

The Baby Peter effect and the increase in s31 care order applications

Research summary

Introduction

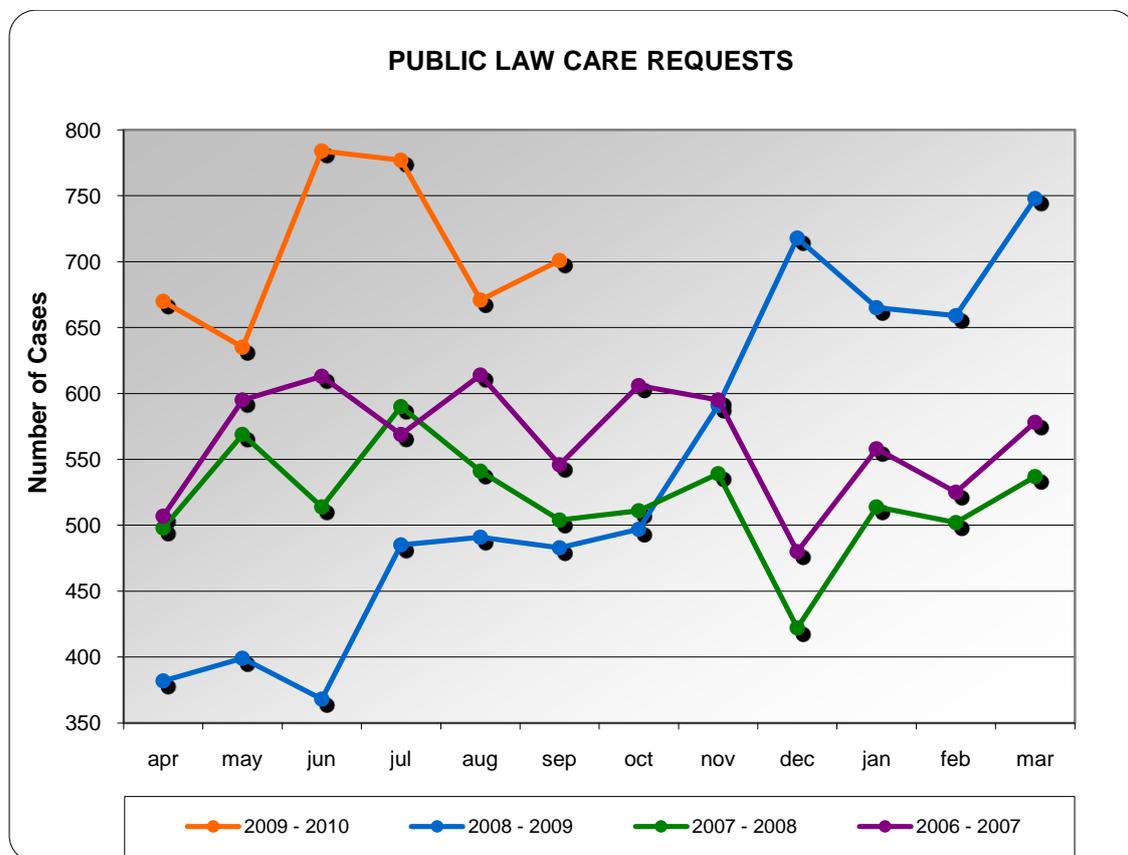
The Baby Peter Serious Case Review executive summary was made public by the Haringey Local Safeguarding Children Board on Tuesday 11th November 2008. This led to intensive media coverage and criticism of the quality of the London Borough of Haringey's child protection work. Cafcass subsequently identified a sharp increase, across England as a whole, in section 31 (Children Act 1989) care order applications during the three weeks immediately following this date, compared with the same time period in 2007.

At the time, it was suggested by the Association of Directors of Children's Services (ADCS) and Cafcass that this rise in s31 care order applications had occurred as a result of the review by local authorities of cases that were on the threshold for s31 applications, as a response to the publicity generated by the circumstances surrounding Peter Connelly's death.

Subsequent analysis has shown continued unprecedented levels of care order applications since this time. From 11th-30th November 2007 there were a total of 365 care order applications received by Cafcass. By contrast, 11th-30th November 2008 saw a total of 449 care order applications filed, an increase of 37% over the previous twenty day period and an increase of 23% over 11th-30th November 2007. Throughout 2009 Cafcass has received its highest ever level of demand for work relating to s31 applications, peaking at 784 requests in June 2009, an increase of 113% compared to the June 2008 figure (368) and an increase of 52% compared to the June 2007 total (514). Between April and September 2009, Cafcass received an average of 706 new s31 applications per month. This increase followed a significant lull in applications, following the introduction of the Public Law Outline in April 2008.

The chart below shows the detail of this increase to September 2009 at a national level, although there continue to be significant differences in the pattern displayed by individual local authorities.

Figure 1 Public law case requests received by Cafcass 2006/07 – 2009/10 (September)



Here we present a summary of responses gathered from a survey of Cafcass Children’s Guardians regarding the increase in s31 care order applications drawn from ten of twenty-one Cafcass service areas, conducted during June/July 2009.

