

Care Proceedings under the 1989 Children Act:

Rhetoric and Reality

Summary

Among the most important changes that it was hoped would flow from the 1989 Children Act were, firstly, a reduction in delay in care proceedings, since this was recognised to be harmful to children and, secondly, a shift away from the use of compulsion towards working in partnership. In this article Bridget McKeigue and Chris Beckett demonstrate that, in both respects, the Act has not only failed to deliver, but been followed by rapid change in the opposite direction to the one hoped for. However many commentators, both within and outside of government, continue to speak of the Act as if it had been a success. The article considers a series of characteristic rhetorical manoeuvres which seem to allow the Act's failings to be passed over in much of this discourse. They conclude that progress is more likely to be made if the Act's failure to deliver is frankly confronted.

Introduction:

If a commentator in 1992 had suggested that over the next decade the number of care orders made per year would triple and the average duration of care orders would more than double, she would surely have faced a chorus of protest. The 1989 Children Act, she would have been told, was designed precisely to *prevent* court delay and to steer local authorities *away* as far as possible from the adversarial approach which care proceedings represent.

Described by the then Lord Chancellor as 'the most comprehensive and far-reaching reform of child care law which has come before parliament in living memory' (Hansard, HoL Debates, 6th December, 1988, Col. 488), the 1989 Act was the first piece of childcare legislation to specifically state as a basic principle – second only to the 'welfare principle' itself among just five basic principles enshrined in the Act's first section - that delay 'is likely to prejudice the welfare of the child' (1989 Children Act, s 1 (2)). And, while the Act does

not comment on the numbers of care applications that should be brought before the courts, it was expected to achieve, as David Mellor MP, the then Minister of State, put it, ‘a better balance, not just between the rights and responsibilities of individuals, but, most vitally, between the need to protect children and the need to enable parents to challenge intervention in the upbringing of their children.’ (Hansard, HoC Debates, April 27th, 1989, Col 1107)

That this ‘better balance’ was generally assumed at the time to involve a shift away from compulsion and towards partnership is illustrated by the comments of the Times of 8th October, 1991, which greeted the newly implemented Act as ‘a fundamental shift from the adversarial legal system. The new emphasis is away from courts imposing solutions or orders and towards parents, relatives and local authorities working in partnership...consensus not conflict.... The Act should mean fewer court orders.’

As it has turned out however, our hypothetical commentator would have been right and her critics would have been wrong. As we will show, about three times as many care orders were made in 2001 as in 1992, while the average set of care proceedings took more than twice as long. Nevertheless the 1989 Children Act continues quite frequently to be described as a groundbreaking piece of legislation which has succeeded in its main objectives.

Our aim in this article is firstly to bring together information about the length and duration of care proceedings, updating earlier articles here by Beckett (2001a, b), and secondly to examine some of the rhetoric within which discussion of the Children Act is characteristically couched. Our suggestion is that the net effect of this rhetoric is to obscure the extent to which the increased use of compulsion and the increased length of court proceedings actually represent real failures of the whole project represented by the Act, and to inhibit discussion of the important questions that this raises about the future of child protection and child care social work.

