



#### Report focus

New empirical evidence concerning infants and newborns in the family justice system in Wales

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# Born into care: newborns and infants in care proceedings in Wales

## Summary report



## About this report

This is the first in a series of reports for Wales about newborn babies and infants aged less than 12 months. It follows publication of *Born into care: newborns in care proceedings in England*, published in October 2018.

A standalone summary of this report, and a Welsh language version is available from [www.nuffieldfjo.org](http://www.nuffieldfjo.org)

The Cafcass Cymru data used in this study are available in the SAIL Databank at Swansea University, Swansea, UK. All proposals to use SAIL data are subject to review and approval by the IGRP. When access has been granted, it is gained through a privacy-protecting safe haven and remote access system, referred to as the SAIL Gateway. Anyone wishing to access data should follow the application process guidelines available at: <https://www.saildatabank.com/application-process>

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## About the Nuffield Family Justice Observatory

The Nuffield Family Justice Observatory (Nuffield FJO) supports better outcomes for children in the family justice system in England and Wales by improving the use of data and research evidence in decision-making. We do this by:

- Supporting the analysis of national data and linking data from different sources to better understand the experience of children and families in the family justice system.
- Researching issues facing children and families and collaborating with others to bring about change in practice.
- Enabling decision-makers to access the latest data and research evidence.

Central to the Nuffield FJO's operation is a data partnership with the Centre for Child and Family Justice Research at Lancaster University, Population Data Science at Swansea University and the SAIL Databank.

The Nuffield FJO has been established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in Education, Welfare, and Justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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## Foreword

The removal of a newborn baby into care is perhaps the most difficult, and brutal, decision that professionals can make to intervene in family life. It is right that we carefully monitor when and how such decisions are made.

But for too long the family justice system has been operating in the dark, with an incomplete picture of the nature, and consequences of, decisions made about children and their families in the family court.

That is why the Nuffield Family Justice Observatory has been established; to ensure that data and research evidence inform decision-making about children in the family justice system.

This study provides the first-ever picture of the extent to which newborn babies and infants are subject to care proceedings in Wales, and how this has changed over time. It complements a report that the Nuffield Family Justice Observatory published last year that looked at these trends in England.

*Born into care Wales* provides insights that will be of great interest to policy makers and practitioners across the social care and family justice systems in Wales. It offers a starting point for discussions about how to ensure that more babies are able to be safely cared for by their parents and that any intervention by the family justice and social care system is designed to avert potential harm.

Taken together the reports for England and Wales allow for regional and national comparison. Overall, the picture of a high proportion of infant cases issued close to birth is similar for Wales and England, but the incidence rate is higher in Wales. And, perhaps surprisingly, the pattern of use of legal orders in England and Wales looks strikingly different.

*Born into care Wales* is a product of the Nuffield Family Justice Observatory data partnership with the Centre for Child and Family Justice Research at Lancaster University, Population Data Science at Swansea University and the SAIL databank. I am grateful to the team for producing such an important report and look forward to continuing our work to build a more complete picture of why children come into the family justice system, their experience of it, and their outcomes.



**Lisa Harker**  
**Director, Nuffield Family Justice Observatory**

## 1. Background

Newborn babies are entirely dependent on their caregivers for their safety and well-being. In cases where an infant is identified as being at risk of suffering significant harm from one or both parents, a decision may be made to issue care proceedings at birth under Section 31 of the 1989 Children Act. The Act provides a framework within which the family court can make a court order authorising the removal of an infant from his or her parents. Removal at, or soon after, birth presents particular challenges for professionals and is highly distressing for birth mothers, birth fathers and wider family networks.

Although frontline practitioners in Wales will be familiar with cases of infants who are subject to care proceedings, national statistics do not differentiate infants further by age. The purpose of this report is to establish the current pattern of practice, to stimulate discussions with stakeholders and support best practice regarding the very youngest children in the family justice system. There are also implications for pre-birth referral, assessment and child protection conferences, where there are concerns about future risk of harm to an unborn child.