Aims

This survey was designed:

- To consider the evidence on the extent to which the increase in the number of s31 care order applications in November 2008 arose from a response to publicity surrounding Peter Connelly’s death
- To determine in what kind of cases (using the child protection categories of physical abuse/sexual abuse/emotional abuse/neglect) this increase has occurred
- To gauge the perceptions of Children’s Guardians, in cases where s31 applications were submitted between 11/11/2008 and 30/11/2008, as to whether ‘the Baby Peter effect’ has led to children appropriately becoming the subject of s31 care order applications, in regard to the timing of proceedings and the interpretation by the applicant local authorities of the section 31 significant harm threshold

- To gauge the perceptions of Children’s Guardians as to whether the s31 cases allocated to them between November 2008 and June/July 2009 have been appropriate, in terms of the timing of the applications and the interpretation by the applicant local authorities of the section 31 significant harm threshold
- To examine the survey sample cases in greater detail in regards to ethnicity, age and sibling groups in comparison with all cases for which Cafcass received s31 care order applications from 11th – 30th November and in comparison with cases received for the same time period in 2007.

Methodology

There are four distinct sources of information used throughout this paper. Quantitative data is presented in three sets and information gathered from follow up telephone interviews is presented in italicised and boxed quotes to provide context.

- A dataset gathered from internal Cafcass data of all s31 care order applications made in ten selected service areas for the time period November 11th-30th 2007 (prior to the introduction of the Public Law Outline and s31 care order application fee increases) (N=181 cases, 322 children). This 2007 cohort was deliberately chosen to predate the introduction of the PLO as following this there was an immediate decline in the levels of s31 applications (as seen in Figure 1, April – June 2008) and the inclusion of cases from the months immediately following the nationwide introduction of the PLO may have distorted the sample.
- A dataset gathered from internal Cafcass data on a total cohort of s31 care order applications made in the selected service areas for the time period 11th-30th November 2008 (N=249 cases, 449 children)
- A ‘survey sample’ which includes the cases and children referred to in the survey responses of Cafcass Guardians from selected service areas who participated in the survey. This sample was formed by inviting Cafcass staff from ten selected service areas that had been permanently allocated new s31 care cases where the application from the Local Authority was made between 11th and 30th November 2008 to complete the survey using an online survey instrument. These ten service areas were chosen to ensure a good geographic and demographic spread and to ensure coverage from areas that had experienced a large increase in demand, smaller increases, no increase, or a decrease in the level of s31 applications being filed by Local Authorities. The survey sample is of 55 practitioners and refers to 82 cases and 166 children.
- Follow up semi-structured telephone interviews, conducted with a sample of twenty survey respondents, used here to provide context to the survey sample

Sample and response rates

The survey sample was taken from 10 Cafcass areas, in some of which there was a significant increase in the number of applications, in some no real variation and in two, a slight decrease.

Due to Cafcass' resource and time constraints, it was decided not make the survey available to all staff as was originally intended, but to select a subset of service areas to target for responses. These service areas were selected to achieve a balance between those that had recorded a large increase in s31 care order applications since November 11th 2008, those that had recorded a moderate increase, and those that had recorded no increase or a decrease in the number of s31 applications received.

A link to the survey was sent to all Service Managers in the selected areas with a request to forward to staff that had been allocated cases in the specified time period, and a news item requesting participation was placed on the Cafcass intranet in selected areas.

There were 269 Practitioners who were eligible to respond to the survey. At this time of significant pressure on practitioners it was decided that involvement would be entirely voluntary. This limits the statistical value of the results to an extent, but the response rate was sufficient to provide a credible snapshot of the perceptions of Guardians who had been allocated s31 cases within the 11th – 30th November time frame. Of the 269 eligible practitioners, 81 started the survey and 55 practitioners provided case specific information, a response rate of 20.4%. These substantive responses (with varying levels of completion) were spread across the selected service areas in the following way:

	Number of responses	Number of FCAs allocated	% of allocated FCAs who responded to survey
N2	8	22	36.4
N5	6	20	30.0
N6	5	21	23.8
C2	7	26	26.9
C3	5	22	22.7
C5	4	27	14.8
S1	2	16	12.5
S2	2	13	15.4
S3	15	80	18.8
S5	1	22	4.5
Total	55	269	20.4

Response rates varied substantially among practitioners in different service areas. At the low end of the scale there was only one response from a practitioner in S5. At the high end, over a third of practitioners in N2 who had been allocated cases in the selected time frame provided a response, as did over a quarter of practitioners in C2 and N5. While S3 provided the largest total number of responses, almost a third of all responses received, this service area also had more than three times the number of practitioners allocated to s31 care cases within the specified time frame and the response rate for eligible practitioners in S3 was 18.8%.

