

Caring about care proceedings

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“Children at risk of abuse are being left unprotected following a sharp fall in the numbers being taken into care...” Independent 20th November 2008

“ ‘Baby P effect’ causes sharp rise in care applications” Independent November 23rd 2008

Care proceedings i.e. the legal process local authorities must use if they want to remove children from their parents have always been controversial. Local authorities are criticised for interfering in family life if they make too many applications and for failing children by making too few. A forecast rise in the number of cases coming to court, concerns about the length of proceedings and their cost led to the Review of the Child Care Proceedings System suggesting various reforms, including that more was done to avoid these proceedings (DCA and DfES 2006). Reforms were introduced in April 2008. In May 2008, the system for paying for the court process was also changed. Instead of the main cost falling on the court service and the Ministry of Justice, local authorities were required to pay very much higher court fees, £4850 if the case was not settled before a final hearing. To compensate money was transferred from the Treasury to each local authority via the Revenue Support Grant, using part of the existing Standard Spending Assessment formula. This paper examines how data were used in the support of these policy changes, and what data are available which can show their effects.

There are two published sources of data on the number of care proceedings (applications). The Ministry of Justice publishes *Judicial Statistics* and Cafcass (the organisation responsible for social work services for the courts) includes statistics on its work in its annual report (Cafcass 2009). In addition, the Department of Children Schools and Families publishes statistics on the number of children in the care system in England (DCSF, 2008), some comparable statistics are also available for Wales (Welsh Assembly Government 2009).

Care proceedings and the *Judicial Statistics*

Until 2006, the *Judicial Statistics* (MoJ 2008) did not provide separate figures for care proceedings applications but included them with other public law proceedings such as applications for contact where children are in care, to discharge care orders etc. The number of orders and some other outcomes were published but these figures are inadequate for calculating the number of applications because it is possible for more than one order to be made in respect of the same child. From 2005, separate figures have been published for the numbers of care proceedings applications in each level of court (family proceedings court, county court and the High Court). Each child concerned is counted as a separate application. However, there are good reasons for doubting the accuracy of these figures. First, a high number of applications are shown as starting in the higher courts even though there are very restrictive rules which require almost all applications to be made to a family proceedings court, which may then transfer them, (see table 1). Secondly, a study for the Ministry of Justice identified that county court staff frequently mis-recorded transferred cases as 'county court starts' when entering them into *Familyman*, the management database which is used to collect data for the *Judicial Statistics* (Masson et al, 2008). The Ministry has subsequently acknowledged these concerns about data quality in annex to the *Judicial Statistics* (MoJ 2008) and when preparing answers to Parliamentary Questions. The most recent edition of *Judicial Statistics* (MoJ 2009) has adopted a different methodology, which 'could be considered to be more accurate' (p.207). Whilst the number of care proceedings applications recorded as starting in the county courts in 2007 drops from 3600 to 1570 applying this new methodology, the published figure remains unfeasibly high given that there has been no relaxation in the rules requiring most applications to be made the family proceedings court.

Further problems arise from the use of a different (incompatible) recording system, *Tracker*, in some family proceedings courts and the lack of any computerised recording in others. *Tracker* counts applications by child, giving each child a separate court number whilst in *Familyman* the court number refers to all the children included in the application. Also, before 2007, the *Judicial Statistics* calculated figures for family proceedings courts on the basis of a weighted sample of courts not returns from each court. Overall, the *Judicial Statistics* have not provided reliable figures either for the gross number of applications, nor for trends.

Cafcass data

Cafcass records the numbers of care cases for which it provided workers. The duty on courts to appoint a children’s guardian means that cafcass figures accurately reflect the number of cases. Each case concerns approximately 1.7 children (Masson et al 2008). Using this calculation, it appears that *Judicial Statistics* overstate the number of applications before the courts by at least 3000 using the old methodology and 1000 with the new one (see table 1). Cafcass, which was established in 2001 from the amalgamation of local services run by local authorities and the Probation Service, only started recording cases on its own case management system in 2005 and does not have quality assured data for earlier years. Consequently, the only trend data available is limited to 2005-6 onwards. This shows only minor fluctuations over the period, see table 1.