## 2. Study objectives

This report is based on the first independent analysis of population-level data collected routinely by the Children and Family Court Advisory and Support Service Wales (Cafcass Cymru) between 2011 and 2018. Focusing specifically on cases of newborns subject to s.31 care proceedings within the first two weeks of life in Wales, and drawing comparisons with the broader population of infants under one year old, the objectives of the study were to:

- quantify the volume and proportion of newborn cases and incidence rates over time
- describe variation in newborn incidence rates between Designated Family Judge (DFJ) areas and local authorities
- identify the number of newborn cases in which an older sibling had previously been subject to care proceedings (“subsequent infants”)
- identify the proportion of newborns subject to urgent Interim Care Order (ICO) hearings or non-standard case management hearings (CMH)
- quantify the duration of care proceedings over time
- describe the pattern of legal orders made and trends over time

This short summary report provides a brief, accessible overview of the main findings. Readers are encouraged to consult the main report for the methodology, data tables, and full findings and discussion. In addition, where readers are interested in comparisons between Wales and England regarding newborns, they should read *Born into care: Newborns in care proceedings in England* (Broadhurst et al., 2018).

All reports are available from the Nuffield Family Justice Observatory: [www.nuffieldfjo.org.uk](http://www.nuffieldfjo.org.uk)

### 3. Methods

The study used population-level data collected by Cafcass Cymru to provide the first national estimate of newborns in care proceedings in the family justice system in Wales. Following approval from an Independent Governance Review Panel, the data was accessed through the Secure Anonymised Information Linkage (SAIL) Databank at Swansea University, which contains a wealth of anonymised health and administrative data about the population of Wales.

Given this is a first descriptive study, quantitative analysis comprised the calculation of volumes, frequencies and incidence rates. An incidence rate is a measure of how frequently an event occurs in the general population. Incidence rates provide a clearer indication of the likelihood of a newborn or infant becoming subject to care proceedings than simple volumes or frequencies, because the size of the underlying population is factored into the analysis.

For this study, an infant is defined as a child aged less than one year old, and a newborn as an infant aged less than two weeks old. Population estimates from the Office for National Statistics (ONS) were used to calculate incidence rates. ONS annual live births data were used to calculate incidence rates for newborns. ONS mid-year child population estimates were used to calculate incidence rates for all children.

Funnel plots were used to analyse and present court area and local authority variation. In addition, the proportion of newborns who were “subsequent infants” (where an older sibling had already been subject to care proceedings) was calculated for cases issued between 2016 and 2018 (to allow a 5-year observational period), as well as the duration of care proceedings. In addition, new evidence is provided about the proportion of urgent interim care order hearings (ICOs) or non-standard case management hearings (CMHs) that concerned newborns (between 2015 and 2018). Legal order outcomes at the close of care proceedings are considered for cases that completed between 2012 and 2018, with legal orders grouped into three categories: “placed for adoption”, “in care”, and “with parents/extended family members” (see main report for full discussion of legal order data and limitations).

A full account of the methodology is available in the *Born into care Wales* main report.



## 4. Main findings

### Volume of cases and changes over time

- Between 2011 and 2018, **3,266 infants** were subject to care proceedings. **Infants comprised 30% of the overall population of children involved in s.31 care proceedings in Wales** during this period.
- **Over time, a greater proportion of care proceedings concerning infants have been issued for newborns in Wales**, although the trend is not linear. In 2011, 40% of all infants coming before the courts in s.31 proceedings did so in the first two weeks after birth. This proportion remained roughly stable until 2015, and then started to rise, reaching 52% in 2018. Cases of **newborns in the family justice system comprised a substantial proportion of all care proceedings issued for infants** in Wales.
- In 2011, for every 10,000 live births in Wales, 43 newborns became the subject of care proceedings within two weeks of birth. The incidence rate remained fairly static at around 40 cases per 10,000 live births until 2015, then increased rapidly, and had more than doubled to **83 cases per 10,000 live births in 2018**.
- Overall, the picture of a high and increasing proportion of infant cases issued close to birth is similar for Wales and England. However, **the incidence rate (number of cases per 10,000 live births) is higher in Wales than England**.