The responses relate to 82 s31 care order applications from 37 separate local authorities. The geographical spread of these local authorities ranges across large cities, small towns and (in one case) a rural village. There is a preponderance of responses from London in the survey sample, similar in weight to the preponderance of the increase of s31 care order applications received in London since November 2008.

This survey was then followed up by telephone interviews in 20 cases – 36% of survey respondents. Guardians participated in these interviews on a voluntary basis, and as such the follow up interview sample was self selecting.

Survey results

It is of interest that our survey results, albeit obtained through a self selecting voluntary sample, are broadly similar to a number of the findings of the Care Profiling Study,¹ Which is the most comprehensive and most recent study of the composition of s31 care order applications in England. For example:

- 58.5% of the children were subject of a Child Protection Plan at the time of application – (Masson 60%).
- 67.7% of the children subject to a plan were registered under the category of neglect – (Masson 75%, DCSF 45%² - for all children who are subject to a Child Protection Plan, including those for whom no s31 care order application has been made)
- Where ethnicity was recorded by Cafcass, 24% were minority ethnic children - (Masson 28%)
- 36.1% of families had their first involvement with children's services more than 5 years prior to the current application - (Masson 45%)
- In both the Cafcass study and the Care Profiling Study, almost all parents had multiple difficulties leading to chronic instability and inadequate care for the children. Follow up telephone interviews were conducted with 20 Guardians who participated in the survey and

¹ Judith Masson, Julia Pearce and Kay Bader with Olivia Joyner, Jillian Marsden and David Westlake, *Care Profiling Study*, Ministry of Justice Research Series 04/08 (2008)

² DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009, available at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000873/index.shtml>

matters mentioned in these telephone interviews were domestic violence; drug and alcohol abuse; mental health problems; learning difficulties; sexual abuse in childhood; hostile parental separation. In the Cafcass study, 67.1% of cases had one or both parents who had experienced involvement with local authority children's services as a child or adolescent.

Ethnicity

The table below shows ethnicity details for children involved in public law cases received by Cafcass during the three week period 11th-30th November 2007, for 2008 and for children involved in cases covered by the survey responses. The figures presented are only for those children for whom ethnicity information was recorded, and do not represent the total number of children involved in public law cases during the specified three week time frame.

Table 1 Ethnicity of children in cases included in survey responses and previous years

Ethnicity	2007 cohort		2008 cohort		Survey responses	
	N	%	N	%	N	%
Asian or Asian British Bangladeshi	1	0.4	14	5.4	5	4.9
Asian or Asian British Pakistani	0	0.0	2	0.8	3	2.9
South Asian Total	1	0.4	16	6.2	8	7.8
Black or Black British African	6	2.7	16	6.2	1	1.0
Black or Black British Caribbean	3	1.3	19	7.4	8	7.8
Black Total	9	4.0	35	13.6	9	8.8
Mixed Other	5	2.2	7	2.7	0	0.0
Mixed White & Asian	9	4.0	5	1.9	0	0.0
Mixed White & Black African	1	0.4	2	0.8	2	2.0
Mixed White & Black Caribbean	12	5.4	9	3.5	6	5.9
Mixed Total	27	12.1	23	8.9	8	7.8
Other Ethnic Group	3	1.3	10	3.9	1	1.0
Chinese	1	0.4	0	0.0	0	0.0
Chinese & Other Total	4	1.8	10	3.9	1	1.0
White British	167	74.6	161	62.4	61	59.8
White English	4	1.8	3	1.2	2	2.0
White Irish	8	3.6	1	0.4	0	0.0
White Other	4	1.8	9	3.5	14	13.7
White Total	183	81.7	174	67.4	77	75.5
All	224	100.0	258	100.0	102	100

A lower proportion of children in the survey group are from ethnic minority backgrounds when compared to both the sample group and the previous year. There is a higher proportion of Pakistani, Black Caribbean, Mixed White and Black Caribbean, and White Other children among the survey group

when compared to the 2008 sample, but a lower proportion of Black or Black British African, Chinese and White British in the cases referred to by practitioners in their survey responses than there are in all s31 care order applications received for the same time period in 2008.

The November 11th-30th 2008 cohort is more diverse than the control sample from the same time period in 2007. The percentage of children who are from an ethnic minority group has increased by 78.1% between the two sample periods, from 18.3% in 2007 to 32.6% in 2008.³

Child Protection Plans

Survey respondents were asked “Were the children subject to care order applications for the cases allocated to you during this period [11th-30th November 2008] subject of a Child Protection Plan at the time of application? If yes, for which category?” 45 Family Court Advisers answered this question, and their responses referred to 53 cases in total.

In 31 (58.5%) of the cases mentioned by survey respondents the child/children had been the subject of a Child Protection Plan (CPP) for one or more forms of abuse (including neglect) prior to the Local Authority initiating proceedings. The figure of 58.5% cases involving children on CPPs is similar, although slightly lower than that quoted by Judith Masson and her colleagues in the Care Profiling Study (2008), which reports that 60% of children involved in cases were on the Child Protection Register. In contrast, Julia Brophy and her colleagues (2003)⁴ have found that up to 73% of care order applications involve children whose names were on Child Protection Registers.

