

Briefing on the English Child Protection System

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This overview of the child protection system covers England, not the whole of the UK. This is because Scotland, Northern Ireland and Wales have devolved parliaments which are responsible for some aspects of policy. There are therefore some important differences in the legal and institutional frameworks for child protection across the four countries of the UK and, for this reason, the *Hestia* study focuses solely on England.

The policy framework: a brief outline

The English child protection system is embedded in a wider child welfare system which not only serves children thought to be at risk of abuse or neglect but also other children and families in need of support. The policy framework governing child welfare services is provided not only by law but also by statutory guidance issued by central government (which must be followed) and non-statutory guidance (which local authorities should follow). The key legislation governing child welfare services today is the *Children Act 1989*. Although this has since been amended and supplemented by other legislation, including the *Children (Leaving Care) Act 2000*, the *Adoption and Children Act 2002*, the *Children Act 2004*, the *Children and Young Persons Act 2008* and the *Children and Families Act 2014*, the *Children Act 1989* continues to provide the core legal framework for all child welfare provision. Child welfare services work closely with the National Health Service (a universal service free at the point of delivery) and with the youth justice system, but these are institutionally separate and are governed by separate legislation.

The *Children Act 1989* states that local authorities have a duty to ‘safeguard and promote the welfare of children who are assessed as being in need’. The term **children in need** encompasses a broad group, including not only children at risk of abuse or neglect but also others with no recorded maltreatment, such as children with disabilities and those living in families experiencing family

dysfunction or acute stress. Promoting the welfare of children is therefore conceptualised quite broadly, with the protection of children from maltreatment nested within a wider set of goals for the child welfare system. Within this framework, the safeguarding task involves protecting children from maltreatment, preventing the impairment of their health or development, ensuring that they grow up in circumstances consistent with the provision of safe and effective care and taking action to enable all children to have the best outcomes (HM Government, 2015). ‘Safeguarding’ is therefore defined quite broadly and includes a strong focus on child development and on positive outcomes for children.

Within this broader focus on promoting the welfare of children in need, the key concept in relation to child protection is **significant harm**. This was introduced by the *Children Act 1989* to set a clear threshold for compulsory intervention in family life. Local authorities have a duty to investigate if they suspect that a child in their area is suffering, or likely to suffer, significant harm. Thus local authorities must be alert to evidence of a high *risk* of harm, as well as any harm already experienced by a child. The harm must be *significant*, in relation both to ill-treatment (including sexual abuse and non-physical forms of maltreatment), health (including both physical and mental health) and development, including physical, intellectual, emotional, social or behavioural development (s.31 (9) *Children Act 1989*). The legal threshold for defining a child as at risk of significant harm was later broadened by the Section 121 of the *Adoption and Children Act 2002* to include exposure to domestic violence.

Two high profile deaths from abuse during the 2000s received a great deal of media attention and led to government-commissioned inquiries. These were followed by new legislation and revisions to official guidance which aimed to improve the operation of the child protection system. Publication of Lord Laming's official inquiry into the death of Victoria Climbié was followed by the passing of the *Children Act 2004*, which recommended a number of changes to the child protection system including, importantly, changes intended to improve inter-agency co-operation (HM Government, 2003). The Act stated that safeguarding children is everyone's responsibility and that all agencies must co-operate with local authorities to promote the wellbeing of children.

The death of a baby, Peter Connolly, in 2007 was followed by a further report by Lord Laming on the child protection system, commissioned by the Labour government (Lord Laming, 2009). It also led the Coalition government, elected in 2010, to commission a further review of child protection by Professor Eileen Munro. The *Munro Review of Child Protection* concluded that child protection should be delivered by a child-centred system, one which would not lose sight of the needs and views of children and which would not place the interests of adults ahead of the needs of children. It called for the government's procedural requirements for child protection services to be less prescriptive and for there to be a great emphasis on the value of professional judgement in child protection work (Munro, 2011). Official government guidance, which was revised after this review, reiterated the importance of taking a child-centred approach, consistent with the core principle underpinning the *Children Act 1989* that the child's welfare is paramount (Munro, 2011, HM Government, 2015).

