

# Permanently Progressing?

Building secure futures for children in Scotland

## Decision making for children

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### Key messages

- The legislative, policy and practice context for permanence decisions in Scotland is complex. The range of options offers flexibility to tailor decisions to an individual child's needs, but is potentially overwhelming.
- Decision making can be driven by processes and policies rather than a child's specific needs. Use of legislation and guidance varies across Scotland with differences in local practice.
- Making decisions is intellectually and emotionally challenging. Decisions are made in a context which is complex and contested.
- The interface between local authorities, Children's Hearings and courts was characterised as difficult and complicated; the focus can shift from the child to the dynamic between the systems and individuals involved.
- Capacity issues in terms of time, resources (including availability and number of carers or adoptive parents) and the skills and knowledge of professionals influenced the decisions made and the timing.
- While many positives were associated with kinship care, it does not meet the needs of all children. An emphasis on kinship care may exclude some children from other forms of permanence.

## Introduction

The concept of permanence for children was developed in the 1970s when researchers in the USA and UK highlighted the problem of children 'drifting in care' with no effective planning in place to provide them with long-term stability and continuity in their relationships with caregivers (Rowe and Lambert, 1973<sup>1</sup>; Fanshel and Shinn, 1978<sup>2</sup>). A core tenet of current policy is 'early permanence', and the Scottish Government (2015)<sup>3</sup> defines four routes to permanence. They are: returning or remaining at home with or after support, where family functioning has stabilised and the parent(s) can provide a safe, sustainable home which supports the wellbeing of the child; permanence through a Permanence Order (PO); a Section 11 Order under Children (Scotland) Act 1995 (or Kinship Care Order under the Children and Young People (Scotland) Act 2014); and adoption. In Scotland there are two routes to adoption, a Direct Petition or a Permanence Order with Authority to Adopt (POA).

*Permanently Progressing? Building secure futures for children in Scotland* is the first study in Scotland to investigate decision making, permanence, progress, outcomes and belonging for children who became 'looked after' at home, or were placed away from their parents in 2012-13 when they were aged five and under. Phase One ran from 2014-18 and was designed to be the first phase in a longitudinal study following children into adolescence and beyond. Phase one involved a team from the Universities of Stirling, York, and Lancaster in collaboration with Adoption and Fostering Alliance (AFA) Scotland.

## Why is the issue important?

Every year thousands of children in Scotland become looked after either at home or away from home. Many of those children will remain with or be reunified to their parents, but others will be placed permanently with kinship carers, foster carers or adoptive parents. The decisions made will have far-reaching consequences for children and their families, and it is important to understand what factors influence decision making processes, children's pathways, and outcomes. This study builds on an existing body of knowledge about decision making and permanence in other parts of the UK (Wade et al, 2011<sup>4</sup>; McSherry and Fargas Malet, 2018<sup>5</sup>; Anthony et al, 2016<sup>6</sup>; Meakings et al, 2017<sup>7</sup>).

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<sup>1</sup> Rowe, J. and Lambert, L. (1973) *Children Who Wait*. London: BAAF.

<sup>2</sup> Fanshel, D. and Shinn, E. (1978) *Children in foster care: a longitudinal investigation*. Guildford: Columbia University Press.

<sup>3</sup> Scottish Government (2015) *Getting it Right for Looked After Children and Young People. Early engagement, early permanence and improving the quality of care*. Edinburgh: Scottish Government. Available at: <http://scotgov.publishingthefuture.info/publication/getting-it-right-for-looked-after-children-and-young-people-early-engagement-early>

<sup>4</sup> Wade, J., Biehal, N., Farrelly, N. and Sinclair, I. (2011) *Caring for Abused and Neglected Children. Making the right decisions for reunification or long-term care*. London: Jessica Kingsley Publishers.

<sup>5</sup> McSherry, D. and Fargas Malet, M. (2018) *The extent of stability and relational permanence achieved for young children in care in Northern Ireland*. Children Australia. DOI: 10.1017/cha.2018.18

<sup>6</sup> Anthony, R., Meakings, S., Doughty, J., Ottaway, H., Holland, S. and Shelton, K. (2016) Factors affecting adoption in Wales: Predictors of variation in time between entry to care and adoptive placement. *Children and Youth Services Review*, 67, pp. 184- 190.