Table 2 Child Protection Plan registration for multiple categories of abuse (by child) in survey group

CPP categories of abuse	N	%
1 category	21	67.8
2 categories	6	19.4
3 categories	4	12.9
All children subject to CPPs	31	100.0

It should be noted that no information about the primary category of abuse was available to the researchers. Among the 10 cases where children were registered for multiple categories of abuse, the multiple registrations break down as follows:

- Emotional abuse and neglect - 3 cases

³ The percentage values shown in Table 1 above are provided as a descriptive comparison between the survey sample and the 2007 and 2008 cohorts. It should also be noted that the percentage difference for ethnic groups other than ‘White’ between the 2007 and 2008 cohorts is not large enough to be conclusive.

⁴ Brophy, J., Jhutti-Johal, J. and Owen, C. (2003) *Significant harm: Child protection litigation in a multicultural setting* LCD Research Series 1/03

- Physical abuse, emotional abuse and neglect - 2 cases
- Physical abuse and emotional abuse – 2 cases
- Sexual Abuse, physical abuse and neglect – 2 cases
- Physical abuse and neglect – 1 case

Table 3 below shows how multiple registrations in the survey sample were dispersed among the four categories of abuse and also shows the total for each category of abuse. The first column shows the total number of registrations for each CPP category (including cases and children with single categories), the second column shows this number as a percentage of all cases where children were the subject of a CPP and each column thereafter shows how many cases within this total were also identified by practitioners as having a Child Protection Plan recorded in each of the other CPP categories. For example, there are two instances of children being subject to a CPP for sexual abuse, and in both instances this registration is in conjunction with neglect and physical abuse.

Table 3 Dispersion of multiple CPP registrations by category of abuse in survey sample (by child)

	Total CPPs	% of cases with CPP category	With Sexual Abuse	With Physical Abuse	With Emotional Abuse	With Neglect
Sexual Abuse	2	6.5		2	0	2
Physical Abuse	15	48.4	2		4	5
Emotional Abuse	7	22.6	0	4		5
Neglect	21	67.7	2	5	5	

Of the 31 cases from the survey where the practitioner identified that a CPP was in place prior to the s31 care order application, there were 45 CPPs (including multiple registrations for single children and multiple registrations for more than one child in a family) in total.

Neglect was most common, with 67.7% of children subject to a CPP including this category (singly or with one or more other categories), followed by physical abuse (48.4%), emotional abuse (22.6%), and sexual abuse (3.2%).

DCSF Child Protection Plan figures (To March 31st 2009)

The most recent available figures from the Department of Children, Schools and Families show that for 45% of all children who were the subject of a child protection plan on March 31st 2009 concerns about neglect were recorded (neglect was the only concern for 49% of children). 27% were registered for

emotional abuse, 13% were registered for physical abuse, 6% were registered for sexual abuse and 8% were registered for multiple forms of abuse.⁵

The survey results show a close similarity to the DCSF figures for the percentage of children being registered for neglect and sexual abuse, although the survey sample shows lower levels of emotional abuse than the national data. While the survey was unable to determine the primary category of abuse for those children in the survey sample who were the subject of a Child Protection Plan, it does show a much higher level of children subject to a CPP for physical abuse than the national figures for CPPs where physical abuse is the primary category. 33.3% of all plans in our survey sample featured physical abuse, while 13% nationally had physical abuse recorded as the primary category.

Our results show a much higher level of multiple registrations than the DCSF figures. This is possibly in part the result of Guardians who responded to the survey inferring registration for more than one category of abuse from their own knowledge of the cases allocated to them.

Age

Table 4 Age of children in survey sample and previous years

Age Group	2007 cohort		2008 cohort		Survey responses	
	N	%	N	%	N	%
At birth	12	3.7	10	2.2	14	8.4
First 6 months	77	23.9	100	22.3	17	10.2
6 months to 1 year	18	5.6	36	8.0	12	7.2
1-2 years	23	7.1	43	9.6	18	10.8
2-3 years	23	7.1	37	8.2	12	7.2
3-4 years	28	8.7	30	6.7	8	4.8
4-5 years	12	3.7	31	6.9	12	7.2
5-6 years	12	3.7	23	5.1	12	7.2
6-7 years	12	3.7	18	4.0	5	3
7-8 years	12	3.7	14	3.1	7	4.2
8-9 years	13	4.0	19	4.2	8	4.8
9-10 years	11	3.4	15	3.3	4	2.4
10-11 years	7	2.2	14	3.1	8	4.8
11-12 years	10	3.1	14	3.1	4	2.4
12-13 years	11	3.4	16	3.6	3	1.8
13-14 years	13	4.0	13	2.9	3	1.8
14-15 years	13	4.0	9	2.0	9	5.4
15-16 years	7	2.2	4	0.9	6	3.6

⁵ DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009, available at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000873/index.shtml>