Table 1: Applications for care or supervision orders in Family Proceedings Courts (FPC), County Courts (CC) and High Courts (HC) and guardian appointments and estimated numbers of children.

Year	Judicial Statistics				Cafcass	
	FPC	CC	HC	TOTAL	guardians	children
2005-6	10378	3909	108	14395	6613	11,242
2006-7	9620	4388	351	14359	6791	11545
2007-8	10450	3897	441	14788	6228	10,587
2008-9*	10030	2020	378	12428	6473	11,004
*new method used for Judicial Statistics						
Sources: <i>Judicial Statistics</i> and <i>Cafcass Annual Reports</i> . The number of children is estimated on the basis that each guardian acts for 1.7 children.						

The Review of the Care Proceedings System

The Review included ‘an extensive analysis of the available statistics’ relating to care proceedings which it collated and published in a Desk Research Report (DCA and DfES 2006a). It also noted that ‘the lack of basic information...makes it impossible to get an analytical handle on the process.’ (p 67). In addition to information from the *Judicial Statistics* on orders made in care proceedings, the Review relied

heavily on data from the Legal Services Commission. The LSC pays for the legal representation of parents, children and some potential carers involved in proceedings. It collects data on each legal aid certificate it grants. It is not able to link the certificates for all the parties and cannot state either the number of cases or how many children are the subjects of applications. Moreover, an increase in the number of certificates does not necessarily reflect an increase in cases or in children, although both of these would produce an increase in the number of certificates. There are two other factors which would lead to more certificates, an increase in the number of parents who are represented by separate solicitors or an increase in the number of fathers being represented. Both of these were likely to be occurring in the early 2000s because of increased awareness of domestic violence (so lawyers were wary of representing both parents together) and changes in birth registration law which gave more fathers party status as of right.

Despite the limitations of LSC data on numbers of applications, the Review appears to have based its forecast of a steep rise in care applications on LSC figures. The Desk Report includes a graph showing an increase of applications from under 11,000 in 2003-4 to almost 16,000 in 2009-10, referenced to the Department of Constitutional Affairs (which then produced the *Judicial Statistics*) and the LSC (p.51). No other data were included relating to applications although the Review also noted a more limited increase in the number of 'disposals' in these proceedings.

As a result of the Review, new Guidance was prepared, intended to encourage local authorities to avoid bringing care proceedings, and a new court process was designed to ensure that local authorities prepare applications better, a further deterrent to them bringing court proceedings. This was done despite research evidence that local authorities did not start care proceedings without good cause (Brophy, 2006; Masson et al 2008). The official training materials for this reform make it clear that 'the aim is to divert families from care proceedings' (p.8) where this is a safe alternative and specifically refer to there being 'around 14,000 applications (by child) for care and supervision each year' (p.2) (MoJ 2008a). As the above discussion and Table 1 show, the figure of 14,000 substantially over-estimates the number of children involved in care proceedings, and the (reliable) Cafcass data provide no evidence to support the forecast increase in applications.

