

# *The Care Cases Crisis*

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# The Care Cases Crisis project

There is widespread concern in England about an increasing number of children involved in public family law proceedings, particularly care order proceedings. The implication is that child protection processes should result in a reduction in children needing State care.

Our paper explores interim findings from our Care Cases Crisis project funded by the Nuffield Foundation, drawing on findings from our related ESRC funded projects. We explain that contrary to public expectations, the current system will inevitably result in increases in children entering State care and put forward the proposition that the situation is likely to worsen, not improve unless the inherent tensions between law, social policy and social work practice are resolved.

We argue that the complex, multi-stage child protection system derives from underlying theoretical legal principles of child rights which have resulted in an unnecessarily overburdened social care system. Drawing on findings from existing literature and new data analysis we question the paradigm and make tentative suggestions for a new approach.

# Context: our projects

**Grant Ref Nos:**

ES/M000990/1

ES/R00983X/1

- ❖ **Safer Children?** A qualitative and quantitative study looking at how referrals are made to Children's Social Care departments from schools.
- ❖ **Rethinking Child Protection Strategy (ESRC grant number ES/M000990/1):** An analysis of the law, policy and practice underpinning Children's Social Care department's response to referrals.
- ❖ **The Risk of Risk (ESRC grant number ES/R00983X/1):** An analysis of the impact and validity of risk prediction systems pre and post referral.

# Care Cases Crisis: a focus on s.31 application trends

- \* S.31 applications are rising, but proportionately at a much lower rate than might be expected given child abuse prevalence estimates and the significant changes to the policy and legal processes in 2015 and 2014 respectively
- \* We are looking at national quantitative datasets over the last 27 years since the Children Act 1989 came into force in 1991, together with detailed analysis of system changes over the past seven years.
- \* We are also conducting a quantitative and qualitative analysis of case files in the Bristol Civil and Family Justice Centre (the main Justice Centre in the South West of England covering city, town and rural Local Authority Areas) to look at what elements of the multi-stage system increase the likelihood of escalation to s. 31 care order applications and whether there are changes over time.
- \* We are using Local Authority cases that do not progress to s.31 applications as our control group.
- \* We are matching our existing datasets from previous projects with these new datasets to understand how (after controlling for cases of actual abuse) the system results in increasing numbers of cases escalating through the system.