<sup>7</sup> Meakings, S., Ottaway, H. and Coffey, A. (2018) The support needs and experiences of newly formed adoptive families; findings from the Wales adoption study. *Adoption & Fostering*, 42(1), pp. 58-75.

## What does the research tell us?

This briefing draws on the views of 160 decision makers. Participants included social workers, reviewing officers, practice leads, Children's Hearings panel members, educational psychologists, independent consultants and one sheriff. Birth parents were not involved in this phase of the study.

### The context is complex

The legislation and policy underpinning permanence vary across the United Kingdom and the context in which decisions about permanence in Scotland take place is complex. Decisions about children are made within local authorities, Children's Hearings and courts, and a child may be involved in all three systems at some point. Systems can be hard to navigate and the knowledge some participants had of key legislation, research, and processes was not always accurate. Moreover, making decisions about permanence is intellectually and emotionally demanding, and often contested, and this affects the people involved and the way that processes operated.

### Becoming looked after

The *Outcomes* strand of the study analysed questionnaires from 433 social workers and 166 carers and adoptive parents. It found that before becoming looked after away from home most children had experienced significant levels of maltreatment. Similarly, participants in this strand described how a range of factors including maltreatment and neglect associated with parental substance misuse, mental health and domestic violence led to decisions for children to be placed away from home (see also Wade et al, 2011; Biehal et al, 2018<sup>8</sup>; Wilkinson and Bowyer, 2017<sup>9</sup>). This followed an assessment (often multi-agency) of the care provided by parents, and of the nature of the risks and protective factors. For children whose older brothers or sisters have already been accommodated, assessment and planning may start at an early stage including pre-birth. While many of the participants mentioned poverty, this was not foregrounded. Rather, it was seen as one part of the lives of the majority of the children and their parents.

When children become looked after, a 'Child's Plan' is completed. This should include the child's needs, what supports are in place, or being put in place and by whom, and timescales for review:

*So very early on you've got a multiagency decision making forum that we would hope initially is just looking at right what supports can we all put in, what can we do to make this better?*

Local Authority focus group participant

A range of supports and services were described both to prevent the need for the child to be looked after away from home, and to promote reunification. These included input from drug and alcohol services, parenting programmes, and family support interventions. A range of agencies including health, education, and the third sector might be involved.

Legislation and policy are based on the presumption that unless it is unsafe, children will remain or return to their parents, and also that the child is at the centre with their needs being paramount. Consequently, while reunification was the primary aim, practitioners looked for tangible changes to enable children to return to parents safely. Significant evidence is required to justify the permanent removal of the child from their parents. Participants reported times when this included repeated attempts to reunify a child with parents where it was clear that

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<sup>8</sup> Biehal, N., Baldwin, H., Cusworth, L., Wade, J. and Allgar, V. (2018) In-home support or out of home care? Thresholds for intervention with abused and neglected children. *Children and Youth Services Review*, 89, pp. 263-271.

<sup>9</sup> Wilkinson, J. and Bowyer, S. (2017) *The impacts of abuse and neglect on children; and comparison of different placement options, Evidence review*. London: Department for Education and Research in Practice.

rehabilitation was unlikely. There was concern this was at the cost of additional trauma to the child. The underlying attitude and values of social workers and team managers to rehabilitation and permanence away from home affects the decisions they make about individual children, and the timing of decision making. Some social workers were presented as offering parents 'too many chances' in circumstances which were detrimental to the child. Others were described as being 'tied in to' timescales without flexibility.

A key driver for planning permanence away from parents was a lack of progress in relation to the child's plan. It was evident that decision making within timescales which meet the needs of the child and their parents may not always be possible, particularly where there are longstanding family difficulties. It is possible, however, to engage with a child and their parents in a way that recognises their differing needs, and is also empathic and sensitive. Existing research with parents highlights that there may be a disjunction between how practitioners think and feel they have involved parents, and the manner in which practitioners and processes are experienced by parents, which can be damaging and disempowering (Buckley et al, 2011<sup>10</sup>; Ghaffar et al, 2012<sup>11</sup>; Broadhurst and Mason, 2017<sup>12</sup>; Featherstone et al, 2018<sup>13</sup>).

