



# Born into care

## Newborns in care proceedings in England

Summary report, October 2018

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**Nuffield Family Justice Observatory for England & Wales**

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## **The Nuffield Family Justice Observatory**

The Nuffield Family Justice Observatory aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. It is being established by the Nuffield Foundation to meet the needs of practitioners who make pivotal decisions in the lives of children and families by:

- Working with them to identify priority issues where research evidence may help guide practice.
- Providing reliable summaries of what is, and is not, known from research or administrative data.
- Combining knowledge from research with insights from policy, practice and user experience.
- Working with practitioners, policy makers and organisations representing families and children to develop, update and test guidance and other tools based on that knowledge.

## **Development team**

The Nuffield Foundation has appointed a development team to complete the set-up of the new Observatory. The development team is working closely with stakeholders to finalise the Observatory's initial priorities and to inform its work plan. Team members are:

- Professor Karen Broadhurst, Lancaster University (Principal Investigator)
- Claire Mason, Lancaster University
- Carey Oppenheim, Nuffield Foundation
- Dr Lisa Holmes, Rees Centre
- Dr Ellie Ott, Rees Centre
- Dr Susannah Bowyer, Research in Practice
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## **Citation**

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We would also like to thank the Children and Family Court Advisory and Support Service for safely sharing data. Without the support of this organisation, none of this work would have been possible.



## Summary report

This report provides a brief, accessible overview of the main findings. Readers are encouraged to consult the main report for the methodology, all data tables, findings in full and discussion.

## Overview

Infants subject to care proceedings as newborns are the focus of this report. For the purposes of this report a newborn is defined as an infant aged less than seven days old. An infant is defined as a child aged less than one year old.

The study used population-level data (2007/08 to 2016/17) held by the Children and Family Court Advisory and Support Service (Cafcass) to provide the first estimate of the proportion of care proceedings for infants in England that are issued for newborns.

New evidence is also presented about the frequency of newborn cases, case characteristics and legal order outcomes. Changes in the frequency and pattern of legal orders over time and regional differences are reported.

Although frontline practitioners will be familiar with cases of infants subject to care proceedings, there are no published studies which specifically focus on newborns in the family justice system in England, based on population-level data.

## Background

The local authority issues care proceedings under s.31 of the Children Act 1989, when a child is assessed as suffering, or is at risk of suffering, significant harm as a result of care provided by parents falling below a reasonable standard.

If a child who is subject to care proceedings cannot be returned to parents, a range of permanency options are considered by local authorities and the courts, which include placing the child within the extended family network or with foster carers. The local authority and the courts may also decide that it is in a child's best interests to be adopted, if a permanent placement within the extended family is not possible.

Not all cases of care proceedings concerning newborns will result in infant removal, but where the local authority does remove an infant from his or her mother within hours or days of the infant's birth, this is highly distressing for birth mothers, birth fathers and wider family networks. Published family court judgements evidence the challenges of issuing care proceedings at birth for all parties. However, statutory practice guidance is very scant on both pre-birth assessment and best practice regarding care proceedings at birth. Equally, the literature focused on professional handling and experience of newborn cases is very limited. Therefore, building an empirical evidence base about this particular population of infants is pressing.

There is considerable national concern about the volume of care applications coming before the Family Court in England. Although the greatest proportional increases in recent years are for older children, infant cases make a considerable and consistent demand on the family justice system. There were 173,002 children involved in care proceedings between 2007/08 and 2016/17 in England, and of those, 47,172 (27%) were infants.

The likelihood of a child coming before the family courts in care proceedings is highest for infants, when the size of the respective child age populations is taken into account. To illustrate, between 2007/08 and 2016/17, the incidence rate was 70 cases of care proceedings per 10,000 infants aged less than one year in the general population, compared to 19 per 10,000 children aged between one and four years old.