Organisation of the child protection system

The English child protection system is highly integrated, with the state providing national policy and guidance and the 156 English local authorities holding the principal responsibility for implementing this at local level. Failures in inter-agency co-operation evident in numerous cases of child deaths from abuse since the 1970s, including the death of Victoria Climbié, have led to attempts to improve inter-agency working. The *Children Act 2004* extended the legal duty on local authorities to safeguard and promote the welfare of children to a wide range of other agencies including, among others, the police, health services and schools. Since

the 2004 Act local authorities have been required to work together with their partners in other local agencies by setting up Local Safeguarding Children's Boards (including health services, education, the police and other agencies) to oversee local child protection services.

Within local authorities, *Children's Services* departments are responsible for investigating and responding to child maltreatment (although one national charity, the NSPCC, is also authorised to investigate child protection referrals and to apply for emergency court orders if necessary). *Children's Services* departments also provide or commission services for a wider group of 'children in need' and for children in out of home care. Most local authorities provide at least some family support services and foster placements and some also provide their own residential care placements. These specific services may also be commissioned from charities (NGOs) or private providers but, unlike in some other European countries, subsidiarity in respect of other kinds of child welfare provision is less common.

Referral and assessment

There is no legal requirement for the mandatory reporting of suspected maltreatment in England, except in relation to female genital mutilation. However Local Safeguarding Children's Boards (LSCBs) and professional bodies issue guidance emphasizing that professionals have a duty to make a referral if they hold a reasonable belief that a child is at risk of harm. All schools must have a designated teacher with responsibility for child protection and health services must have designated nurses and doctors who are responsible for dealing with child protection issues. Allegations of abuse by professionals who work with children (and adults) are referred for investigation to a Local Authority Designated Officer (LADO).

Over 600,000 referrals were made to *Children's Services* in England during the year April 1st 2014-March 31st 2015. After a referral is received, social workers must carry out an assessment following protocols set by national guidance and governed by the procedures of the LSCB. Social workers must take the lead on these assessments, consult with relevant local agencies and complete the assessment within 45 working days of the date of the referral. The assessment must determine the range of children's needs and designate the child's primary need.

In 2014-15 just over 400,000 of the children referred were assessed as being 'children in need' of services and for half of these (166 children per 10,000 under the age of 18 years) the primary need, recorded was abuse or neglect. Additional factors identified by the end of the assessment are also reported, with the most common being domestic violence (in 48% of cases), mental health difficulties of the parent, child or other adult in the household (33%) and misuse of drugs (18%) or alcohol (18%) (Department for Education, 2016). A Framework for Assessment was initially published by government in 2000 and is today incorporated into its guidance on child protection services. This stipulates that assessments must take account of children's needs, parenting capacity and family and environmental factors (the 'assessment triangle'). Assessments must be rooted in an understanding of child development, informed by evidence, be holistic in approach, consider parenting capacity, address the child's needs within the context of their families and local communities and be action- and outcomes-oriented. Where there is a conflict of interests, decisions should be made in a child's best interests, consistent with the 'paramountcy principle' of *the Children Act 1989*. The guidance also places an emphasis on the timeliness of assessment, which may be critical if the child is at risk (HM Government, 2015).

Investigation

Many children whose primary need is assessed as being abuse or neglect become the subject of a formal child protection investigation, known as a Section 47 enquiry. If a local authority 'has reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or likely to suffer, significant harm,' it must investigate these concerns and decide whether any action should be taken 'to safeguard and promote the child's welfare' (S.47(1), Children Act 1989). The number of S.47 enquiries has steadily increased over the last five years, with 138 children per 10,000 becoming the subject of an investigation during the year ending March 31st 2015. Social workers must consult and work with relevant professionals from other agencies and are expected to involve parents and keep them informed during S.47 enquiries, unless it is considered that this poses a risk to the child. They must also ascertain the child's wishes and feeling, depending on the child's age and understanding.