### **Permanence away from home – what route**

Once decisions have been made that a child cannot safely return home, several factors influenced the route and timing to an alternative permanent placement. The term 'place-ability' (of child) was used as shorthand to cover a range of factors which decision makers took into account. These included the age of child, the current and proposed level of contact with birth parents, whether they have siblings, the degree of trauma experienced, whether the child has a disability, and the degree of medical uncertainty. In some areas, participants talked of 'unwritten' rules that influenced the child's perceived 'place-ability' for some forms of permanence.

During Phase one of the study the Children and Young People (Scotland) Act 2014 introduced Kinship Care Orders and formalised financial provision for kinship carers. Although most participants were interviewed before the Act was embedded, kinship care was usually the first option they considered. However, there were concerns when this was perceived as a 'blanket' strategy, or when the child did not have an existing relationship with the relative. Different approaches to kinship care within and across local authorities appeared to be linked to team and management cultures and beliefs, rather than always being driven by a child's specific needs. The complex nature of kinship care, which includes responding to the needs of the child while also managing family relationships, was identified. While recognising the benefits to the child which kinship care can bring, some worried that an early emphasis on kinship care may exclude some children from other forms of permanence if the kinship placement is not sustained.

For those children who can neither return home safely, nor live permanently with kinship carers, participants viewed adoption as the preferred option, particularly for younger children. In Scotland, there are two routes to adoption, and it was evident that geographical differences remain as to whether adoption is achieved via a Direct Petition, or via a Permanence Order with Authority to Adopt.

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<sup>10</sup> Buckley, H., Carr, N. and Whelan, S. (2011) Like Walking on egg-shells: Service users views and experiences of child protection systems. *Child and Family Social Work*, 16 (1), pp. 101-110.

<sup>11</sup> Ghaffar, W., Manby, M. and Race, T. (2012) Exploring the Experiences of Parents and Carers Whose Children have been Subject to Child Protection. Plans. *The British Journal of Social Work*, 42 (5), pp. 887-905.

<sup>12</sup> Broadhurst, K. and Mason, C. (2017) Birth Parents and the Collateral Consequences of Court- Ordered Child Removal: Towards a Comprehensive Framework. *Journal of Law, Policy and the Family*, 31 (1), pp. 41-57.

<sup>13</sup> Featherstone, B., Gupta, A. and Mills, S. (2018) *The role of the social worker in adoption - ethics and human rights: An Enquiry*. London: BASW.

Where a child's current foster carers offer to care for them on a permanent basis, participants identified benefits for the child, especially if this was a 'positive claiming decision' rather than one which occurred by default because of lengthy delays. Where children are settled with foster carers who can provide long-term care, carers would be encouraged to formalise this arrangement to provide legal as well as emotional security for the child.

*One of your main routes to permanence, to achieving permanence is foster carers claiming children who have been with them for X amount of time. And a lot of the time it works because they know them and they know exactly what they're coming with and the children have already settled.*

Local Authority focus group participant

### Decision making forums

Children and their parents may be involved in a range of formal decision making meetings. These include Child Protection Case Conferences, Looked After Children reviews, and Children's Hearings. Following implementation of legal aid aspects of the Children's Hearings (Scotland) Act 2011, more solicitors have been present at Hearings, generally representing parents (Porter, Welch and Mitchell 2016<sup>14</sup>). Children's Hearings were reported as being increasingly adversarial with an emphasis on parental rights rather than responsibilities. There was unease that this could compromise the 'paramountcy' principle, and make positive working relationships between parents and social workers less likely.

A tenet of legislation and policy is that children should be supported to express their views, and those views should be taken into account. Participants said formal processes endeavour to seek children's views, including at Looked After Child reviews and Children's Hearings, but that this is not always achieved, particularly for younger children (Whincup, 2011<sup>15</sup>; Winter, 2011<sup>16</sup>; Bruce, 2014<sup>17</sup>). Children's presence in decision making forums does not mean they are meaningfully involved.