## Study objectives:

The objectives of the study were to:

- a. provide the first estimate and profile of cases of newborns subject to care proceedings in England using national population-level data.
- b. provide a critical discussion of the findings for further consideration and development by family justice stakeholders.

## Methods

The study used population-level data held by Cafcass to provide the first national estimate of newborns in care proceedings in the family justice system in England, based on all usable records from 2007/08 to 2016/17. For some measures (such as duration of care proceedings and final legal orders), data was only available for part of this period.

Ethical approval was granted by Cafcass and Lancaster University. The research team worked with pseudo-anonymised records to preserve the privacy of the children and families in the national data. Pseudo-anonymised means that all personally identifiable information is replaced with artificial identifiers or pseudonyms.

Given this is a first descriptive study, quantitative analysis comprised the calculation of volumes, frequencies and incidence rates. An incidence rate is a measure of how frequently an event occurs in the general population. Incidence rates provide a clearer indication of the likelihood of an infant or child becoming subject to care proceedings than simple volumes or frequencies, because the size of the underlying population is factored into the analysis.

An infant is defined as a child aged less than one year; a newborn is an infant aged less than seven days old. Population estimates from the Office for National Statistics (ONS) were used to calculate incidence rates. ONS annual live births data were used to calculate incidence rates for newborns. ONS mid-year child population estimates were used to calculate incidence rates for all children.

Funnel plots were used to analyse and present regional and local authority variation. In addition, the proportion of newborns who were “subsequent infants” (an older sibling had already been subject to care proceedings) was calculated, as well as the duration of care proceedings and legal order outcomes.

Regarding legal order data, five analytic categories were created: “no order”; “with parents”; “with relatives”; “with foster carers”; “placed for adoption”. Table 1 below indicates how legal order data produced by Cafcass was rationalised for analytic purposes.

**Table 1: Legal order categories.**

| <b>Analytic category (devised by research team) proxy indicator of permanency placement</b> | <b>Legal order (as recorded by Cafcass)</b> |
|---|---|
| “no order”  | Application refused <sup>1</sup>            |
|   | Order of No Order                           |
|   | Order Refused/App Dismissed                 |
|   | Case by Leave Withdrawn                     |
|   | Order not made                              |
| “with parents”  | Supervision Order                           |
|   | Family Assistance Order                     |
| “with extended family”  | Residence Order                             |
|   | Child Arrangements Order (live with)        |
|   | Special Guardianship Order                  |
| “with foster carers”  | Care Order                                  |
| “placed for adoption”   | Placement Order                             |
|   | Adoption Order                              |

Cafcass has only recently started to collect placement data, hence the final legal order was used as a proxy indicator of final permanency arrangements for the child. This is the most reasonable assumption that can be made, on the basis of the information that was available to the research team, at the time of this study.

The sampling timeframe was adjusted to deal with levels of missing data for legal orders in records before 2010/11 and to ensure the best correspondence with general population data available from ONS, creating three distinct samples.

It is important to note that because the research team did not have access to infants becoming looked after under s.20 of the Children Act 1989 (accommodated children), the statistics presented in this report, will under-estimate the total population of infants separated from parents at birth. Infants who are accommodated under s.20 enter care by way of parental agreement rather than court order. Local authorities may choose to use this option to safeguard infants, because care proceedings cannot be issued in advance of an infant's birth.

## Main findings

### Newborns in care proceedings in England: volume, frequencies and incidence rates (2007/08 to 2016/17)

- In 2007/08, **32% of all care proceedings issued for infants were for newborns**. By 2016/17, the percentage increased to **42% of all cases**. Therefore, newborns in the family justice system comprised a substantial proportion of all infant care cases and this proportion increased across the observational window.
- Newborn cases of care proceedings also increased in volume over time. In 2007/08, **1,039 newborn cases were issued**, by 2016/17, this figure has risen to **2,447 cases**. Although the greatest proportional increases are for older children, the large volume of infant cases is also noteworthy. Between 2007/08 to 2016/17, infants constituted 27% of the overall population of children involved in care proceedings (2007/08 to 2016/17).
- The likelihood (incidence) of newborns in the general population becoming subject to care proceedings **has more than doubled, increasing from 15 newborns per 10,000 live births in the general population in 2008 to 35 per 10,000 in 2016**.