Fee increases

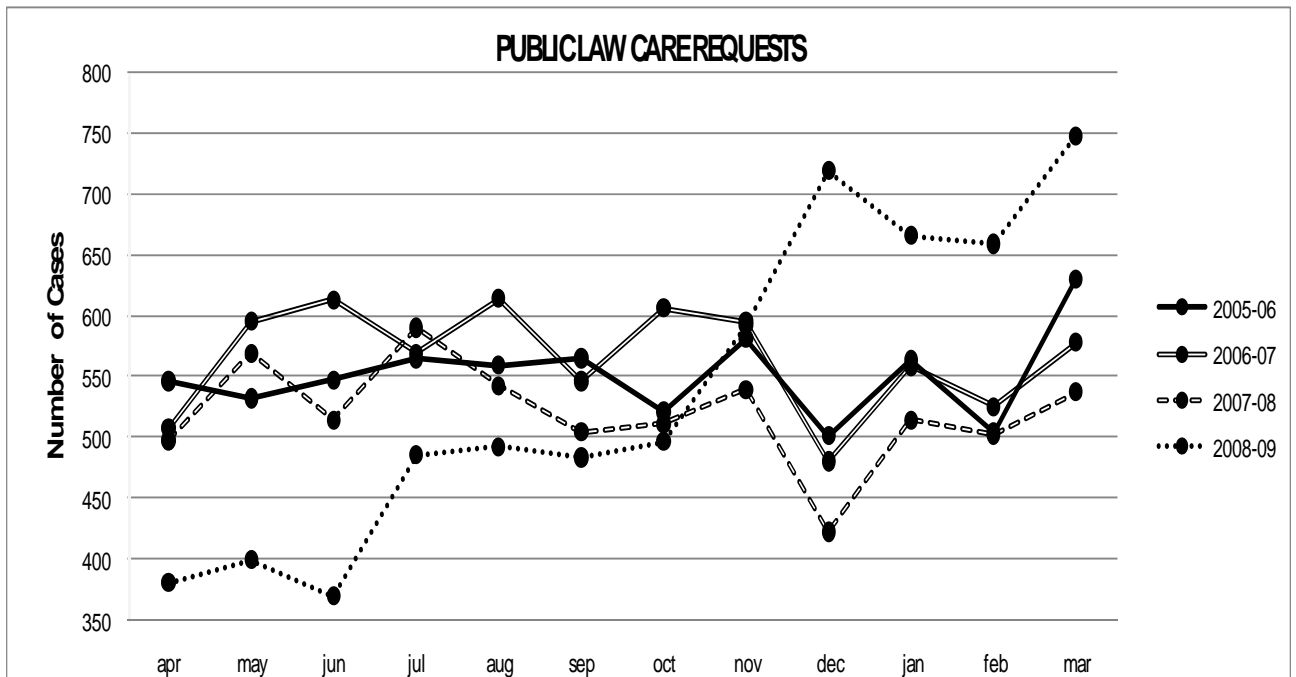
Government policy to set court fees at a level which reflected the cost of providing civil court services was announced in 2007. This acknowledged that 'different policy considerations may apply' to care proceedings (DCA 2007, 38). Nevertheless, in March 2008 the Ministry of Justice issued another consultation paper, proposing very substantial increases to care proceedings applications, reflecting the costs of these cases to the court system. Whereas in the Care Proceedings System Review the DCA Economics and Statistics Division had estimated the cost of care proceedings in 2003-4 to be £1,200 per application, this figure was now stated to be over £4,000 in 2006-7. The total cost of care proceedings was said to be £45 million with only £1.6 million recovered in fees (MoJ 2007). The consultation paper included a page headed 'Evidence base' but included no information on the number of cases. The paper stated the average cost of care applications as £4099 in FPCs and £4244 in County Courts (p.8), figures which could only be calculated with knowledge of the numbers of cases in each level of court. Using these figures, it appears that HMCS believes there are between 10650 and 11030 care applications each year, again far fewer than the number reported in the *Judicial Statistics* but fairly close to the number of children calculated from the *cafcass* figures. However, it was never suggested that the fee would be charged *per child*, only *per case*. On this basis the proposed fee level appears likely to recover far less than the £40 million intended.

Compensating local authorities for this increase posed a further problem because neither the Ministry of Justice nor the Department for Children Schools and Families held data on the number of care proceedings brought by each local authority. It was not possible to allocate prospectively a sum of money to reflect the higher fee level. In fact, by the time the consultation had been published, an adjustment had been made in the Revenue Support Grant for 2008-9, using the same formula applied to spending on children's social care generally. The Standard Spending Assessment takes no account of the number of care proceedings brought although the number of children who are looked after by a local authority is one factor. It is clear that the consultation was a sham and that government made changes without adequate data either to set a rational fee level or to reallocate resources to local authorities to cover the new fees. The timing of the change also raised the suggestion that fees were raised with the intention of (further) discouraging the use of courts for child protection.

Monitoring the operation of the reforms

The reforms to the care proceedings system were introduced in autumn 2007 in 10 Initiative Areas and then applied across England and Wales in April 2008. The new fees were introduced in May 2008. Cafcass data shows how the number of requests for children’s guardians has changed (see Figure 1).