Panel members talked about the importance they placed on parents' presentation at the Children's Hearing, indicating that this contributed to their decision making. From a different perspective, social workers worried that the 'snapshot' of the child and their parents in a Hearing can be an inaccurate or superficial picture of complex family relationships. There was a widely held view among social work professionals that the emotional impact of witnessing visibly distressed parents at Children's Hearings influenced panel members more than the information provided in written reports:

*If there's an emotional response from parents at hearings then that often has an impact on the decision when actually the evidence is there and social work are very clear about what the evidence is and there's been a reluctance to take that on board.*

Local Authority focus group participant

Some social workers thought Children's Hearings considered rehabilitation even if very limited improvement in parenting was demonstrated. Similarly, some panel members thought that social workers gave parents too many chances to resume care of their child, or that rehabilitation home

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<sup>14</sup> Porter, R., Welch, V. and Mitchell, F. (2016) *The Role of the Solicitor in the Children's Hearings System: A study commissioned by the Scottish Legal Aid Board*. University of Strathclyde: CELCIS.

<sup>15</sup> Whincup, H. (2011) *Involving children and young people in assessment and decision making*. Stirling: University of Stirling, Scottish Child Care and Protection Network/WithScotland.

<sup>16</sup> Winter, K. (2011) *Building Relationships and Communicating with Young Children: A Practical Guide for Social Workers*. London: Routledge, Taylor and Francis.

<sup>17</sup> Bruce, M. (2014) The Voice of the Child in Child Protection: Whose Voice? *Social Sciences*, 3 (3), pp. 514-526.

lasted too long and was damaging to the child. Each thought the other avoided making decisions about permanence away from home where there was a temporary reduction in substance/alcohol misuse even where there was evidence to conclude this would not be maintained, and where ongoing neglect was significant. Participants generally attributed timely decision making to themselves and delays to others.

When making, varying, or continuing a Compulsory Supervision Order, Children's Hearings have a duty to consider whether conditions regulating the child's contact with parents and others should be attached. Contact can vary along a continuum from no contact to regular face-to-face contact which may or may not be supervised by professionals or adults who care for the child. In the interface between Children's Hearings and social work, decisions about contact were associated with difficulties at different stages, but particularly where permanence away from home is being progressed (Porter, 2017<sup>18</sup>). Contact with birth family can be complex (Triseliotis, 2010<sup>19</sup>; Schofield and Simmonds, 2011<sup>20</sup>; Wassell, 2013<sup>21</sup>) and arrangements need to be driven by attuned sensitive decision making and be flexible to the child's changing needs.

The variable quality and level of analysis present in social work reports emerged as a theme and influenced decision making. This included members of the Children's Hearing stating they would be much less inclined to appoint a Safeguarder and request additional assessments if social work reports were clear and provided the level of information and analysis required. Some had a limited understanding of permanence planning processes within the local authority, and commented that information about these processes would also increase their confidence about social work assessments and recommendations:

*We don't get information from Looked After Child Reviews, or Permanency Panels we don't get any of that info ... You wouldn't need to have the Safeguarders you've got if you got the information from the local authority in the first place.*

Children's Hearing focus group participant

It was evident that the relationship between social workers and panel members was variable, and at times each appeared to question the capability and expertise of the other (Hill et al, 2017<sup>22</sup>). One possible explanation for tensions at the interface between social work processes and Children's Hearings is that the emotions and tensions involved in making difficult decisions are not fully recognised, explored, and contained (Ruch, 2008<sup>23</sup>).

Permanence assessment reports are completed for Permanence and Adoption panels. These are major pieces of written work and some described the format as overly lengthy and repetitive. There was a move in some local authorities to use extended versions of the Child's Plan rather than the Child's Adoption and Permanence Report (CAPR) form. However, there are implications

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<sup>18</sup> Porter, R. (2017) *Contact Decisions in the Children's Hearings System*. Glasgow: CELCIS.

<sup>19</sup> Triseliotis, J. (2010) Contact between looked after children and their parents. *Adoption & Fostering*, 34 (3), pp. 59-66.

<sup>20</sup> Schofield, G. and Simmonds, J. (2011) Contact for infants subject to care proceedings. *Adoption & Fostering*, 35 (4), pp. 70-74.