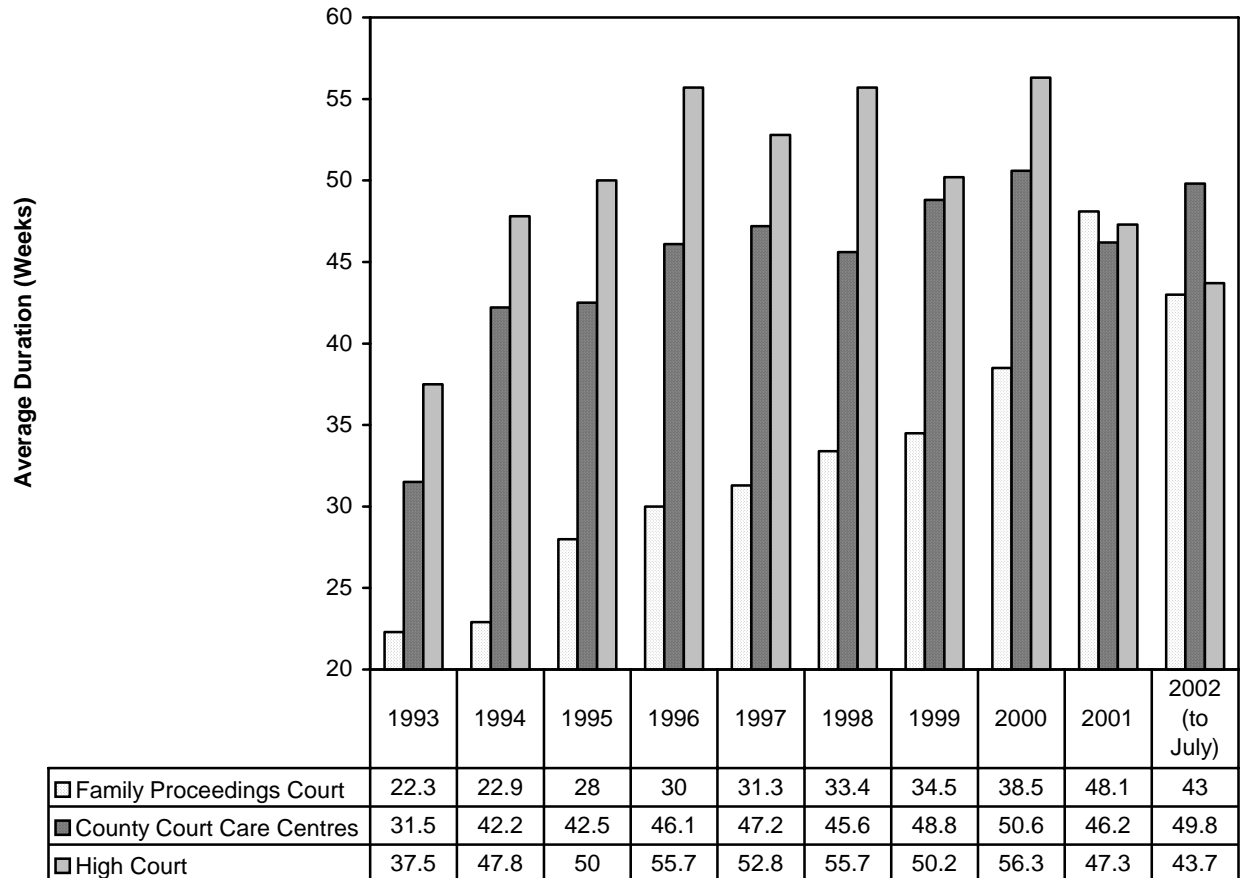
Although the duration of care proceedings and the number of proceedings are different phenomena we have chosen to deal with them in the same article because we think it is likely that they are linked. We know for instance that the amount of available court time has not increased in proportion to the number of care proceedings. According to figures published by the Lord Chancellor's department (Lord Chancellor's Department, 2002: 28) the 'sitting hours' of judges on Children Act cases was virtually constant over the three years 1995, 1996, 1997, yet over these same three years the annual number of care proceedings rose by about 7%. If more work has to be dealt with in the same amount of time, then inevitably each case will take longer.

We would also suggest that increasing lack of confidence about making decisions about inherently risky situations is a factor which is likely to lead both to more cases coming to court *and* to courts taking more time over them. (See Beckett, 2001c, on the 'psychological gradient' leading to delay.)

We will now describe the current position regarding court delay and numbers of proceedings and then look at how each of them is discussed in the literature.

