lives of child welfare-involved mothers are in danger (namely, Agamben's analysis of the Camp) nor are they to ignore some children die as a result of maltreatment. In the case of the examples of forced caesarean, however, there must be some risk to life for mother and unborn child. Agamben's paradigm can help us to see a bigger picture - 'that modernity is characterized by an increasingly more radical tendency to take control of "life"' (Ross 2007:2).

This paper suggests a plurality of application of Agamben's writing to the potential significance for child welfare-involved mothers of the political context in which child protective services operate, especially the potential significance for women when their motherhood may be rendered redundant. It helps us to understand better women's exposure to control over life, both child and mother.

## **Conclusion**

Agamben's theoretical stance helps us appreciate the magnitude of what is present in the contact between child welfare-involved mothers and child protective services where a form of control of life is passing through the professionals who animate the system in their face-to-face encounters with the women. There is the potential for physical separation from the child (from the body) to which they gave birth whether this happens at birth or later. Women may be dispossessed of their children, stripped of their political identity as mothers, placed outside the polis, bringing them perilously close to a form, albeit more partial, of mere existence. In these ways Agamben's argument that the Camp represents the fundamental biopolitical paradigm of modern western society has bearing for the control over life represented in child protective services where decisions on the value and non-value of mothering are made and acted upon.

In providing a more expansive reading of Agamben's work to the position of child welfare-involved mothers, this paper alerts us to the vicissitudes of their exposure to the institutional power of child protective services. It brings to the fore what is at stake in any evaluation of maternal care, namely the potential for it to be deemed without value for child or society. In the context where the primary operating legal principle is the child's best interests, this paper argues it is important to pay scrupulous attention to a fair, humane and proportionate consideration of the position of women in contact with child protective services.

Notes

<sup>1</sup> The child protection system is used in this paper to refer to the comprehensive administrative and juridical system concerned with the protection of children from maltreatment.

<sup>2</sup> Child protective services are sometimes referred to as child protection services in some countries.

<sup>3</sup> In England, an ‘unprecedented rise’ in care applications by local authorities followed the publication of the review into the death of a child Peter Connelly (Baby P) in 2008 (Cafcass 2012: i). By 2012-13 there was a 75% increase in the number of care applications in comparison to 2007-08 (6,323 to 11,110 respectively). This consistent upward trend has continued until 2013-14, which saw an annual reduction of 5% on the previous year to 10,595 applications (Cafcass 2014). In addition local authorities appear to be making applications at an earlier stage of their involvement with families (Cafcass 2012).

<sup>4</sup> Court sanctioned adoption without the consent of parents (sometimes referred to as non-consensual adoption) is permitted within UK legislative frameworks. In England, in the year ending 31 March 2012 1,890 adoption orders (55%) were made unopposed, and 1,550 (45%) where consent was dispensed with, following opposition to the application (Luckock and Broadhurst 2013). There has been an increase in placement orders (where the court decides parental consent can be dispensed with and makes a placement order) Between 2012 and 2013 the number of looked after children placed for adoption increased by 16 per cent compared to 25 per cent between 2009 and 2013. There has been a similar level of increase, namely 16 per cent between 2012-2013, of the number of

looked after children for whom a placement order has been granted and by 95 per cent between 2009-2013 (Department of Education 2013).

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