Keynote address

Policing Parents, Protecting Children?
Rethinking Child Protection Strategy
Initial findings from trend data:
Dr Lauren Devine

Abstract

This paper discusses the findings from our trend analysis of child protection and safeguarding referral and assessment data. This analysis is the first phase of our ESRC funded research project, ‘Rethinking Child Protection Strategy’.

The project evaluates several key aspects of the child protection and safeguarding system, including the development of child protection legislation with the implementation of the Children Act 1989 and the Children Act 2004, and related policy and the statutory guidance, ‘Working Together to Safeguard Children’. Our trend data analysis indicates a policy re-think in relation to the outcomes of referral and assessment in the context of existing child abuse prevalence studies. The trend for referral and assessment is significantly increasing but there is no proportionate increase in the detection of child abuse, nor is there any reduction in the prevalence of child abuse reported by the NSPCC that could be explained by the referral and assessment data.

Keywords

Child protection, safeguarding, ESRC, Rethinking Child Protection Strategy, policing parents, protecting children

Introduction

The Children Act 1989 created a clear separation between consensual and non-consensual interventions:

- S.17 concerned support services for families. It is consensual (Part III of the Act; and

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S.47 concerned the investigation of reasonably suspected significant harm to children. It is not consensual (Part V of the Act);

The clear intention of Parliament in the Children Act 1989 to limit non-consensual state interference into private family life was to ensure it:

‘..realigns the balance between families and the state so as to protect families from unwarranted state interference…’. (Allsop, 1990:41-46).

The intention of the Act was that any coercive or non-consensual interaction with families by local authorities would be:

(a) Clearly controlled by the Children Act 1989 under s.47; and

Since the Children Act 1989 came into force, government policy has eroded this aim to the extent that the precise boundary between consensual and non-consensual statutory intervention is now virtually indistinguishable.

Examination of the referral and assessment trend data, evaluated in the context of the statutory guidance, ‘Working Together to Safeguard Children’ (DfE, 2015) raises significant questions about the current policy to integrate assessments for welfare purposes with assessments for policing purposes. The single Continuous Assessment (DfE, 2015) may therefore be an inadequate and insufficiently considered response to the statutory duty on local authorities to provide services and investigate suspected child abuse, by placing an unrealistic expectation on social workers to build a relationship of trust whilst potentially collecting evidence for use in subsequent litigation. This raises the question of whether a separate response to ss.17 and 47 is indicated, with appropriate new safeguards, controls and remedies.

**Our research questions**

Our research focusses on the following areas:

- The drive towards increased referral and assessment (carried out via trend analysis);
• The use and impact of risk assessment in child protection and safeguarding referrals and assessments;
• The impact of Public Inquiries and Serious Case Reviews on policy and practice; and
• An overall evaluation of how these three elements contribute to social work practice and family welfare.

Trend analysis: indications for policy change

We have completed the trend analysis of referrals, assessments and outcomes over the 22 years since the Children Act 1989 came into force. Our findings highlight the following issues:

• The referral system has evolved in a manner that cannot separate out requests for help from allegations of abuse until an assessment has been carried out;
• This results in the conditions for a climate of fear, mistrust and confusion over the question of whether the role of social workers is to police, to support, or both;
• The system’s assessment framework intrusively assesses every aspect of a family’s life, not simply an allegation (if one is made) or the reason for the referral;
• Growing numbers of families are becoming known to social services in response to triggers such as the refocusing debate and early intervention policies;
• Despite the NSPCC’s prevalence numbers remaining almost constant (Cawson et al, 2000; Radford et al 2011), there is no proportionate increase in significant harm detected during assessment.

In light of the data, we suggest that the success of the mixed method of assessment as a means of reducing the prevalence of child abuse should be re-thought. Alternatively, the prevalence numbers may simply reflect incidence. Further, the incidence reflects a layer of interpretation by the researchers; in a large number of cases where the participants were concluded to have been abused, the young adults
who completed the questionnaire did not consider themselves to fall into this category.

**The restricted role of lawyers**

There is virtually no role for lawyers acting for families at the referral and assessment stages. There is no legal aid, and professional advocacy is heavily controlled (Lindley and Richards, 2002). The consequence is that in cases that progress through the Public Law Outline (Children and Families Act 2014, PD12A) to litigation there is already a high level of social work interaction with families, with extensive notes and decisions that form the evidence base for litigation. Families may find themselves in this position without appreciating that the referral and assessment stages can be threshold stages towards litigation. The confusion occurs as assessment is used concurrently as both a gateway for family supportive services and a forensic, evidence gathering mechanism.