16-17 years	6	1.9	3	0.7	3	1.8
17-18 years	2	0.6	0	0	1	0.6
Grand Total	322	100.0	449	100	166	100

- 10.2% (17) of children in the survey group were the subject of a s31 application within 6 months of birth, considerably lower than both the 2007 cohort (23.9%) and the 2008 cohort (22.3%)
- 25.9% (43) of children were aged less than one year at the time of the s31 application. This figure matches the proportion of children aged under one year in the Care Profiling Study, but is lower than both the 2007 cohort (33.2%) and the 2008 (32.5%) cohort
- 56.0% (93) of children who were the subject of applications included in the survey sample were less than five years of age at the time of the s31 application. This is very similar to the number of children aged less than five years in Masson's Care Profiling Study (57%) but is a lower percentage than both the 2007 control group (59.8%) and the 2008 sample (63.9%)
- The total percentage of children aged less than ten years in our survey group (77.7%) is also close to the number cited in Masson's care profiling Study (81%), is similar to the 2007 control group (78.3%) although lower than the 2008 sample (83.6%)

Age of children who were the subject of a Child Protection Plan (CPP) for neglect

There were 35 children (involved in 22 cases) who were the subject of child protection plans for neglect at the time of the s31 application included in the survey sample. The average age of these children was 6.4 years, higher than the average age of 4.9 years for children who were not the subject of a CPP for neglect, and that of 5.4 years for all 166 children in the survey group.

Table 5 Age of children in survey sample subject to CPPs for neglect

Age at s31 application	N	%
At Birth	1	2.9
First 6 months	5	14.3
6 months to 1 year	0	0.0
1-2 years	2	5.7
2-3 years	2	5.7
3-4 years	2	5.7
4-5 years	3	8.6
5-6 years	2	5.7
6-7 years	3	8.6
7-8 years	3	8.6
8-9 years	0	0.0
9-10 years	4	11.4
10-11 years	2	5.7
11-12 years	1	2.9

12-13 years	0	0.0
13-14 years	2	5.7
14-15 years	1	2.9
15-16 years	2	5.7
16-17 years	0	0.0
17-18 years	0	0.0
Total	35	100

Among the children who were the subject of a child protection plan for neglect:

- 17.2% were less than one year old at the time of the s31 application
- 42.9% were less than five years of age at the time of the s31 application
- 77.1% were aged less than ten
- 22.9% were aged ten and over at the time of the s31 application

The proportion of children aged less than ten (77.1%) in the neglect sample is very similar to that seen in the overall survey sample and in Masson's Care Profiling study.

The proportion of young people aged ten and over is also very similar between the overall survey sample (22.3%) and the group of children who were the subject of a CPP for neglect at the time of the s31 care order application (22.9%).

The higher average age among the neglect group is the result of a larger contingent among children aged 5-10 years who were the subject of a Child Protection Plan for neglect. In the neglect group, 34.3% children were aged 5-10 years, while amongst all children in the larger cohort 21.7% fell within this age group.

Sibling groups in case samples

Table 6 s31 care order applications with one child and more than one child in survey sample and previous years

	One child		More than one child	
	N	%	N	%
2007 cohort	108	59.7	73	40.3
2008 cohort	154	59.5	105	40.5
Survey sample	35	42.7	47	53.3

There is a much higher instance of s31 care order applications involving more than one child in the survey sample than there is in either the 2007 control sample or the 2008 sample.

- The average number of children per case in the survey sample is 2.0, while the average number of children per case in the 2007 control sample is 1.8, and for the 2008 sample, 1.7 children per case
- The average for the survey sample is increased substantially by one case in which 10 children were subject to s31 care order applications and eight cases involving three and four children respectively.
- Our survey sample contains a larger number of cases where multiple children from the same family have been made subject to a s31 care order application than both the 2007 control sample and the 2008 sample

Length of involvement with Children's Services

The length of time children from the survey sample have been involved with Children's Services covers a wide range, with the longest period of involvement beginning in January 1993 and the most recent on 22nd November 2008.

In 11.5% of cases children had their first involvement with Children's Services in November 2008. This figure is again similar to that quoted in Masson's Care Profiling Study, where 9.3% of index children had no previous involvement with Children's Services prior to the s31 care order application. In this study 60.7% of cases the children's involvement with Children's Services began more than one year prior to the initiation of a care order application.

In 36.1% percent of cases the children concerned had their first involvement with Children's Services before November 2004, more than five years prior to the specified time period for s31 applications included in survey responses. Judith Masson's Care Profiling Study (2008) reports that, on average, 45% of care order applications concern children who had their first involvement with Children's Services more than five years prior to the first s31 care order application.

Length of involvement with Children's Services – neglect cases

The higher average age of children in the neglect group, as outlined above, and the overrepresentation of children aged 5-10 years, could indicate that many the children in these cases had been in contact with Children's Services for a longer period of time prior to the first application being made than have children who were not the subject of Child Protection Plans under the category of neglect.