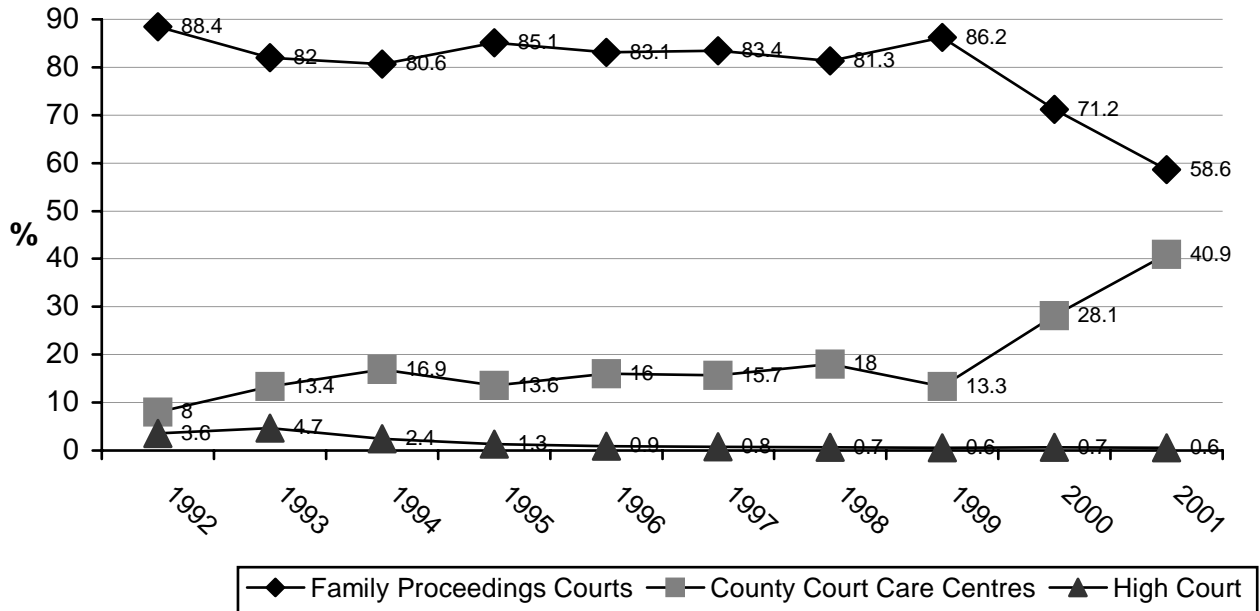
Update on delay

The average length of care proceedings has been increasingly steadily since the early days of the 1989 Children Act. Fig (i) summarises data provided to us by the Lord Chancellor's Department, about the average length of proceedings in the three tiers of court that deal with family matters. This data, which has never been published before, is based on incomplete returns, so may be inexact, but is the best data available.

Fig (i) Average Duration of Care Proceedings (by level of court)

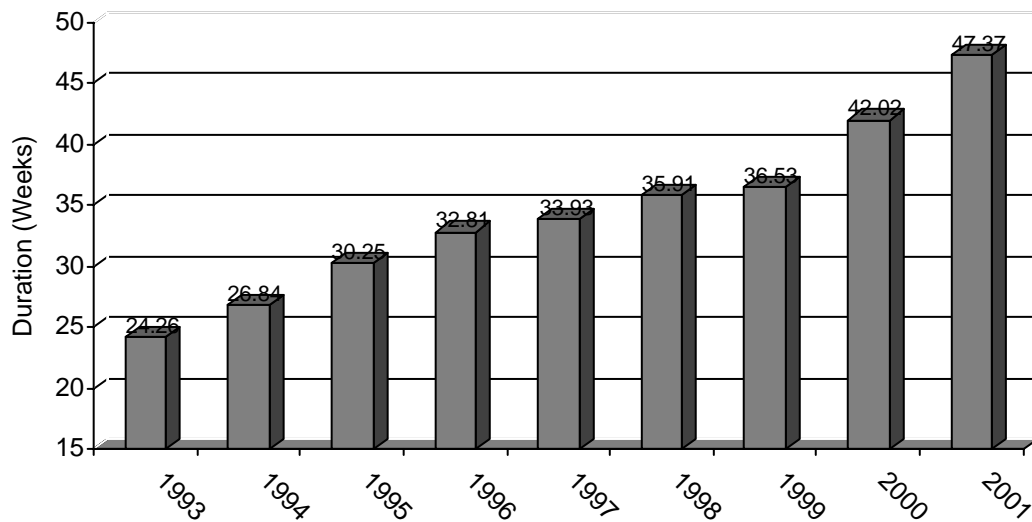
In order to determine the overall average from these figures, it is necessary to allow for the fact that the different tiers of court deal with different amounts of business. In the early days of the Act, the great majority of care proceedings were dealt with by magistrates in the family proceedings courts. Recent years however have seen a greatly increased proportion of this work being taken up by the County Court Care Centres. Although we do not have separate figures for the numbers of care proceedings at each tier of court, the Judicial Statistics published annually by the Lord Chancellor's Department do give the numbers of Public Law cases in general dealt with by the different courts, from which it is possible to calculate the percentage of business dealt with at each level. This is illustrated in Fig (ii):

Fig (ii) Percentage of Public Law Children Act Cases Heard in each Level of Court



We can use these percentages to come up with a weighted average of the figures presented in Fig (i) and so give the approximate picture of the average duration of care proceedings across all courts that is represented by Fig (iii):

Fig (iii) Estimated Average Duration of Care Proceedings across All Courts



This diagram indicates that court delay has been steadily increasing since the early days of the 1989 Act, even though, as we have noted, it was the first piece of legislation to spell out that delay was harmful.