A parent who needs supportive services or who does not understand its dual use is unlikely to refuse assessment, or may not be aware that their consent is needed unless there are grounds under s.47 to proceed regardless. Consequently in many cases there is little a lawyer or a support organisation can do once a large amount of social work interaction has taken place with a family other than urge compliance with social work requirements. This is often too little too late to prevent removal of a child and presumes social work decision making is invariably correct. The interface between social work relationships with families, and legal rights and responsibilities which differ throughout the stages of the Public Law Outline, together with high emotional stakes for parents render the process potentially fraught, confusing and incompatible with family support. Consequently, by the time contested cases reach the courtroom there is arguably little that can be done to unpick the complex interaction between families and Children’s Services Departments.

The Public Law Outline creates a clear pathway which emphasises parental compliance with social work requirements: parents disputing social work accounts and requirements are *de facto* failing to comply. This puts parents who dispute social work accounts in an impossible position, particularly in cases involving uncertain expert evidence (Devine & Parker, 2015a:7-9). Disputing social work accounts and non-compliance is risky, leaving parents with an impossible dilemma.
This dilemma is particularly evident in cases which have been successfully challenged in the appellate courts. Judges have long observed that miscarriages of justice do occur. At the time the Children Act 2004 was enacted Mr Justice Ryder in Oldham Metropolitan Borough Council v GW, PW, KPW (a child) (by his children's guardian, Jacqueline Coultridge) [2007] EWHC 136 (Fam) reiterated Munby J.’s comments in Re B (a child) (Disclosure) [2004] 2FLR 142, explaining that:

‘...it would be complacent of us to assume that miscarriages of justice do not occur in the family justice system.’ (Per Mr Justice Ryder, [2007] EWHC 136: para.75)

This echoes our concerns. At the centre of our research is the premise that situations of such critical importance, governed by a complex legal framework, should not be operating without legal advice and representation from the outset, together with a separating out of social work as professional family support from the role of policing (Devine & Parker, 2015b). There is little that lawyers can do to retrieve the situation; compliance is expected to avoid litigation, despite the knowledge that miscarriages of justice do occur. At this stage advice to parents is focussed on minimising the risk of ‘losing their child’. Restrictions to legal aid and the lack of parental knowledge of the precise boundaries of the law at the referral and assessment stage leaves these stages of the process largely unregulated and potentially operating outside the boundaries of the law if informed consent is not freely given, for at least part of the process.

Policy development

It is important to consider that since the major legislative changes implemented in the Children Act 1989, modern child protection and safeguarding policy has evolved in response to specific events and political agendas. The impetus to address the question of serious child abuse has been consistently highlighted by high-profile child fatalities such as Dennis O'Neill, Maria Colwell, Jasmine Beckford and Tyra Henry (Sir William Monckton, 1945; Department of Health, 1974; Blom-Cooper, 1985; Sedley, 1987). Social work became increasingly linked with the need to prevent abuse as opposed to primarily a professional welfare social service as intended following the Beveridge Report (1942).
Comparative jurisdictional studies in child protection also inform policies. There are two main models of intervention: the universal service model operating in many European countries, and the rationed service model operating in England, Australia, New Zealand, America and Canada (Hill et al (eds.), 2002). In the rationed service model, social work as a supportive provision is only able to be accessed via assessment. The assessment framework relies on risk prediction and invasion of every aspect of private family life using a framework designed for the consensual assessment of children in need and their families (HM Government, 2000:17).

Under this framework Children’s Services Departments have adopted systems such as ‘Signs of Safety’ (Bunn, 2013), leaving it virtually impossible for a family to face assessment and a finding of ‘no further action’ to be concluded. There is no data available to evaluate the way in which such commercial systems are being used, their reliability or the range of outcomes achieved. The policy of mixing welfare with policing, coupled with reliance on such assessment models render this fundamentally a problematic system. This creates the conditions for conflict between the legal parameters of policing and welfare considerations resulting in irreconcilable difficulties for legal practitioners, Children’s Services Departments, support organisation, children and families.

**Embedding Child Protection with Safeguarding**

Despite the intentions and aim of the law to separate out coercive interventions (s.47) from supportive social work as a family service (s.17), the policy direction in relation to social work practice has progressively embedded child protection (the protection of children from significant harm) and safeguarding (the promotion of welfare) together to the extent it is virtually impossible to envisage one without the other. Amongst other adverse effects this has created a multi-billion pound per annum industry in England, some of which is privatised and largely unregulated (Devine & Parker, 2015c). Wrennall reports that in the UK the ‘Total gross expenditure on children in care in 2007-08 was £2.19 billion’ and that in ‘the US, the Child Protection expenditure is estimated to be $11.2 billion’ (2010:309).