## **Newborns in care proceedings in England: regional and local authority variation (2008 to 2016)**

- There were marked differences between regions regarding overall rates of care proceedings issued for newborns. Based on an overall rate (2008-2016), **Yorkshire and Humber** and the **North West** recorded the highest incidence rates, with overall rates above 30 cases of care proceedings concerning newborns, per 10,000 live births in the general population.
- In contrast, **London** and the **South East** recorded the lowest overall rates at 18 newborns per 10,000 live births and 20 per 10,000, respectively.
- For all regions, rates increased over time, however, **the greatest proportional increases were evident in the North East, North West and South West**. There is also unexplained fluctuation in the percentage changes for all regions over time.
- At the level of the local authority, a minority departed significantly from the expected national average rate of proceedings (35 per 10,000 live births in 2016). The range in rates for **outliers** (local authorities departing significantly from the expected average) in 2016 **was 55 newborns per 10,000 live births in the general population to 159, per 10,000**. Although the majority of local authorities fall within an expected average for their regions, the rate range for outliers is considerable and therefore, warrants further analysis.

## **“Subsequent infants” (2012/13 to 2016/17)**

It was important to ascertain how many newborns were “subsequent infants” – that is an older sibling had already appeared before the courts in s.31 proceedings.

- **47%** of newborns between 2012/13 and 2016/17 were “subsequent infants”, so **53%** of newborns did not fall into this category.
- If the court has not already dealt with an older sibling, this raises the question of the basis of a claim of likely significant harm. For infants whose family is new to the court, pregnancy provides only a short window for the assessment of parenting capacity and support for change.

## Duration of care proceedings (cases completing between 2010/11 and 2016/17)

- More cases of care proceedings concerning infants completed within 26 weeks over time. In 2012/13, only **28%** of cases concerning newborns completed within the statutory timeframe of 26 weeks, whereas in 2016/17, **this percentage increased to 61%**.
- The duration of care proceedings reduced over time for all infants and children given a new statutory timescale for the completion of care proceedings introduced under the Children and Families Act 2014. However, a greater proportion of cases concerning newborns completed within 26 weeks, than cases for older infants in our dataset. For example, for infants in the age categories “26-38 weeks” and “39-51 weeks”, the proportions of cases which completed within 26 weeks were 46% and 49% respectively in the year 2016/17.
- **39% of newborn cases in 2016/17 exceeded the 26 weeks statutory timescales.** Further qualitative research is needed to understand why newborn cases do or do not complete within 26 weeks and the grounds for seeking more time in the longer running cases.
- Further qualitative research is needed to understand the impact of shorter timescales for care proceedings on decision-making specific to newborns.

## Final legal orders (cases completing between 2010/11 and 2016/17)

Based on the final legal order as a proxy indicator of the child’s final permanency placement:

- Almost half of all newborns recorded the final legal outcome: “**placed for adoption**”; the percentage of placement/adoption orders was also **highest for newborns** than for all other age bands of infants. The total percentage of all orders falling into this category was **47%**.
- Regarding children placed “**with extended family**”, **fewer newborns** recorded this type of legal order outcome than older infants. The total percentage of all orders for newborns falling into this category was **21%**.

- It is important to note that whether care proceedings were issued for newborns or later in infancy, a similar (albeit small) percentage of cases recorded the final legal order: “with parents”. For example, **a total of 13%** of all orders made for newborns fell into this category and a similar percentage was recorded for infants aged 39 to 52 weeks at **14%**.