Figure 1: Numbers of requests for a children’s guardian in care proceedings 2005-2009



Source: Cafcass Annual Report (2009)

There appears to have been a decline in requests from November 2007, shortly after the changes were introduced in the Initiative Areas. This decline is more marked following the full implementation in April 2008 with approximately 200 fewer applications per month between April and June 2008. Numbers then rose gradually, reaching their earlier levels in October and November 2008 and continued to increase (see figure 1). In November 2008, there was wide press coverage of the Baby P case (Haringey LSCB 2009), including substantial criticism of the local authority for failing to bring proceedings earlier. It has been claimed in the *Independent* and elsewhere that this accounts for the increase in the number of care applications. Also, similar claims based on percentage increases have failed to take account of the depressed numbers in the year from October 2007.

The total number of applications for 2008-09 was 3.9 per cent higher than the previous year. However, the pattern across the year is quite different from previous years as shown in figure 1 with a lower level of applications in the first half of the year balanced by higher numbers in the second half. Such a pattern might be expected where applications were delayed. This is not an unusual phenomenon when there are changes in legal proceedings, indeed some officials clearly expected this to occur. This is a more likely explanation for the increase in November 2008 than publicity about Baby P because of the time taken to prepare applications. A continuation of the higher number of applications suggests that local authorities have subsequently become more concerned to take proceedings following the child protection failures identified in the Baby P case.

Understanding the use of care proceedings better – DCSF data

The Department for Children Schools and Families collects data from local authorities about each child they look after. It and maintains a database of all children in the care system, including their legal status, age, gender and reason for coming into care. This is used to monitor the operation of the system. Figures for the care population of England are published annually (DCSF 2008). This gives snapshot information such as the numbers of children who are looked after on the census day (31st March) and information on the numbers of children entering and leaving the care system each year, including by reference to their legal status. Further tables are published giving some of this information at local authority level.

These data provide a basis for monitoring changes in the population of looked after children but it is necessary to understand both the system and the way information is recorded. For example, increases in

the population may reflect longer periods spent in the care system rather than more children becoming looked-after (Rowlands and Statham 2009). Also, figures for the number of children entering care under care orders can be misleading for two reasons. Very few children enter the care system in this way; they are more likely either to be removed to care under an emergency order or to enter by agreement with their parents. Also, the published tables do not distinguish between full and interim (temporary) care orders. The number of interim orders indicates the number of children who are subject to formal protection during care proceedings, this number depends on the number of proceedings, their length and the availability of agreed alternative arrangements such as voluntary care by relatives.

It is possible for the DCSF to identify the number of new full care orders made each year (Masson et al 2008). This rather than the published data could be used to show the trends in recourse to compulsory measures of care because it would not conflate entering the care system with remaining in it. Had this been done during the Review of the Child Care Proceedings System it would have been possible to identify trend data even in the absence of data on applications. Information on the number of new full care orders would also be useful when monitoring the reforms. There are, however, substantial differences between the number of children identified by the DCSF as being looked after under care orders and the number of orders made recorded in the *Judicial Statistics* (see Table 2). This may reflect the exclusion from the DCSF data of children who are placed at home under care orders (although the differences appear too large for this to be the only reason), or further inaccuracies in one or both datasets.

Table 2: Number of children entering care under new full care orders (DCSF data) and number of care orders granted (*Judicial Statistics*) 2004-6

	2004	2005	2006
DCSF data	6,200	5,500	5,000
Judicial Statistics	7796	7051	7222
% difference	20.5	22.0	30.8

Conclusion

Trends in the use of care proceedings can only be evidenced over a limited period of time; further analysis of the DCSF data could extend this. The available data did not provide a basis for the forecast in the Review of the Care Proceedings System that applications would rise substantially; for seeking to discourage applications to court; for setting the fees at their current level or for compensating local authorities for the increase in the court fees.

Improvements to the quality of the *Judicial Statistics* are essential for the Ministry of Justice to have reliable data on applications in care proceedings. The change in methodology does not appear to have produced the necessary level of accuracy in the care proceedings figures. The Department for Children Schools and Families could also make better use of the looked-after children dataset to monitor trends in the use of care orders, and related matters such as kinship placements of children under care orders. Whilst better data may not have dissuaded the Review of Care Proceedings from its conclusion that the number of applications needed to be reduced it would now help monitor the impact of changes in the system.

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