### Variation by court area

- There were **differences in the rates of care proceedings issued for newborns across the three Welsh Designated Family Judge (DFJ) areas**. Based on an overall rate (for the period from 2011 to 2018), the **Swansea and South West Wales DFJ area** recorded the highest incidence rate, of 64 cases of care proceedings concerning newborns per 10,000 live births in the general population. **Cardiff and South East Wales DFJ area** and **North Wales DFJ area** had lower overall rates, at 47 per 10,000, and 45 per 10,000 respectively.
- All three DFJ areas saw an overall increase in incidence rates over the period (2011 to 2018), although the trends varied, and incidence rates between the three DFJ areas appear to converge in the more recent years.
- Between 2015 and 2016, **all three DFJ areas recorded a marked increase in newborn cases**, which warrants further investigation.

## Local authority level variation

- A minority of local authorities departed significantly from the national incidence rate of 52 newborn cases per 10,000 live births. However, **the rate range for outliers was marked between 32 and 100 newborn cases per 10,000 live births.**
- In the **North Wales DFJ area** and **Cardiff and South East Wales DFJ area**, there was **very little deviation** in local authority rates from the area average.
- However, in **Swansea and South West Wales DFJ area**, there were a number of **low and high outlier local authorities**, falling outside the expected boundaries of the area average incidence rate of newborns entering care proceedings.

## Case characteristics

### “Subsequent infants”

- Between 2016 and 2018, **49% of newborns were “subsequent infants”**; that is their mothers had already appeared in care proceedings concerning an older sibling.
- Based on a 5-year observational window, **51% of newborns were linked to mothers who had not previously appeared** in care proceedings.

### Urgent ICO hearings and non-standard case management hearings

- Newborns are more likely to be subject to urgent ICO hearings and non-standard case management hearings than older infants, and other age groups of children.
- **A non-standard CMH or an urgent ICO hearing was recorded for 61% of newborns between 2015 and 2018**, compared to 37% of older infants and 36% of all children aged 12 months and above. **52% of the newborns had an urgent hearing within 7 days of the issue of the care application during this period.**

### Case duration

- Between 2012 and 2018, **52% of infant cases completed within 26 weeks.**
- There has been a **general trend towards shorter care proceedings for all infants**. In 2012, only 12% of cases concerning infants completed within 26 weeks (the statutory framework introduced in 2014), whereas in 2017 this percentage had risen to 70%, declining slightly to 63% in 2018.

## Final Legal Orders

- In 2012, the largest proportion of newborns (50%) were “placed for adoption” at the close of proceedings. However, **there has been a decrease in the proportion of newborns “placed for adoption”** over time, with only 24% of newborns falling in this category at the close of care proceedings in 2018.
- A decrease in both the use of orders within the category “with parents/extended family members” and “placed for adoption” is evident across all age-bands of infants.
- In 2012, 29% of newborns were subject to care orders at the close of care proceedings (“in care”). However, by 2018, **64% of newborns were subject to care orders at the close of proceedings**. As Cafcass Cymru does not currently record placement data, it is not possible to say how many of these babies were living with unrelated foster carers, with kinship carers, or at home with birth parents.
- **The family courts are making far less use of the range of orders available under the Children Act 1989, for newborns and infants over time.** The marked increase in newborns and indeed, all other age categories of infants, subject to care orders at the close of care proceedings is unexpected and warrants further investigation.
- A **supervision order was made for only 4% of newborns** at the close of proceedings between 2012 and 2018. The use of supervision orders is particularly low for all age-bands of infants.
- There is a **marked difference in the pattern of legal orders recorded for infants in Wales and England**, with England making far less use of care orders for infants at the close of care proceedings.

## 5. Discussion

This report provides new empirical evidence concerning infants and newborns in the family justice system, based on analysis of population-level data collected by Cafcass Cymru.