If the child is judged to be at continuing risk of harm, an **initial child protection conference** (ICPC) must be convened within 15 working days, involving professionals from all relevant agencies.

Child protection conferences may also take place before a child is born, for example if there are concerns about parental substance misuse or domestic violence or because the family has a history of child abuse. ICPCs must bring together family members and their advocates, children (where appropriate) and relevant professionals from other agencies to make decisions about the child's future safety, health and development.

Intervention with children and families in the community

Early help

If children have specific needs but do not meet the eligibility criteria for children in need (which can allow them access to family support services), public agencies are encouraged to provide **early help** in the form of targeted services to meet the needs of the child and family. 'Early' is defined as early in the life of a problem rather than early in the life of a child, so this provision applies to adolescents as well as to younger children. Children who have specific needs that might be met by early help include those who are showing early signs of abuse or neglect or whose families have problems with mental health, domestic abuse or substance abuse, for example, as well as those with anti-social behaviour. This recommendation to provide early help is set out in the *Working Together* inter-agency guidance, but does not have any statutory backing. It has been driven by the growing policy attention to the value of early intervention and by the recommendations of the *Munro Review of Child Protection* (Munro, 2011). A wide range of public agencies have responsibility for identifying children who may need early help and for providing this help, if appropriate. Government guidance recommends that universal services (such as education and health services) should provide effective, evidence based services, such as parenting programmes or help with substance abuse problems.

Family support

Children who are assessed as being 'in need' may receive **family support** services under the provisions of S.17 of the *Children Act 1989*. These may be provided, either by the local authority or a

voluntary sector agency, to families in need of support for a range of reasons, not just those where there are concerns about abuse or neglect. A variety of family support services may be provided, including individual work to support parents and children in their homes and access to local Sure Start children's centres, which can provide support and a range of services, including parenting programmes.

Child protection plans

If a decision is made at the initial child protection conference that a child is at continuing risk of significant harm, he or she may become the subject of a **child protection plan (CPP)**. CPPs allow local authorities to provide compulsory supervision and monitoring, together with support, with the aim of ensuring that children considered at risk of significant harm can safely remain in their families. The CPP sets out a plan to ensure the safety and wellbeing of the child and includes details of the changes that are needed to reduce the risk to the child (for example, that an abuser should leave the household, or a parent should attend drug treatment) and the support that will be provided. The initial child protection conference agrees on a core group of professionals responsible for monitoring the effectiveness of the CPP, which must meet regularly to monitor progress.

During the year 2014-15, 54 children per 10,000 became the subject of a CPP. The number of CPPs has risen over the last five years, a rise largely driven by an increase in S.47 enquiries during this period. Two-fifths (39%) of children on CPPs in March 2015 were under 5 years old, but CPPs were also used for older children and adolescents, as 29% of children were age 10-17 years. A small number of unborn children are also the subject of child protection plans (just over 1,000 in March 2015).

Child protection plans are generally used as a short term measure, with less than four children per 10,000 remaining the subject of a CPP for two or more years. This measure must initially be reviewed within three months and thereafter every six months. It may be ended if the local authority considers that a child (under 18 years) is no longer at risk of harm or has left the country.

Emergency court orders

If the local authority have strong concerns about the immediate risk of maltreatment, they may apply to the court for an emergency order to protect the child. These include exclusion orders, which can ban an alleged abuser from a child's home and emergency protection orders, which allow the removal of the child from home for up to eight days. The police also have powers to take out a Police Protection Order to remove the child for up to 72 hours without a court order, during which time they work with the local authority to make arrangements for the child.

