Articles

New entrants and repeat children: continuity and change in care demand over time

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This article and 'Women in recurrent care proceedings in England (2007–2016) at p 412 below are based on presentations given at a seminar 'Disrupting the care cases crisis' co-hosted by the Nuffield Foundation and Cafcass, held on 23 February 2017. The seminar was prompted by the concerns over the escalation in care demand highlighted by Sir James Munby in his 15th View from the President's Chambers (see October [2016] Fam law1227) and the need for a strategic response to tackle it. The Nuffield Foundation brought together policy-makers, experts across the family justice system, Whitehall and academics to hear and discuss latest research evidence, analyses by the DfE and MoJ and innovative practice by children's services. The overall aim of the seminar was to consider how the crisis might be addressed and to identify gaps in knowledge. Baroness Claire Tyler of Enfield, Chair of the Cafcass Board provided the concluding speech and Sir James Munby outlined his reflections on the day and what questions remained.

The relentless rise in care proceedings is one of the most troubling developments in family justice today. It has major consequences for the children and families and poses an immense strain on local authorities and the courts. The President of the Family Division has described this trend as a 'looming crisis'[1] and additional funds to meet expanding need are considered to be unlikely. Whilst acknowledging that the causes of the rise are likely to be multifactorial, the President has drawn up a list of questions which focus on the use of the family justice system to see if they can illuminate some of the drivers of the increase in care demand.

In this article we present brand new information on three questions posed by the President. Have there been changes over time in the number of children in each care case? Have there been changes in their age and gender profiles? Have there been changes in the number of 'repeat children'? These are defined as children who return to court following placement breakdown. We also include an analysis of trends over time in the use of different types of legal order made at the end of the s 31 proceedings. This analysis is important in order to understand the relationship between return to court and order type and captures more broadly shifts in policy and decision-making about permanency planning and how the child's best interests are met. In this way we are able to map out patterns of stability and change in the case from the start of the proceedings, through to final order, and subsequent disruptions that lead to return to court.

To address these questions we draw on our ongoing national study of supervision orders and special guardianship[2] funded by the Nuffield Foundation (2015–2018). Our answers are derived from analysis of the Cafcass national electronic case management database which allows us to generate national data and therefore to be confident that our results are robust. Policy-makers in the socio-legal field are increasingly seeking evidence based on national data to underpin and inform strategy.

1 http://www.familylaw.co.uk/news_and_comment/15th-view-from-the-president-s-chambers-care-cases-the-looming-crisis.
2 http://wp.lancs.ac.uk/cfj-supervision.

In this article we use the period 2008/09–2016/17[3] as our observational window to provide the crucial longitudinal perspective. The primary unit of analysis in our study is the child's s 31 set of proceedings. This includes a s 31 application (care, supervision and extension of supervision) and may include other additional applications such as residence/child arrangement orders (live with), special guardianship or placement and which leads to one or more final orders. By using the child's set of proceedings as the main unit of analysis we are able to track individual legal outcomes for singleton children and those who are part of a sibling group and to track their individual pathways over time. We have used return to court as a proxy of disruption as s 31 proceedings always indicate risk or actual significant harm.

Have there been changes in the profile of care cases and children subject to s 31 proceedings over the period 2008/09–2016/17*?

Our starting point is that the number of s 31 cases increased between 2008/09 and 2015/16[4]. Over that period the annual number of cases almost doubled. The largest proportional increase was in 2009/10, a 35% increase on the previous year, and widely described as the 'Baby P Effect'. But there has also been a marked increase in the last three years. In 2015/16 there were 13% more cases than in 2014/15 and 2016/17* is heading towards the highest number of cases ever recorded over the period. The story is the same whether we look at the increase per child or per case. However there has been very little change over this period in the number of children involved in the case. The average (1.7) child per s 31 case has remained stable year on year and around 60% of all s 31 cases involve one child only.

The age profiles of children at the start of s 31 proceedings do show some changes over time. The main changes have taken place since 2013/14 and the general trend is that the children are getting older. The proportion of children under one comprised around 30% of all children between 2008/09 and 2012/13 compared to only 25% in 2015/16 and 24% in 2016/17*. At the opposite end of the age spectrum children who were aged 10 years or older at the start of the s 31 proceedings comprised less than 20% of all children up to 2013/14. The proportion had risen to 23% in 2015/16 and in 2016/17* comprised 26%. This is the highest ever recorded for this age group over the period. While children's age profiles have changed over time this is not the case for gender. The ratio of girls (49%) to boys (51%) has remained constant during the whole period.