The initial findings of our trend data give an indication of the scale of the social cost of referral and assessment. This is a separate cost from the subsequent cost of early intervention strategies. There is no clear indication in policy about the measure
of success for the referral and assessment strategy, or whether there is evaluation of whether it reduces child abuse in the general population. As indicated earlier, our data analysis questions both.

The current position leaves a clear disjoint between the legislation and how it has been interpreted in the statutory guidance. This guidance sets out the Government's policy in relation to both child protection and safeguarding (DfE, 2015). Following the Report into Child Abuse in Cleveland 1987, July 1988, Chaired by Dame Elizabeth Butler-Sloss (Butler-Sloss, 1988) the Children Act 1989 was heralded as a much needed bringing together in a modern framework of law and policy in relation to children and their welfare. It sets out the enabling, legal framework. It *inter alia* swept away the final vestiges of the notion of ‘parental rights’, firmly establishing ‘parental responsibility’ as a benchmark of parental expectation in Part I, ss.2-4A. This established the principle that parents are expected to be responsible for their children as opposed to exercising rights over them. Centuries of oppression of children were to be swept away by this embodiment of the primacy of child welfare. The ‘welfare principle’ in s.1(1) made it a statutory requirement for courts to consider the welfare of the child as ‘paramount’ when making any order. Coercive interventions were contained in Part V of the Act and were to be used only when necessary. Part III of the Act concerned family support to improve welfare, and was intended to be consensual and helpful. This part of the Act located social work as part of the post-Beveridge Report (Beveridge, 1942) social welfare framework of which professional social work formed part:

‘In the context of the institutional framework of the universal state welfare services, while social work was constituted as a residual service, it was seen as making a positive contribution to the development of the overall ‘welfarist’ project. It was to provide the personalised, humanistic dimension to the welfare state, the primary tool being the social worker’s personality and use of relationships.’ (Parton, 2014:2047)

When it was enacted, care was taken to ensure that the separate sections of the Act reflected the intention that non-consensual state intervention should only take place in very limited circumstances. The Children Act 1989 was about removing the notion of the ‘nanny state’ and re-establishing the boundary between support and policing.
S.17 Children Act 1989 concerned the duty on local authorities to provide support services to children in need and their families. In contrast, s.47 Children Act 1989 concerned the duty on local authorities to investigate reported suspicions of a child suffering or likely to suffer significant harm, and to consider whether any action should be taken. The wording of the statute is important, as is the distinction between the locations of the sections in the Children Act 1989. They were not intended to read, or acted on together.

The policy approach to the framework and method of assessment to check if a family is eligible for support services has enabled child protection to be embedded with safeguarding and service provision without adequate consideration of any adverse consequences. The two distinct functions of social work to support, under s.17, and to police, under s.47 have been mixed together so that one cannot take place without the other. This dramatically increases the cost to the state and the intrusion into private life for all referred families (over 5% of all families in England in 2013/2014).

Germ theory, early intervention and child protection

The origins of early intervention can be traced to the rise in the use of risk prediction, originating in the 1980s. Child protection discourse was populated with an ideology that child abuse can somehow be eradicated in a manner analogous to a germ (Browne and Saqi in Browne et al, 1988) via the use of risk assessment (to diagnose) and early intervention (to treat). The consequence of this has been to increase the cost and time of assessment, the number of assessments undertaken, the speculative nature of predicting risk and adverse consequences for social workers when they fail to make the correct prediction and a child is subsequently harmed. The speculative nature of this approach to assessment was highlighted in the late 1980s when the authors of the research underpinning this approach realised that this would create a large number of false positives:

‘The most optimistic estimates of screening effectiveness imply that a screening programme would yield large numbers of false positives’. (Browne and Saqi in Browne et al, 1988:70)
Despite this cautionary note, policy direction has moved towards increased family surveillance and interventions despite the lack of redress or remedy in relation to the inevitable large number of false positives (Anderson et al, 2006, 2009; Wrennall, 2010). Every child fatality or report of organised or historic abuse adds additional suggestion to extend the existing structure: recent examples are mandatory reporting with a criminal sanction (Wintour, 2015), increased surveillance powers (Travis, 2015; RT, 2015) and further reduction of right to privacy and data control (EPIC & CMCS, 2010; Cronin, 2014) are recent examples.