Out of home care

Admission to out of home care

In some cases, parents may agree to their child being **accommodated**, that is, placed in care under a voluntary arrangement (S.20, *Children Act 1989*). If the local authority decides that compulsory placement in care is needed to keep the child safe, it may apply to the Family Court for a **Care Order** (S.31, *Children Act 1989*). Social workers may initially apply to the court for an Interim Care Order, which allows them to remove the child temporarily while investigations continue and decisions are made and then subsequently apply for a full Care Order if they feel that this is necessary to protect the child's safety and development. Parents of children who are accommodated by the local authority retain full parental responsibility and may remove their child at any time, but for children on Care Orders parental responsibility is shared with the local authority and, in practice, the local authority has the power to determine how far they can exercise this parental responsibility.

Children who are accommodated voluntarily and those on Care Orders are both defined as children who are **looked after** by local authorities. Sixty children per 10,000 were looked after on March 31st 2015, that is, just over half of one per cent of the population under the age of 18 years. The majority (61%) of children who are looked after have been placed in out of home care due to abuse or neglect. As these figures suggest, the English care system is mainly used for children considered at serious risk of abuse or neglect. It is perhaps unsurprising, therefore, that the majority (71%) were placed on a court order and less than a third were looked after on a voluntary basis.

Care proceedings

If concerns about abuse or neglect cannot be resolved through voluntary intervention or within the framework of a Child Protection Plan, or if the risk to the child is so great that the local authority decides that only removal from home can protect the child, the legal process for obtaining a Care Order may commence. This process is known as care proceedings and is governed by a set of procedures known as the Public Law Outline (PLO), which were introduced in 2008 and given statutory authority by the *Children and Families Act 2014*. The aims of the PLO were to reduce delay in the court process, partly due to recognition of the negative impact of this delay on child development. Research evidence indicates that the later a child is placed in a permanent family setting, the greater the risk that they will develop attachment problems and potentially long-term mental health difficulties (Brown and Ward, 2012). The aim was therefore to speed up the process of deciding on who could best provide the child with safe and effective care: parents, relatives, foster carers or adoptive parents. Another important goal was to reduce the cost of the family justice system.

The PLO therefore introduced strategies to reduce delay in the court process by ensuring that families got the help they needed before resorting to court action. It also aimed to ensure that assessments by social workers were evidence-based and that these were completed before care proceedings were commenced. When local authorities are considering commencing care proceedings (that is, applying for a Care Order), they must first undertake specific work with the child's family during a pre-proceedings stage in order to prevent the need to apply for a Care Order wherever possible. The idea is to make sure that all assessments and interventions to help parents change have been completed before a decision taken to apply for a Care Order and to divert families from the court if the assessment indicates that this may be safe.

Alternatives to a Care Order, such as the possibility of placing the child with relatives or friends, must be explored at the pre-proceedings stage. Family Group Conferences are often held to encourage the child's extended family to find a solution to the concerns about the care of the child (Frost et al., 2014). If these concerns cannot be resolved during the pre-proceedings stage, the local authority must issue the parents with a Letter Before Court Proceedings, which is a final notification of the local authority's intention to commence court proceedings. This sets out the local authority's concerns for the

child, the changes required of the parents or carers and the timescales within which these changes must take place and invites parents or carers to attend a formal pre-proceedings meeting with a solicitor. The aim of this meeting is to agree on a plan with parents about the changes that must be made and the support that will be provided to help them achieve these changes. If this meeting does not result in a satisfactory agreement, the local authority applies to the Family Court for a Care Order.

Parents who receive a Letter Before Court Proceedings and those who are involved in care proceedings have the right to legal representation funded by the state. During care proceedings the court appoints a **children's guardian** (an experienced social worker working for Cafcass, an agency independent of the local authority which is accountable to the Ministry of Justice) to consult all concerned, including the child, in order to represent the child's interests in court. Once court proceedings commence, the PLO requires that they should be completed within 26 weeks except in exceptional circumstances.