Section 31 proceedings include both applications for a care order and for a supervision order. The majority of applications are for care. They make up over 90% of all s 31 applications but there has been a small increase in the rate of supervision order applications since 2013, up from 6% to 9%.

Have there been changes in the proportion of repeat children over time?

The phrase 'repeat children' coined by the President in his 15th view is new and is likely to enter the family justice lexicon in the same way that 'repeat' or 'recurrent mothers' have become a very important lens through which to analyse care demand. As Broadhurst and Bedston demonstrate in their article below,[5] just over 1 in 4 cases involve mothers who have been subject to care proceedings previously.

The concept of repeat children is helpful because it allows us to look in aggregate at the extent to which repeat children contribute to care demand over time. It also allows us to test out the hypothesis that the

3 All figures for the fiscal year 2016/17 in this article are based on Quarters 1, 2 and 3 and are denoted by use of an asterisk.
4 Except for 2013/14 where there was a 2% drop in the number of s 31 cases.
5 K Broadhurst and S Bedston, (2017) Women in recurrent care proceedings in England (2007–2016): continuity and change over time.

proportion of repeat children might be as high as it is for repeat mothers. The answer is clear-cut. The proportion of repeat children – (ie those who were involved in s 31 proceedings during the previous 5 years) – account for a very small share of total care demand. In the last three years this proportion (6%) has shown very little change. In this respect our findings are in line with those of Broadhurst and Bedston whose results show only a very small increase in recent years.

Have there been changes in the use of different types of legal order over time?

An important question to consider is whether the surge in care proceedings and changes in the age structure of the child population has led to changes in use of different order types. To answer this question we have compared use of six permanency options – order of no order, supervision, residence/child arrangement orders, special guardianship, care and placement. Our analysis focuses on the 7-year period 2010/11–2016/17 because from this point onwards SGOs were used more frequently and recording of final legal orders is most consistent. We have used orders of no order as a proxy for confirmation that the court decided the child could remain at home with birth parents. Supervision orders are not of course permanency orders in their own right but are used to support reunification to the birth or extended family. The main reason for choosing placement orders for this analysis rather than adoption is because it captures the intention to adopt.

Three clear trends stand out. There has been a steady increase in SGO usage which accounted for 19% of all legal orders made in 2015/16 and 2016/17*. At the same time, there has been a decrease in the use of placement orders. The downward trend started in 2013/14 and has continued since then. Placement orders now account for 17% of all orders made. The final noteworthy trend concerns the use of supervision orders. Over the 7-year period 2010/11–2016/17 the use of supervision orders to support reunification has changed little, accounting for between 13%–16% of all orders. The big change is in the growing use of supervision orders attached to either a SGO or RO/CAO. Supervision orders attached to SGOs account for approximately one third of all SGOs and approximately two thirds of all ROs/CAOs in the last 3 years.

What is the risk of return to court for different types of legal order?

To answer this question we have estimated the likelihood of a child's case returning to court within a 5-year period using a statistical approach called survival analysis that is widely used in health and sociological research. The comparison was based on the same six legal order types described above. Some clear and important messages emerge. Supervision orders have the highest rate of return to court. Approximately 1 in 5 of all supervision orders supporting return home are estimated to end up back in court within 5 years because of new s 31 proceedings. No national evidence has been presented on this issue before. This risk of return to court following a supervision order varies with age. Children aged under 10 are significantly more likely to return to court than those above ten. Furthermore, supervision orders attached to special guardianship or residence/child arrangements orders increase the risk of return to court when compared with the making of a standalone SGO or residence /child arrangements order. This is another important trend that has not been identified before.

What is the extent of local variation in these trends?

Understanding local variation is extremely important but the first task is to demonstrate to what extent it exists and to map the patterns. To explore these issues we have carried out analyses of local variation in the rate of repeat children, the rate of use of different legal orders and rate of return to court after a supervision order. None of these rates have been analysed before. Our analysis is based on the use of funnel plots which are a valuable graphical aid for outcome comparisons and a particularly

effective visual way of comparing rates that take into account volume without producing league tables.

Our results suggest there is variation between local authorities in all three rates described above. The same story also applies to variation between Designated Family Judge (DFJ) areas. Variation in the use of supervision orders is particularly noteworthy amongst local authorities where there is also an association between a high rate of supervision orders and return to court after the making of a supervision order. In our next article we will discuss variation and possible reasons for the findings.