Among the children in the neglect subgroup, 42.9% (9 of 21 children and siblings) had first had contact with Children's Services more than five years before the current s31 care order application was made, and 76.2% (16 of 21 children or siblings) had first come into contact more than one year prior to the current application.

Although this analysis is based on a small sub group of the larger sample, these results suggest that a substantial proportion of the cases where s31

care order applications were made soon after November 11th 2008 were long running neglect cases, where previously no application was made, but that have now been taken forward following a review of current cases following the initial publicity surrounding Baby Peter's death.

Definition of the legal threshold for a s31 care order application

In this instance, the threshold for a s31 care order application is defined as being the point at which a Local Authority believes it has accumulated enough evidence to reasonably pursue a s31 care order in accordance with in Children Act 1989 Guidance and Regulations Vol.1, that (a) the child concerned is suffering significant harm, or is likely to suffer significant harm; And (b) the harm or likelihood of harm is attributable to (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or (ii) the child is beyond parental control.⁶

Timing of applications & thresholds

For each case allocated to them within the survey sample time frame, Children's Guardians were asked whether the s31 application was early, late or appropriately timed within the context of the case. The only guidance provided for respondents regarding this question was a reference to the Children Act 1989 Guidance and Regulations Volume 1. The answers to this question were explored in some detail during the telephone interviews, but the responses below remain a snapshot showing a consistent perception among those surveyed rather than a statistically significant result.

Overwhelmingly, Guardians felt that the application was either timed appropriately (53.7%) or had been delayed (43.9%). Just 2.4% (2 responses) indicated that the application had been premature – as indicated by the following quote:

“They are bringing everything into the court arena and for the court to decide. They are doing this very, very rapidly and I am having to get them to take more time and slow down and give the assessments time to be tried.”

In their responses, Guardians appeared to differentiate between the threshold for care proceedings (as outlined in Children Act 1989 Guidance and Regulations Vol.1)⁷ and the decision to activate an application to the court.

Practitioners were asked, “For each of the Local Authorities you deal with, do you believe that the threshold for making a s31 care order application has changed since November 11th 2008?”

⁶ The Children Act 1989 Guidance and Regulations – Volume 1 – Court Orders, Chapter 3: care and Supervision Orders, p39.

⁷ Retrieved from

<http://www.dcsf.gov.uk/everychildmatters/publications/documents/childrenactguidanceregulations/> 08/09/2009

Average s31 application threshold weighting

Each response regarding whether Local Authorities application of the legal threshold had increased or decreased since November 2008 was given a numerical weighting between one (decreased significantly) and five (increased significantly), with a rating of three meaning that thresholds had remained the same. The average threshold rating given to Local Authorities by practitioners surveyed was 2.8. This indicates that, by and large, practitioners believe that the threshold for making a care order application has largely remained the same since November 2008, with a slight skew towards a decrease in thresholds.

Table 7 Application of the legal threshold – response by Local Authority

	N	%
Decreased significantly (1)	12	12.4
Decreased slightly (2)	22	22.7
Remained the same (3)	38	39.2
Increased slightly (4)	15	15.5
Increased significantly (5)	8	8.2
N/A	2	2.1
Total LA ratings	97	100

The majority of respondents felt that the application of the legal threshold had not changed significantly in the wake of publicity relating to Baby Peter's death. For 39.2% of Local Authorities discussed in the survey, practitioners felt that the threshold had not changed, for 35.1% it was felt that the threshold had decreased (22.7% decreased slightly and 12.4% decreased significantly) and 23.7% felt that the threshold had increased (15.5% increased slightly and 8.2% increased significantly).

A different response was identified when Guardians were asked when the decision to go to court was made following the initial identification that the threshold had been met. The majority of respondents felt that this decision to begin proceedings was now being taken at an earlier stage, sooner after it had been identified that the legal threshold had been met.

"All cases have met the legal threshold for legal intervention under s31. Local Authorities are taking legal action in a more timely way than previously"

"It is clear that the LA should have been taking these proceedings previously and, as is the situation in this case, on occasion should be taking these a lot sooner still."

Other respondents felt that some cases were still not reaching court that should in fact do so:

"There is still not one case that I'm aware of that should not be in proceedings, and so although the LA's are taking more proceedings, they are

still all appropriate.”

“ .. speaking to a [Children’s Services] team manager recently who said that all the cases .. were potentially care cases and it was a matter of deciding on which had the greatest need to go to court”

Increased pressure & changing ways of working

The telephone interviews provided more detailed insight into the responses of local authorities to the changed context post November 2008. For example, whilst Guardians spoke of familiar concerns such as the frequent turnover of social workers, limited input by social work managers and variable competence of legal advisers, they also described some new and creative responses to the current pressures:

“Since Baby Peter, this LA has got all of their managers to spend time in other teams and look at cases, decide whether decisions / actions being taken are appropriate. This is like an ongoing internal review, and it is encouraging that they are doing this, and these managers spend a week in another team doing this, and that manager does the same for them, in their team. So a “fresh pair of eyes” is looking at all of these cases.”