Care planning and permanence

During care proceedings, the local authority must present a **care plan** to the court which states, among other things, where the child will live. Once children are placed in a care placement their development and circumstances must be regularly reviewed (initially within four months and then every six months). There is a strong emphasis on finding a permanent home for children removed from their parents as soon as possible, informed by a body of research evidence on the negative impact on children's development of the instability caused by moving them between placements (or between home and care) and by delay in placing them in a permanent alternative home if they cannot safely be returned to parents or other family caregivers.

Official government guidance highlights the importance of planning for permanence for looked after children, which it defines in the following way:

Permanence is the framework of *emotional* permanence (attachment), *physical* permanence (stability) and *legal* permanence (the carer has parental responsibility for the child) which gives a child a sense of security, continuity, commitment and identity. The objective of

planning for permanence is therefore to ensure that children have a secure, stable and loving family to support them through childhood and beyond (Department for Education, 2015).

There is therefore a requirement for a **permanence plan** to be drawn up by the time of the child's second review (that is, within 10 months of placement away from home), setting out where the child should live in the long-term. Government guidance expects local authorities to consider the possibility of returning children to their parents or placing them with other relatives who might care for them as kinship foster carers or as legal guardians (under a Special Guardianship Order). If those options cannot provide safe care for the child, the plan may be to find a long-term foster placement, a special guardian (a relative, in most cases, but sometimes a former foster carer) or, in a small number of cases, an adoptive home (Department for Education, 2015). However, residential placements are rarely used to provide a permanent home.

Care placements

Local authorities are accountable for the children they look after and are assigned the role of a 'corporate parent' who acts in the children's best interests. There is a strong preference for family-based placements, with 75% of looked after children placed in foster care. Only a small proportion of children in foster care (11% of looked after children) are placed in kinship foster placements. An even smaller proportion (9% of looked after children) are placed in residential children's homes. These are mainly used for adolescents, with an average age of 15 years. Most of these young people stay a relatively short time in children's homes, in most cases a matter of months rather than years (Berridge et al., 2012). As in many other countries, there is concern about the instability that many children experience in the care system as a result of planned or unplanned moves between placements.

Adoption and Special Guardianship

A small number of children achieve permanence through adoption from care. Just over 4 per 10,000 were adopted from care during 2014-15, most of them under five years old. The aim of adoption from care is to provide children who can never safely return to parents or other relatives with a perma-

nent family home. Children adopted from care are typically very young children who have experienced serious abuse or neglect or who are at high risk of experiencing these due to the maltreatment of a previous child or chronic parental difficulties such as drug or alcohol misuse or serious mental health problems. Adoption is the only legal status which removes all parental rights from birth parents.

In conclusion

To sum up, the key principle underpinning the English child protection system is that the child's interests are paramount. However, local authorities must work in partnership with parents and parents retain parental responsibility even if their children are taken into out of home care. A key aim of the system is to assess the degree of risk to the child and, if needed, to provide early help or more comprehensive family support so that children can remain in their families. If there are serious concerns, the child may be supported to live at home under the formal supervision provided by a Child Protection Plan (although this is only a short-term measure) or, in a small number of cases, may be taken into out of home care.

The development of the English child protection system has been influenced by a variety of factors, including research evidence on child development and on the importance of permanence for separated children. Widespread publicity about the deaths of a number of children from maltreatment has also had an influence on policy and practice for many years, contributing to the rise in child protection referrals since 2008. This increased pressure on the child protection system has, since 2010, occurred in the context of substantial cuts in funding for public services under the government's austerity programme. These spending cuts have led to a significant decrease in the availability of early intervention and other family support services. The cuts in family support services have occurred at the same time as other policy changes introducing greater conditionality in welfare provision, especially in relation to social security and housing, which have placed families under increasing pressure. Together, these developments have helped to shape the operation of English child protection system today.

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