‘Rethinking Child Protection Strategy’ interim trend analysis results


Our headline findings showed that:

- Since the children Act 1989 referrals have increased by 311% (from 160,000 per year in 1991/1992 to 657,800 per year in 2013/2014);
- 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 data and trend analysis raises some interesting questions about the accuracy of the prevalence studies, and the efficiency and success of the current system. The methodology underpinning the prevalence number studies raises questions over whether they should be taken to be reliable across the population, or simply provide helpful contextual data about the retrospective recollections of a sample of young adults as children. As we noted earlier, we find that the most interesting finding from this data is the disjoint between the participants’ construction of themselves as ‘not-abused’ matched against the researcher’s criteria that they were. Some questions for further research arise from this.

If it is the case that more children are being referred than are being abused then it does raise legitimate questions of the number of families subjected to screening via assessment; a process which is known to be stressful and in some cases extremely harmful. There is a large body of literature highlighting harm caused by referral and assessment. Research findings consistently link suspicion of child abuse and the investigation of it as causing more harm than the wider issues of power relations and state interference per se. However, it is sometimes difficult to separate out the harm caused at each stage (Dale et al., 2005). Other research identified false positive cases as causing ‘great suffering’ at all stages of the process (Jones, 2001:1395; Luza, S., & Ortiz, E., 1991:108; Kaufman, 2004; Wakefield, H., & Underwager, R., 1994 and Prosser, J., 1995).
The findings also raise categorisation questions about the use of s.17 measures and whether they have become a quasi-coercive stage overriding the clear divisions envisaged in the Children Act 1989 between ss. 17 and 47. If there is a tendency towards over-referral the ability of social workers to carry out timely and effective reports is compromised. It is unsurprising that serious cases are likely to be missed in the increasing mass of mixed referrals. There are consequential dangers in relation to both false positives and false negatives.

The data provides a framework for further analysis as the project progresses. The single most significant of the project’s findings to date demonstrate that the number of referrals has dramatically increased although the number of substantiated child abuse cases has not. The number of substantiated cases of ‘core abuse’ has dropped from 9.2% to 1.1% of referrals. The number of referrals has increased by 311% but despite this, Serious Case Review findings consistently find threshold decision making errors. The system is utilising ever increasing resources to detect abuse that is either not there on the scale suggested by Cawson et al (2000) and Radford et al (2011); is undetected; or is being ‘caught’ at the primary and secondary stages. The inability to separate out from the available data what is happening and address this question should prompt more rigorous Government data collection. It should also prompt investigation of whether there is routine damage to families and children who are subject to assessment, particularly in cases where there has been an allegation.

Further investigation will be needed to understand why there is uncertainty and ambiguity in the collected data and how these issues can be resolved. In part it may be because there is no limit to the behaviours that could be added to the categories of ‘child abuse’ (World Health Organisation, 1999:13-14). As a result, it is difficult to accurately measure how widespread it is; if we don’t know what it is we can’t measure how much of it there is; some abused children may not be referred at all, or some potential child abuse may be addressed through early intervention strategies and consequently never categorised as abuse. This, however, does not explain the rising referral and assessment rate, and the lack of proportionate rise in detected child abuse (Devine & Parker, 2015b)
Despite these issues, it has become commonly understood by the media and the public that there is a high level of undetected child abuse. Under the current system the predominantly welfarist approach is providing rationed but consensual services to those who request them under s.17. It is noted there are many requests for services that are not met. Additionally services are provided to those who do not want them as a way of subverting escalation to s.47 measures. This is the coercive nature of the current system. The data illustrates that the role of s.17 is expanding, raising a number of interesting questions about how prevalence studies are understood in this context, and the consequences of mixing welfare and policing roles.

The difficulties and complexities of separating data relating to family welfare from data relating to family policing leave a number of important questions for future research. What can be concluded, however, is that there is no data from the prevalence studies, when matched against the trend data, to suggest there is a statistically significant reduction in the prevalence of child abuse in the general population in England. A policy rethink is indicated as is the underpinning theoretical approach to the policy.

**The Policing/Welfare dichotomy: is assessment quasi-coercive from the outset?**

Despite the intention of the Children Act 1989 to keep ss.17 and 47 separate, assessment is arguably quasi-coercive from the outset. If parents do not comply with social work requirements during and after assessment the situation can escalate out of a consensual stage, raising questions about whether any stage of social work involvement is truly consensual. If it is not, the foundation of trust on which social work relations were intended to be built is extremely difficult to obtain and maintain.