Tackling care demand: the implication of our findings

The single most important finding from this investigation is that new entrants are the main driver to the rise in care demand and this has been so since 2008/09. Repeat children play only a small part in care demand and this has scarcely changed throughout the period. This too is an important result. It shows that if the rise is to be intercepted, strategy needs to be targeted to first time children in order to prevent ever larger numbers of children being made subject to s 31 care proceedings because of significant harm. We need to examine the pathways to care proceedings and look in particular at the wider socio-economic antecedents. Whilst drivers are likely to be multiple and difficult to disentangle better understanding is needed of the impact of rising child poverty over the 2008/09–2016/17 period on child vulnerability and care demand. The damaging effects of poverty on child well-being are well evidenced.[6] These wider structural factors seem as important to investigate as the behaviour of children's services and courts in managing risk and the decision when to issue care proceedings.

With the possible exception of age, no other question about the profile of cases has yielded fruitful avenues for further inquiry. The surge is not explained by an increase in very young children or by the number of children in the care case. It is however possible that the rise in the proportion of children aged 10 and older may be linked to an increase in s 20 cases coming before the courts as s 31 proceedings as a result of recent case law[7] (*Re P* and *Re N*). If this were so, the increase might be short-lived as local authorities clear the backlog of these cases. If however the increase in older age reflects a rise in child sexual exploitation cases following Rotherham,[8] Oxfordshire and other areas, we might expect the trend to be more enduring given greater professional awareness and more obligations to intervene. Whatever the causes of the proportionate increase in older children, it is likely to lead to greater complexity in case management. Older children are more likely to have more entrenched difficulties affecting their mental well-being and increasing the chances of risky lifestyles, all of which make placement finding more difficult.

In an earlier article[9] we argued that supervision order children are a largely invisible group in policy, practice and research. The present analysis has shown that this needs to change for two main reasons. First supervision orders are the main contributor to return to court. Second, the practise of attaching a supervision order to special guardianship and to residence/child arrangement orders has increased markedly over the period and is also associated with higher rate of return to court. What lies behind this trend is unclear.

6 J Bradshaw, A Garnham, A Lister and M Shaw, (2016) Improving Children's Life Chances, Child Poverty Action Group; http://www.cpag.org.uk/child-poverty-facts-and-figures; http://www.nuffieldfoundation.org/sites/default/files/files/Children_wellbeing_income_summary_v_FINAL.pdf.

7 *Re P (A Child: Use of section 20)* [2014] EWFC 775 (16 December 2014); *Re N (Adoption: Jurisdiction)* [2015] EWCA Civ 1112, [2016] 1 FLR 621.

8 A Jay, (2015) https://www.rotherham.gov.uk/…/id/…/independent_inquiry_cse_in_rotherham.pdf; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408604/2903652_RotherhamResponse_acc2.pdf.

9 J Harwin, B Alrouh, M Palmer, K Broadhurst and S Swift, 'Spotlight on supervision orders: what do we know and what do we need to know?' [2016] Fam Law 365.

Does it indicate that these cases have become more risky[10] or that practitioners are becoming more risk averse and demanding more rigorous monitoring? And is the strategy effective? In the next phase of our work with the five partner local authorities, we will address this issue by comparing profiles and outcomes for children on standalone SGOs and those with an attached supervision order. But already, in focus groups carried out with our partner local authorities we have found considerable variation in attitudes to the use of attached supervision orders and indeed to supervision orders in general. In this way professional perspectives are confirming the variation between local authorities/DFJ areas that we have demonstrated from analysis of the national Cafcass database.

The President is seeking ways of achieving a coherent strategy to tackle the causes and consequences of rising care demand. It is a major challenge that will need to go beyond the operation of the family justice system to encompass the wider structural and socio-economic influences that affect care demand. But this article has shown there is much to be learnt from focusing on the family justice system itself. It also reminds us of the importance of using national databases such as that held by Cafcass in order to generate robust evidence on national patterns and variations over time. In our next article we will explore patterns of return to court for special guardianship and the other five legal order types discussed here and provide new evidence on local variation and possible reasons.

In the next issue, Professor Harwin and Dr Alrouh will discuss further findings from their study of supervision orders and special guardianship presented at the seminar, 'Disrupting the care cases crisis'.

The focus is on cases that return to court with special emphasis on special guardianship and supervision orders. The authors investigate national rates of disruption and report on the important but under-explored issue of local variability. They ask what might lie behind the trends and draw on emerging findings from focus groups with professionals.

The authors are grateful to the Nuffield Foundation and to Cafcass for their support with this study. The results reported in this article are the responsibility of the authors.

10 The DfE Special Guardianship Review (2015) identified the use of attached supervision orders to SGOs as a possible indicator of difficulties in the arrangements, especially over contact with birth parents. https://www.gov.uk/government/consultations/special-guardianship-review.