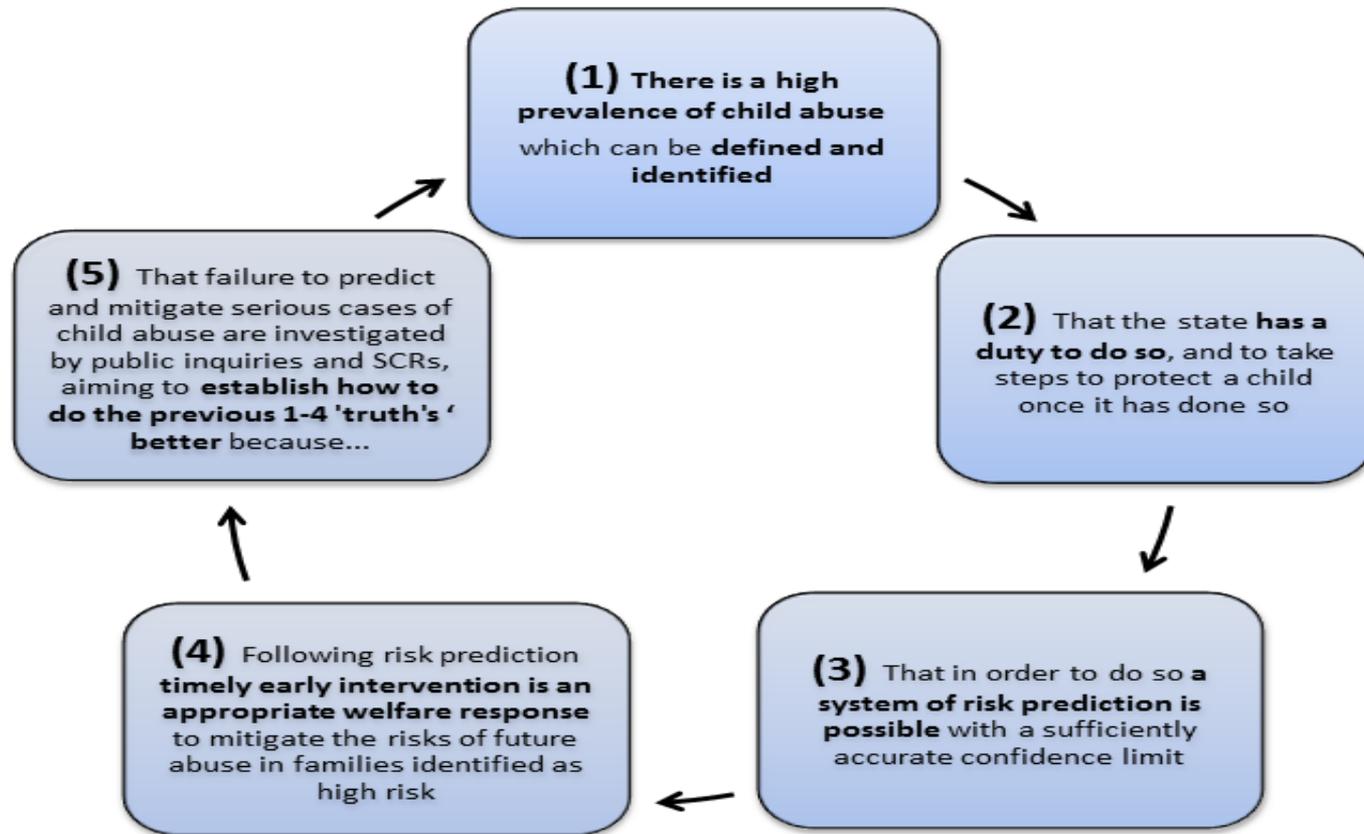
# Policy development

- \* Policy has developed over the last 25 years as a response to high profile child tragedies and political agendas, particularly when **Public Inquiries & Serious Case Reviews** occur.
- \* Tragedies leading to PIs such as Dennis O’Neal (1948), Maria Colwell (1974) and Jasmine Beckford (1985) raised public and political awareness of serious child abuse and influenced the Children Act 1989.
- \* In addition, there have been over 1,000 published SCRs in recent years which have increased fears of large scale serious child abuse.
- \* Social work thus became linked with the need to prevent abuse as opposed to primarily a professional welfare service, as the Beveridge Report (1942) originally intended.
- \* This, together with the *Every Child Matters* agenda, the introduction of ‘safeguarding’ reporting from the Children Act 2004 and statutory guidance ‘policy mixing’ in relation to need and abuse, has not had the intended effect of reducing abuse prevalence or preventing tragedies.
- \* Why?.....