### Volumes, timing and urgency

Between 2011 and 2018, infants (under one year of age) comprised 30% of the overall population of children involved in s.31 care proceedings in Wales, by far the largest category of children when divided into one-year age categories. Of these care proceedings concerning infants, a high proportion are issued in the very first weeks of life, with **an upward trend in newborn cases against all measures, a similar picture to that seen in England**. In addition, a greater proportion of newborns are subject to urgent ICO hearings or non-standard case management hearings than any other group of infants or children. Given this new empirical evidence, more emphasis needs to be placed in policy and practice on pregnancy as a critical window for assessment, support and change.

### Subsequent infants

Between 2016 and 2018, **49% of newborns were “subsequent infants”; that is born to a mother who had already appeared in care proceedings concerning an older sibling**. This provides firm endorsement of Welsh government investment in the Reflect initiative.<sup>1</sup> This programme aims to reduce parents’ repeat appearances in care proceedings and the number of “subsequent infants”.

**Recommendation 1:** Given the dearth of empirical evidence to inform very early intervention in the lives of newborns, there would be considerable merit in reviewing the casefiles of a representative sample of cases of care proceedings issued for newborns. The review would aim to ascertain the challenges to, but also examples of good practice, focusing on the quality and content of pre-birth assessment, support and planning, the management of care proceedings and stability of permanency arrangements.

### Court area and local authority variation

There are **marked regional differences in the rates at which infants and newborns were subject to care proceedings across the three designated family justice areas in Wales**. It is highly likely that deprivation accounts for at least a proportion of the variance we have reported. However, further factors are likely to be at play including professional practice, available preventative services, and implementation of pre-birth guidance.

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<sup>1</sup> Roberts, et al. (2018) *Evaluation of Reflect in Gwent: Final Report*. Cardiff: CASCADE. Available at: <https://sites.cardiff.ac.uk/cascade/our-projects/reflect/>

**Recommendation 2:** The programme of research carried out by the Nuffield Family Justice Observatory will generate insights into the issue of care demand and deprivation. Through collaborative discussion with stakeholders, this empirical evidence aims to enable services to respond to local needs.

## Legal order usage

The pattern of legal order usage over time in Wales is particularly noteworthy. There appears to be **a marked change in practice** in terms of the legal orders made for both categories of very young children which appears **out of sync with the ethos of the Children Act 1989, which provides a clear legal framework for the use of a wide range of orders**. In 2012, care orders were made in 29% of newborn cases, however by 2018 this figure had risen sharply to 67%, with an associated decrease in the use of other orders. As mentioned earlier, Cafcass data does not currently provide information on children's placements, and children on a care order may be placed with unrelated foster carers, with kinship carers, or at home with birth parents.

When we draw comparisons with *Born into care England*, there appear to be markedly different trends in the use of legal orders for newborns and infants at the close of proceedings. In England, there has also been a drop in the number of children placed for adoption, but in contrast to Wales, an increase in the use of special guardianship.

The new evidence reported here on the pattern of legal orders for newborns and the broader population of infants suggests further analysis is needed of practices in Wales concerning the increasing use of care orders, reunification and placement with family.

**Recommendation 3:** In consultation with professionals, the Nuffield Family Justice Observatory's work will enhance understanding of the reasons behind the changing pattern of legal orders for newborns and infants at the close of proceedings, children's placements and future trajectories.

## Surfacing and spreading good practice

New and innovative practices are emerging in Wales. Systematic description and evaluation of emerging initiatives is needed to enable best practice to be evenly spread across different regions of Wales and further afield.

## 6. Conclusions

This report has begun to build evidence about the very youngest children in care proceedings in Wales. In addition, this is the first report to draw comparisons between Wales and England in respect of this group of children. Understanding the impact of the family justice system on newborns and infants is critical, given that decisions made for these children may either resolve safeguarding concerns and deliver permanence, or lead to very lengthy involvement in public services.

The research team have made use of valuable administrative data provided by the Children and Family Court Advisory Services Wales (Cafcass Cymru). In pioneering new statistics for Wales, the authors aim to bring research more closely in line with policy's emphasis on effective early intervention in the lives of infants to avert developmental harm. Welsh policy and practice colleagues require a rich and differentiated picture of infants and their families in the family justice system and beyond, in order to make the best, evidence-informed decisions.

## 7. Acknowledgements

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