“..am still seeing cases which should have been in proceedings a lot sooner, despite Baby P, but at least they seem to be coming through now. I put this down to the continuous changes in the local authority, which started before baby Peter.”

“My experience is that most professionals currently feel overworked, criticised and under pressure. All professionals appear to be reassessing their own thresholds in terms of risk and child protection”

Was any other course of action possible?

Respondents were asked whether there was any other course of action that could or should have been pursued by the Local Authority before the court application. The possible courses of action presented as options were a Family Group Conference, respite care, section 20 accommodation, a Child Protection Conference, temporary kinship placement, a parenting education programme and referral to other services. Any of these options was identified as a factor in just 7 cases (10.3% of responses). Of these the following options were identified: temporary kinship placements, Section 20 respite care and Child Protection Conferences received two mentions each, and family group conferencing, respite care and a parenting education program were all mentioned once.

Did the Local Authority comply with Volume 1, Children Act Guidance?

Respondents were also asked to identify whether, in their view, Local Authorities had complied with the requirements of the new Volume 1, Children

Act Guidance, produced in 2008 as part of the Public law Outline provisions. The response was as follows:

Table 8 Guardian opinions on whether the Local authority had complied with the requirements under Volume 1, Children Act Guidance

	N	%
Yes, entirely	20	24.4
Yes, partially	37	45.1
No	18	22.0
I'm not sure	5	6.1
N/A	2	2.4
Total	82	100

Letter before proceedings

Children's Guardians completing the survey were also asked whether there was evidence of a letter before proceedings on the case file. This provoked an unexpected set of concerns relating to practical limitations and encumbrances on Guardians accessing the Local Authority file in compliance with their responsibilities under the Children Act. Reasons given for this were confusion about paper and electronic files; lack of password for electronic file; data protection limitations for the electronic file and confusion about location of any paper record.

The response is shown at Table 9. Although at first glance the proportion of cases where a letter before proceedings was sent might appear quite low, the picture presented here is actually positive, as 50% of cases where a letter before proceedings was not issued (19.5% of all cases) were Emergency Protection Orders where, due to the urgency of the application, a letter would not have been possible. Therefore, the percentage of cases in the survey sample where a letter before proceedings could have been sent and was definitely not sent is 19.5%. It is not known how many applications were non-EPO emergency applications where a letter could not have been sent.

Table 9 Frequency of letter before proceedings sent by case (all cases in sample)

	N	%
Yes	32	39.0
No	32	39.0
No (excluding EPOs)	16	19.5
I'm not sure	15	18.3
N/A	3	3.7
Total	82	100

Conclusions:

This limited survey focused on cases where the s31 care order application was made in the three weeks after November 11th 2008, following the initial publicity surrounding the death of Peter Connelly. The results are validated by their similarity to many of the findings of the Care Profiling Study, as outlined earlier in this paper. The responses suggest that:

- The majority of Cafcass Guardians surveyed believe that the cases they were allocated in the three weeks following the public release of the Baby Peter Serious Case Review executive summary were either appropriately timed, or should have been brought to court earlier than they were.
- There is a difference in the composition of s31 care order applications made in the three weeks immediately following the release of the Baby Peter Serious Case Review executive summary and those made during the same time period in 2007. These contrasts highlight some important differences particularly in regards to sibling groups, an increase in applications where chronic neglect is a primary factor and the average age of children subject to s31 applications. These differences were further highlighted by the survey results and the semi-structured telephone interviews.
- A substantial proportion of the increase can be attributed to Local Authorities re-evaluating their involvement with families where they are already providing a service. This is evidenced by the increase in the percentage of children aged 5-10 years becoming the subject of s31 applications in the 11-30 November 2008 cohort when compared to the 2007 cohort in conjunction with the higher incidence of long term involvement with children's services exhibited by many children in the survey sample where chronic neglect has been the primary factor in the decision to bring an application to court.
- Most of the Cafcass Guardians who responded to the survey did not believe that the Local Authorities they dealt with had lowered the threshold of concern at which applications were made.
- There is a difference between the threshold for legal proceedings being met, as defined by Volume 1, Children Act Guidance,⁸ and the decision to act upon this evidence and beginning court proceedings.
- The way these two processes (firstly, the identification that the legal threshold for a s31 application has been met, and secondly the initiation of care proceedings) operate in different local authorities seems to vary.

⁸ The Children Act 1989 Guidance and Regulations – Volume 1 – Court Orders, Chapter 3: Care and Supervision Orders, p39. Outlines the legal threshold for a s31 application as where the child concerned is suffering significant harm, or is likely to suffer significant harm; And (b) the harm or likelihood of harm is attributable to (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or (ii) the child is beyond parental control

- This survey suggests that in the opinion of Cafcass Guardians who were allocated s31 care cases in the three weeks following the public release of the Baby Peter Serious Case Review executive summary, the increase in s31 care order applications by Local Authorities, although a response to Baby Peter, has led appropriate action to be taken.