We therefore believe that mixing policing with welfare from the outset is problematic, and suggest a policy rethink more in line with the original intention of the 1989 Act. We suggest a framework to rebalance state power with private rights is indicated: S.47 processes should follow a model aligned with the safeguards and controls inherent within the criminal justice process. Professional social work as a supportive service under s.17 would re-align with a consensual service model based on trust.
An analogy can be drawn with the criminal justice system to inform this suggestion. It is well recognised in criminal investigations that investigatory and decision making roles need to be separate (The Attorney General, 1998:para.1). The police investigate crime; the CPS decides whether to bring a prosecution (The Prosecution of Offences Act 1985 s.1(1)). When investigating a crime the police do not offer to ‘support’ suspects alongside their investigation, nor do they decide whether to bring a prosecution. They are restricted in the manner, length and conduct of their investigation and are covered by a code of conduct (PACE, 1984). In contrast, family assessments are open-ended, multi-faceted and extremely confusing in their complexity (DfE, 2015; Devine, 2015).

One of the most striking issues about the way in which policy has driven local authority responses is that because the system is not analogous to the criminal justice system it consequently lacks appropriate safeguards (Devine & Parker, 2015a). Fundamentally the question is whether it is more appropriate to locate the s.47 duty primarily within a welfare discourse or within a policing discourse. If located in welfare discourse the narrative focusses on measures to improve child welfare with other considerations secondary to this central aim. If located in policing discourse the narrative focusses on the balance between crime control and due process (Packer, 1968), the power of the state balanced against the rights of the suspects and the need to protect the alleged victim. Inter alia the aim of policing is to protect the public, including children, and to achieve justice by imposing penalties upon those found guilty of committing crime. The aim of the child protection system is to enable the Local Authority to discharge its duty under s.47 to protect children. Inherent in this aim should be an acknowledgement of the similarities with the criminal justice system.

The reasons for the differences in approach between criminal and public family law cases refer to a policy reluctance to acknowledge that parents accused of child abuse have an analogous situation to a defendant in a criminal trial (Devine and Parker, 2015a). Consequently for practical purposes the parent is not placed in an analogous position: a parent is not the defendant in cases arising from ‘child protection’ investigations and the welfare narrative construes the removal of the child from the family as taking action to protect the child rather than a sanction against either the child or the parent. When the rights and protections of parents in public
family law proceedings is compared with those of a criminal defendant the vulnerability of parents is evident. The reluctance for this to be acknowledged may stem from a fear that any attempt to consider or address the position of parents accused of maltreatment, but not specifically on trial in a criminal court for these events, may erode the ability of courts to remove children from parents if it is considered to be in a child’s best interests. This highlights the obvious tension between the belief that the state should take responsibility for protecting children from perceived parental maltreatment and the ideology of citizen’s rights within justice systems, identified by Packer as regard for due process. (Packer, 1968)

Conclusions

Referral and assessment policy blurs the legal boundaries between consensual and non-consensual assessment. Without robust evidence from the data to support this approach, policy change is indicated to restore a better balance between individual rights and state power; a balance that was envisaged when the Children Act 1989 came into force, but which has been eroded primarily via successive versions of ‘Working Together to Safeguard Children’ (Department of Health and Social Security, 1986; Department of Health, 1989, 1990, 1999, 2010a, 2010b; Department of Health, Home Office, Department for Education and Employment, 1999; HM Government, 2010; DfE, 2013; DfE, 2015). The guidance has drifted towards a position where it is hard to separate out the exact point where consensual assessment ends and non-consensual assessment begins (Devine, 2015).

This approach creates conflict and increased pressure on social workers to cope with increasing numbers of referrals, many of which are simply requests for social help. There are legal implications to this decision as it shifts the emphasis from support to risk prediction. This is indicated to have an adverse effect on the families involved. It also adversely impacts on individual social workers who are charged with the uneasy burden of building a relationship with ‘service users’ whilst policing them, and their management teams who are managing increasing bureaucracy and caseloads. The expectation that social workers should ‘work with’ families, a position recently removed from ‘Working Together’ in the context of family/professional relationships has been shown consistently in research to be unrealistic. Worldwide research studies who have talked to families and social
workers report this to be a fraught and difficult relationship (Donzelot, 1978; Dumbrill, 2005, 2006). A clearer rationale and measure of evaluation is needed to justify this policy approaches to the reduction of child abuse.

The next stage of our project examines Serious Case Reviews and Public Inquiries, and the use of risk assessments. The project will conclude with an analysis of all three elements (trends, etc.) and produce a final project Report.

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**Statutes**

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