<sup>21</sup> Wassell, S. (2013) *Contact - A Review of Research and Practice Literature*. Commissioned by Inverclyde Community Health and Care Partnership and shared with authors consent.

<sup>22</sup> Hill, M., Welch, V. and Gadda A. (2017) Contested views of expertise in children's care and permanence proceedings. *Journal of Social Welfare and Family Law*, 39 (1), pp. 42-66.  
DOI: 10.1080/09649069.2016.1272781.

<sup>23</sup> Ruch, G. (2008) Developing "containing contexts" for the promotion of effective direct work: the challenge for organisations. In: B. Luckock and M. Lefevre eds. *Direct Work: Social work with children and young people in care*. London: BAAF, pp. 295-306.

of providing reduced information for prospective carers, adopters and for children accessing their records in the future.

### **Child centred timescales for permanence?**

The *Pathways*<sup>24</sup> strand of the study tracked the progress of 1,836 children from 2012 to 2016 using Children Looked After Statistics (CLAS data). It found that the route to permanence influenced the time it took. Where children were reunified with parents this took, on average, nine months. For children where the route was Section 11, the average time from becoming looked after away from home to the order being granted was 22 months. For children where adoption was the route it took two to three years. There has been concern that in other areas of the UK adoption may be pursued hastily, and at the cost of other routes to permanence (Featherstone et al, 2018). This did not emerge as a concern in this study:

*We're very keen to tackle delays in terms of drift in relation to permanence and again I think that's a common theme across Scotland now because children wait far too long. Even children accommodated at birth can wait two to three years before they're finally placed for adoption.*

Local authority senior manager

### **Resources**

Limited resources were reported to have an impact on decision making and timescales. Delays in progressing children's plans were associated with staffing issues, including high caseloads, social worker retention rates, and sickness absence. Some participants described lengthy waits for a court hearing, which they thought were exacerbated by the loss of local sheriff courts. The important role of legal and medical advisors was highlighted. In some areas, it was reported that there were insufficient medical resources, and this could delay Adoption and Permanence panels. The capacity and skills of those involved, and the availability of sufficient numbers of good carers and adopters with realistic expectations of children and a clear understanding and of possible challenges ahead also emerged as important.

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<sup>24</sup> The *Pathways* report can be accessed at: <https://www.stir.ac.uk/about/faculties-and-services/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>

## Implications for policy and practice

- Engaging with children, their parents and carers, and being involved in decisions about what route to permanence will best meet the child's needs is intellectually and emotionally demanding. Those involved in decision making require sufficient ongoing support and training to equip them for this task. If supervision and training is limited to processes, policy, legislation and research, and does not also address the emotional content and context, it is unlikely to be effective. Ideally, given the tensions at the interface between social work processes and Children's Hearings, joint training should be encouraged.
- The legislative, policy, and practice context for permanence decisions in Scotland offers flexibility to tailor decisions. However, the drawback is the resulting, potentially overwhelming, range of possible pathways to permanence and systems which are difficult to navigate. Any changes which compound this should be avoided.
- Decisions about the choice of placement and the legal route are influenced by local cultures and processes. Activities that encourage local authorities to share practice experiences and learn from each other are one way forward. As part of quality assurance, local authorities need to question how far custom and culture contribute to decisions for individual children.
- The Children and Young People (Scotland) Act 2014 introduced Kinship Care Orders, and formalized financial provisions for kinship carers. The positives associated with kinship care are clear, but it cannot meet the needs of all children and may exclude some children from other forms of permanence. An analysis of the longer-term outcomes for children in kinship care, and the supports provided to kinship carers post the 2014 Act would be beneficial.
- Decisions about contact can be the site of conflict. Contact arrangements with those people who are important to the child (including birth parents, siblings, extended family members, and previous carers) need to be driven by sensitive, attuned, decision making, and be flexible, given that a child's needs may change over time.

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<https://www.stir.ac.uk/about/faculties-and-services/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>

<https://afascotland.com/learning-zone/2-static-content/124-permanently-progressing>

<https://www.york.ac.uk/spsw/research/researchproject-permanentlyprogressing/>

<https://www.cfj-lancaster.org.uk/projects/permanently-progressing>