Elizabeth Hall / Jonathon Guy
November 2009

References

Brophy, J., Jhutti-Johal, J. and Owen, C. (2003) *Significant harm: Child protection litigation in a multicultural setting* LCD Research Series 1/03

Judith Masson, Julia Pearce and Kay Bader with Olivia Joyner, Jillian Marsden and David Westlake, *Care Profiling Study*, Ministry of Justice Research Series 04/08 (2008)

DCSF: Referrals, assessment and children and young people who are the subject of a child protection plan, England - Year ending 31 March 2009, available at <http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000873/index.shtml>

<http://www.dcsf.gov.uk/everychildmatters/publications/documents/childrenactguidanceregulations/>

The Children Act 1989 Guidance and Regulations – Volume 1 – Court Orders, Chapter 3: care and Supervision Orders

Appendix 1 Summary of telephone interviews & case vignettes

Telephone Interviews

While these interviews are ongoing, the initial results drawn from these case studies have enabled some assessment to be made about how the Baby Peter publicity impacted upon the decision to proceed with a s31 care order application.

At the time of writing, 20 cases have been investigated further through an in depth interview. Among these cases, the publicity surrounding Peter Connelly's death can be seen to have fully impacted on the decision to proceed with a s31 care order application (in that the application is directly attributable to the "Baby Peter effect") in seven of these cases.

In five cases, the "Baby Peter effect" was seen by the allocated Guardian to have partially effected the decision to proceed, in that the decision was triggered by an incident, but in the past similar incidents had been responded to without recourse to s31 application.

In seven cases, the application was triggered by a one-off, serious concern. For example a new birth, release from prison, disclosure of serious sexual abuse or the breach of contact provisions.

In two cases, the s31 care order application related to a requirement for a secure accommodation order without parental consent and was not directly relevant to the publicity surrounding Peter Connelly's death or any possible subsequent effect.

Three short vignettes, which demonstrate the variety of circumstances within the cases discussed in the follow up interviews, are included below.

Case 1

A 10 yr old girl (one of six children) had previously been the subject of a child protection plan for neglect due to her mother's heroin use, but the plan had ended once mother started co-operating with the new social worker and stopping her drug use. The girl suffered a self-inflicted injury following tensions in the home caused by adult friends of her mother. Her mother attempted to treat this herself, before taking her to hospital a week after the incident.

At hospital a social worker was called, and the mother left the hospital 'in a panic' with the children before the social worker arrived. This was taken as a reversion to her previously negative interactions with the Local Authority social workers. A police protection order was taken on all six children who were removed from their beds and placed in foster care. This was followed by the care order applications for all the children.

According to the Guardian interviewed, both Police and the Local Authority social worker told the mother that if it were not for the publicity surrounding

Baby Peter's death that week, a care order application would not have been made in this case. The children are now in a kinship placement.

During the case, underlying concerns emerged relating to mother's re-using drugs and her new partner, which arguably should have been identified previously.

Case 2

A baby was taken into care several months after birth. Several years earlier the parents had had another child removed and placed on a residence order with grandparents. Following this, a second child had died of SIDS at three months of age whilst in the care of the parents. Both parents misused drugs and alcohol and there had been frequent domestic violence call outs. The mother had been known to children's services since childhood due to her own mother's use of alcohol.

The Local Authority did a full pre birth assessment for the current baby. There was then no active involvement for about a month prior to birth, but a Child Protection Plan was put into place at birth.

The professional network identified numerous concerns in the first months of the baby's life. The care order application, linked with a plan for immediate removal of the baby into foster care, was actually triggered by a further domestic violence incident and ongoing concerns about the parent's drug and alcohol use. It was not possible to identify whether the Baby Peter publicity had played a part in the heightened reaction to this situation compared with the way in which the previous incidents and concerns had been dealt with.

Case 3

A baby was born prematurely to a young mother.. The mother had herself been the subject of a child protection plan, along with her siblings, from the age of ten onwards, for neglect and sexual abuse. The father also had a long history of involvement with children's services. There were serious concerns about father relating to drug and alcohol abuse, domestic violence and possible sexual abuse against a young friend of the family.

The mother originally concealed this latest pregnancy from health services. A CAF was completed by the midwife prior to birth and a child protection plan was implemented as a result of the mother's concealment of her pregnancy, her inaction in regards to engaging with health services and the father's violent behaviour towards her. Initially a parenting assessment was planned but did not occur due to the parents separating during the proceedings. Instead, the mother and maternal grandmother were assessed and the baby was initially placed with the maternal grandmother in spite of the family history and current information about domestic violence and a history of sexual abuse by other adult family members.

. A new social worker was allocated in October 2008, who (according to the Guardian) "provided more direction" and this resulted in a s31 care order application being filed in mid November 2008. Again, it was not possible to identify whether the Baby Peter publicity had played any part in the heightened reaction to this baby's situation.