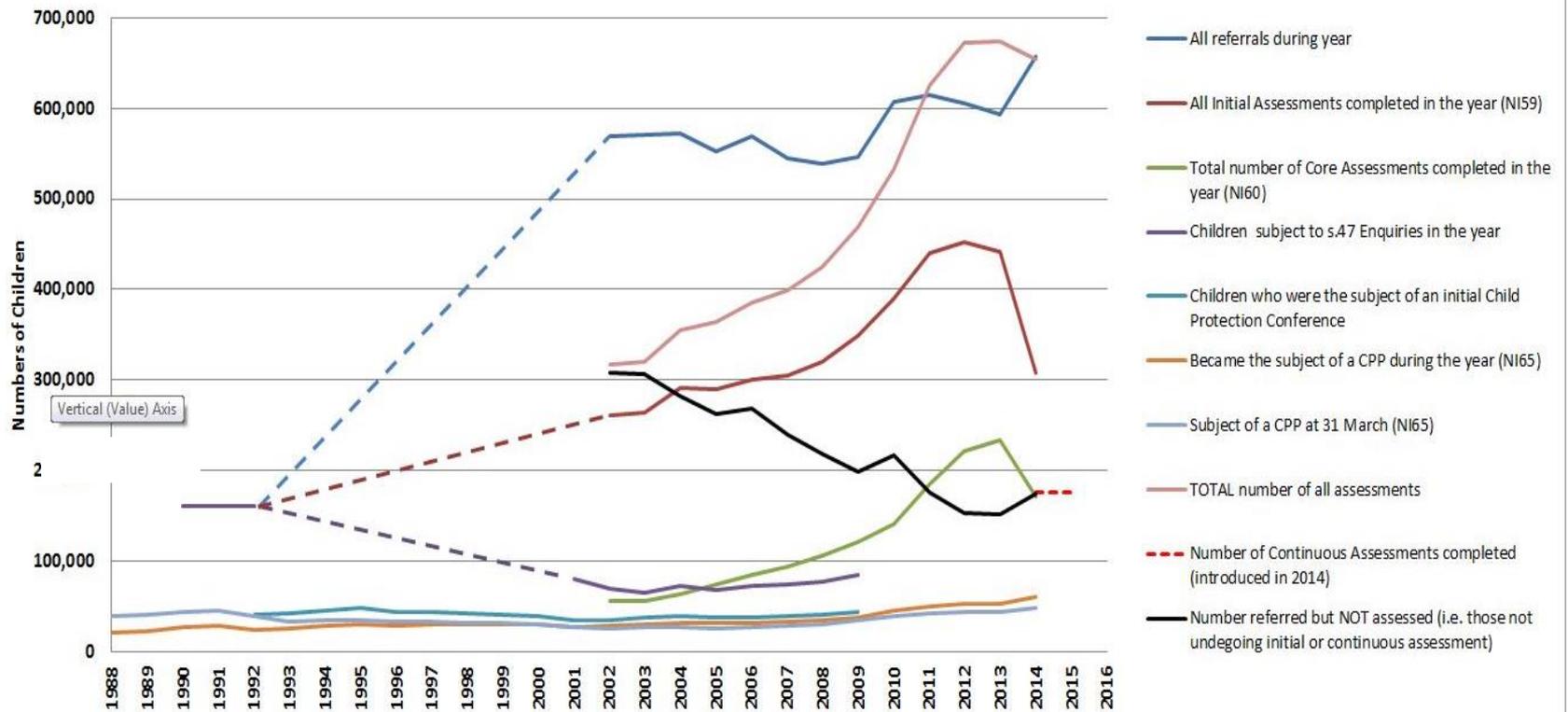
# Ideological approach

- \* England's Statutory Guidance, Working Together to Safeguard Children (WTSC), starts from a premise there is a large amount of (a) undetected familial child abuse and (b) fatal cases are likely to contain 'missed opportunities';
- \* Prevalence estimates reinforce that belief;
- \* Feeds the narrative of 'success' and 'failure' in child protection and safeguarding work as families with 'risky characteristics' are more likely to have a 'point of contact' (POC) with CSC departments and thus enter the multi-stage machinery of risk management within assessment and decision making;
- \* Policy drive is towards early intervention to head off abuse; SCRs that illustrate cases where this has not happened are seen as evidence of failure to intervene correctly;
- \* The Munro Review & Report (2011) is the most recent government funded review but it did not offer critique of the strategic direction of referrals and assessments in CP and S;
- \* Since 2015, WTSC progressively conflates ss.17 and 47 responses and erodes family rights to either withhold consent or obtain s.17 services without risk assessment.
- \* The 2014 roll-out of the Public Law Outline increases the Local Authority focus on litigation from the outset.

# Child rights focussed ideology: the 'Theory of Child Protection Circuit'



# Diminishing Returns Ratio



# Trend analysis

- \* Since the Children Act 1989 referrals have increased by 311% (from 160,000 per year to 657,800 per year, between 1991 and 2014).
- \* Assessments have increased by 302% over the same period (from 120,000 to 483,800).
- \* The number of cases of 'core abuse' have fallen.
- \* The ratio of referrals to registrations have fallen year on year (from **24.1% to 7.3%**).
- \* The vast majority of referred cases do not meet s.47 thresholds and this number is increasing.
- \* Two major changes around 2014/15 that changed this trend:
  - \* Change to WTSC to erode family support under s.17 in favour of a s.47 child rights approach via the continuous assessment; and
  - \* National roll-out of the Public Law Outline.

# Our data analysis findings

## **(1) Analysis of the legal and policy framework**

Child protection & safeguarding strategy merges ss.17 & 47.