The percentage of infants across all age bands subject to care orders, warrants further attention. Care orders are not generally a preferred permanency option for infants, but for **all infants whether newborn or older, between 13% and 16% of final legal outcomes were care orders**. Without further analysis it is not possible to explain the circumstances of these infants, for example, infants may be at home on care orders, may be hard to place for adoption, or there may subsequently be a change of permanency plan.

## Discussion and conclusion

This report provides firm empirical evidence based on population-level data that a significant proportion of all cases of care proceedings concern newborns. In 2016/17, of all infants subject to care proceedings, 42% of cases concerned newborns. Given this finding, **a greater focus on newborns in the family justice system within policy and practice is indicated**. As stated, statutory practice guidance is scant on both pre-birth assessment and best practice regarding care proceedings at birth.

The marked regional differences in the rates at which newborns were subject to care proceedings (2008 - 2016) reported in this study, **warrant further collaborative analysis of regional contexts and practices**. Differences are most likely attributable to an interaction between professional practice and socio-demographic factors. Differences in the detail and nature of guidance produced by local authorities regarding pre-birth assessment, may contribute to the variance described. Although only a minority of local authorities varied significantly from expected within region averages, the reported rate range for outliers (55 newborn cases per 10,000 live births to 159 per 10,000) is considerable and requires further examination.

Although there is a general increase in children coming before the family courts in care proceedings, it is important to further interrogate the **increases in both the proportion of infant cases issued for newborns and incidence rates reported in this study**. The following questions are relevant:

- Is increasing financial hardship for families a factor in the rising rates of newborns in care proceedings?
- What is the impact of the reduction in preventative services on rates of newborns coming before the courts?
- Does a defensive, risk averse culture mean that professionals are less likely to want to work with the family without the security of a court order?
- What accounts for fluctuations in the volume of newborn cases over time and place?

Newborns are a distinct population within the family justice system. In contrast to the removal of older children from parents, **newborn removal will typically take place in a maternity setting**. This raises a host of very specific questions about best practice. For example: what should be the timing of removals at birth (within hours or days of delivery)? When should the police be involved? Should the mother breastfeed? Should the mother have a private room on the maternity ward? Anecdotal evidence is that there are pockets of excellent innovation initiated by a range of agencies which aim to reduce maternal distress where infants are removed at birth, but without systematic description and evaluation it is difficult to envisage how best practice can be integrated across services and more evenly spread across different regions of England and further afield.

In this study, 47% of cases of newborns (2012/13 to 2016/17) were identified as “subsequent infants”; that is an older sibling had appeared previously in an earlier set of care proceedings. However, **a surprisingly large percentage of newborns did not have this history (53%)**. This raises questions about the timeframe for assessment of parenting capacity – the window for pre-birth assessment is typically short and the court cannot draw on a previous history for infants who are born to mothers who the court has not previously seen in care proceedings. How do professionals and parents navigate the very short window for assessment and change that pregnancy affords?

Time constraints are further exacerbated by shorter timescales for care proceedings introduced with the Children and Families Act 2014. At present, there is no published research on how the 26 weeks rule for the completion of care proceedings impacts (or does not impact) on decision-making in regard to different populations of infants in the family justice system. The particular position of newborns in the context of far more stringent timeframes for care proceedings is also an important avenue of enquiry.

A high proportion of newborn cases in our sample recorded the final legal order outcome: **“placed for adoption”**. However, divergence in pathways was also evident. A similar percentage of all infants fell into the category “with parents” at the conclusion of proceedings, whether the case was issued early in an infant’s life or later. It is difficult to explain the reasons why **a proportion of newborns were subject to a care order only (“with foster carers”)** without linking data from different government departments to create a more detailed picture. If newborns take divergent pathways following care proceedings at birth, this also raises critical questions about birth parent and extended family **contact and the part that contact plays in final legal outcomes**. This is another subject which is insufficiently addressed within policy and research, despite the fact that final permanency decisions have life-long effects for infants and their families.

Finally, **international comparison** is important to understand how jurisdictions beyond England protect newborns, whilst also ensuring the rights of parents and wider family.

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