## **(2) Trend and prevalence analysis**

The significant increase in referrals (311%) has not led to a reduction in child abuse.

Instead there has been a significant reduction in the child abuse detection ratio from

24% to 7%.

What does the data tell us about the current strategy?

## **(3) Adverse event response analysis**

SCR findings are narrow and formulaic. By definition, they concern outlier cases.

They enable a culture of over-intervention driven by fear of the consequences of under-intervention.

## **(4) Risk prediction analysis**

Risk prediction does not have a reliable confidence limit. For example, a large, 10,000 family study predicted in excess of 97% false positives and 17.5% false negatives.

This study influenced the rise of risk prediction as a means of predicting and preventing child abuse.

# Our theoretical findings

(1) The legal and policy framework led to identification of:

**The Theory of Child Protection Circuit**

(2) Our trend and prevalence analysis led to identification of:

**The Law of Diminishing Returns Ratio**

**Overall conclusion: There is a need for a new ethico-legal model (framework) of child protection**

(3) Adverse event response analysis led to identification of:

**The Outlier Paradox**

(4) Risk prediction analysis led to identification of:

**The Welfare/Policing Dichotomy**

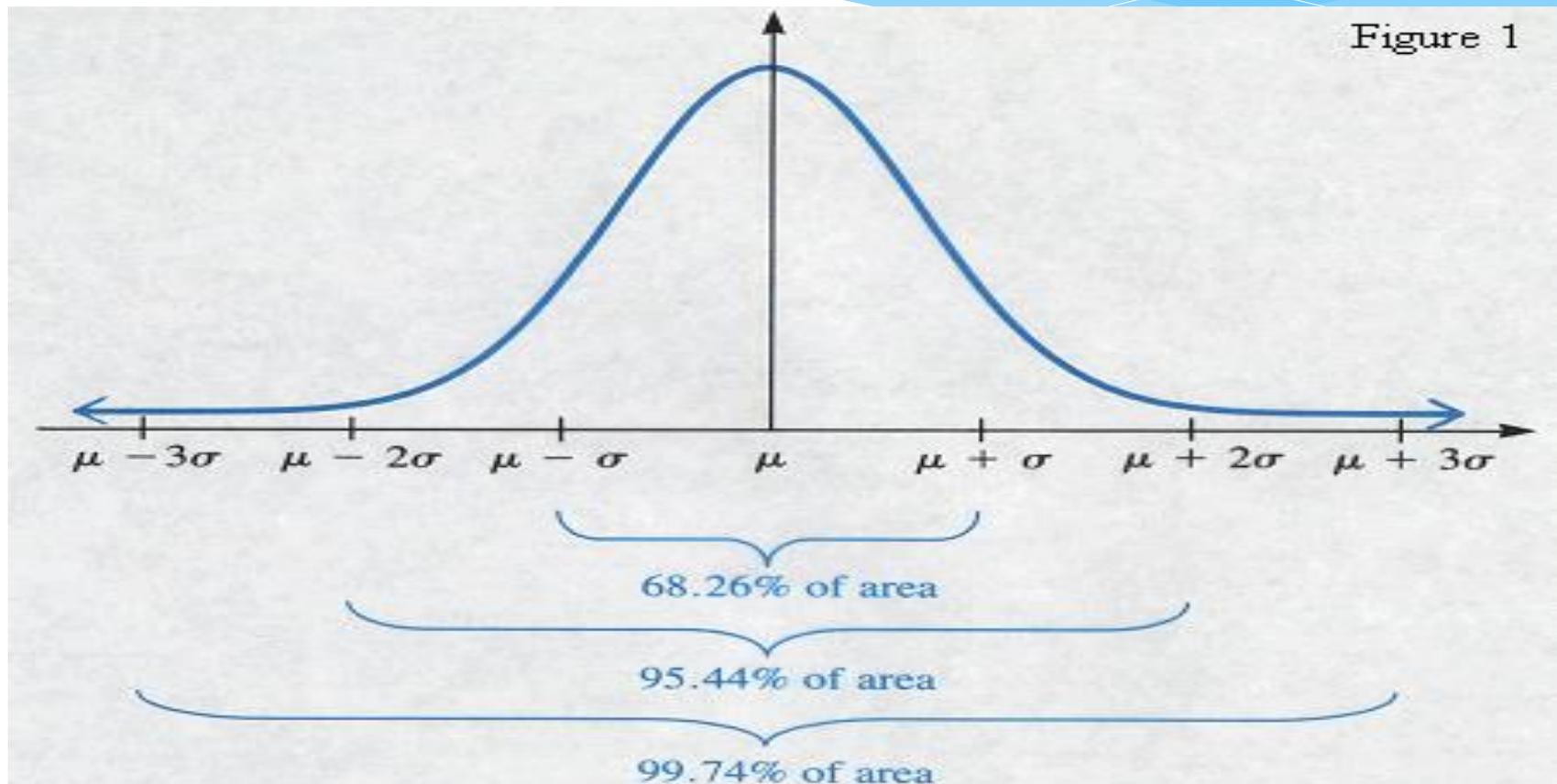
# The Public Law Outline

- \* Designed around a 'Woolf' PAP model, it has had the opposite effect of the PAP: the characteristics of the participants are different in PLO cases
- \* Helps the Local Authority formulate its case for success. Local Authorities build a PLO compliant case from the outset.
- \* Families have no legal aid until a late stage. By the time a lawyer is involved the case is already built and the forensic evidence collected. Our interviews with lawyers showed that lawyers do not challenge most of the evidence or the means by which it is collected. They see their role as focussed on convincing the courts that the 'service user' will be compliant with social work requirements.
- \* The outlier paradox is particularly evident in cases where parents challenge the LA's case. These parents behave as though they are in the criminal justice process (ie protest their innocence). Deviating from the 'model service user' paradigm In a child rights focussed system this does not help them.
- \* Our file analysis is showing that families mostly do not realise what is happening. They see referral and assessment as a gateway to support and help and feel unable to say 'no' without appearing non compliant. They do not necessarily understand that any contact with CSC is a forensic evidence gathering process.

# Analysing the paradox: finding the needle in the haystack

- \* Serious Case Reviews overall cannot find any characteristics (reliable risk indicators) in families where fatal abuse occurs that differ from the characteristics in families who do not fatally abuse their children.
- \* The national and local level policies work well with a 'model service user', but the less a family fit this model the more 'risky' they appear to be. The 'model service user' presents the least risk to the child. Thus in a child rights focussed system the less a parent questions State assessments the more likely they are to keep their child.
- \* This is counter-intuitive and our file analysis is showing a 'criminal justice system response' from many parents who believe there is a due process model operating that is concerned with their 'guilt' or 'innocence'
- \* In s.31 order cases, the more extreme the outlier behaviour (ie resisting social work involvement, disagreeing with professional assessment), the more likely they are to be **either** a false positive, or a false negative.

# The Outlier Paradox: compliance and the 'Model Service User'



# Who is responsible?

**Department for Education:** creates policy and writes it into the Statutory Guidance.

Also controls many of the sources of referrals, eg from schools as well as the process of referrals themselves.

It encourages uncontrolled and increasing numbers of cases into the system.

The DfE does not have the financial consequence.

**Local Authorities:** Responsible for funding the response to the large numbers of referrals including deciding which cases to pursue forensically and which cases to pursue via 'support.'

**The Ministry of Justice:** Responsible for the process of litigation.

They have the problem of funding the litigation stages once cases reach the Public Law Outline.

# A possible restructure

- \* The **theory of child protection circuit** merits overt consideration and dismantling as an underlying rationale;
- \* Services need to be able to be structured so as to ensure **s.17 is consensual and s.47 is able to be a forensic investigation**. This will address elements of the **welfare/policing dichotomy, the law of diminishing return ratio problem and the outlier paradox**;
- \* We suggest a return of policy to the original intention of the 1989 Act and a revised framework to rebalance state power with private rights;
- \* The primacy of child rights merits rethinking in favour of a family support model. At present the welfare model is anti-family in its attempts to be pro-child. In s.47 cases this may be justified; in s.17 cases it is not.
- \* S.47 processes should follow a model more aligned with the **safeguards and controls inherent within the criminal justice process**.



**Thank you!**  
**Questions?**

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