The problem was officially recognised in 1995 when Lord Mackay asked Dame Margaret Booth to investigate. She concluded that the causes of delay lay not in the legislation itself, but in the ways in which the Act and the Rules were being operated. She concluded that ‘no one set of rules and procedures can hope to deal with the question of delay once and for all. It will inevitably be a recurring problem.’ (Booth, 1996: 61) She identified several factors that contributed to delay, including lack of adequate resources, poor administration, lack of proper court control in the preparation and management, overuse of experts, the joinder of too many parties to the proceedings and waiting times for assessments. She then identified the issues that needed to be addressed and, in response, the Lord Chancellor’s Department drew up an implementation plan. However the bulk of the response came from the Children Act Advisory Committee, which had been set up to supervise the implementation of the Act. The

Committee produced a *Handbook of Best Practice* (Lord Chancellor's Department and Children Act Advisory Committee 1997). This Handbook was disseminated throughout the country and remains a source of reference for practitioners today.

However delay has continued to increase and, in recognition of this, the current Lord Chancellor initiated a 'scoping study' on delay in 2000, to look further at the problem and assess the need for reform. The study involved surveying all care centres in the country via their designated family judge. In addition, the senior judiciary and professional associations were consulted about their views on the causes of delay and potential solutions. Twenty areas of the country were then studied in detail and interviews conducted with judges, magistrates, local authorities and what are now CAFCASS officers. The Lord Chancellor's Department, (2002), outlined the study's findings and summarised the action that has since been taken.

The study found a good deal of consistency with the messages of Dame Margaret Booth's research into the problems, although there were some differences as to priority. The three principal causes of delay were identified by the respondents to the report as:

- Lack of experts
- Not having the right judges in the right place at the right time
- Judicial case management

In addition, a priority identified by the research team, although it was infrequently mentioned by respondents to the study, was a lack of effective partnership working between those professionals involved in dealing with Children Act proceedings. The scoping study report explores each of these areas in detail and for each area sets out what is being done to address the issues identified. The study concludes that 'in respect of delay, the Children Act 1989 legislation does not require major review, but the operation of the system is in need of

reform.’ (Lord Chancellor’s Department, 2002: 53). It is acknowledged that this is no simple task:

The difficulty with delivering change is that many of the required improvements do not concern simple rule or procedural amendments but instead relate to the development of common objectives for the system and changes in culture and attitude, along with a long term programme of modernisation. (Lord Chancellor’s Department, 2002: 53)

This rather pessimistic statement, together with the earlier one quoted by Dame Margaret Booth about delay inevitably being a recurring problem, would be all very well if it were not for the consequences of delay for the children concerned. As Fig (iii) illustrated, care proceedings are now taking nearly a year on average. In a study of one local authority Beckett (2001c) found that a significant number of children involved in care proceedings had waited for two years or more from start to final order.

Effects on Children

We find these figures shocking. The fact that this principle of ‘no delay’ was enshrined in Section 1 (the nub of any act) of the Children Act 1989 is an explicit recognition of the harmful nature of delay on the welfare of children. ‘Procedural and substantive decisions should never exceed the time that the child-to-be-placed can endure loss and uncertainty,’ wrote Goldstein, Freud, Solnit (1980: 42) over twenty years ago, when care proceedings on average lasted only about six weeks. (They went on to observe that courts can and do make very speedy decisions when a child’s physical well-being is at stake, for example when parents refuse to authorise a blood transfusion for a dangerously ill child, and asked why the clear risks to children of being left in protracted limbo were not the cause of similar urgency.)

The Lord Chancellor's Department's study describes the potential consequences of delay on the child's placement and schooling:

Delay can have a real impact on children. For example, the longer it takes to resolve the question of whether or not a child should be taken into care, the longer a child has to wait for permanence in his or her life. This can mean it is more likely that children will live in a series of temporary placements until their future is decided, which may in turn impact on continuity in schooling. 70% of children in care leave school with no qualifications. (Lord Chancellor's Department, 2002:3)

Finlay (2002) restates the point made by Goldstein et al (1980):

The effect of delay on children may be particularly damaging because of the differences of scale and perspective – an inconvenient delay of 12 months for an adult is literally half a lifetime for a 2 year old child – and because a young child's development is so rapid and so sensitive to events that damage may sometimes be done even during the time it takes to bring proceedings designed to resolve the child's position and protect him or her from further harm.

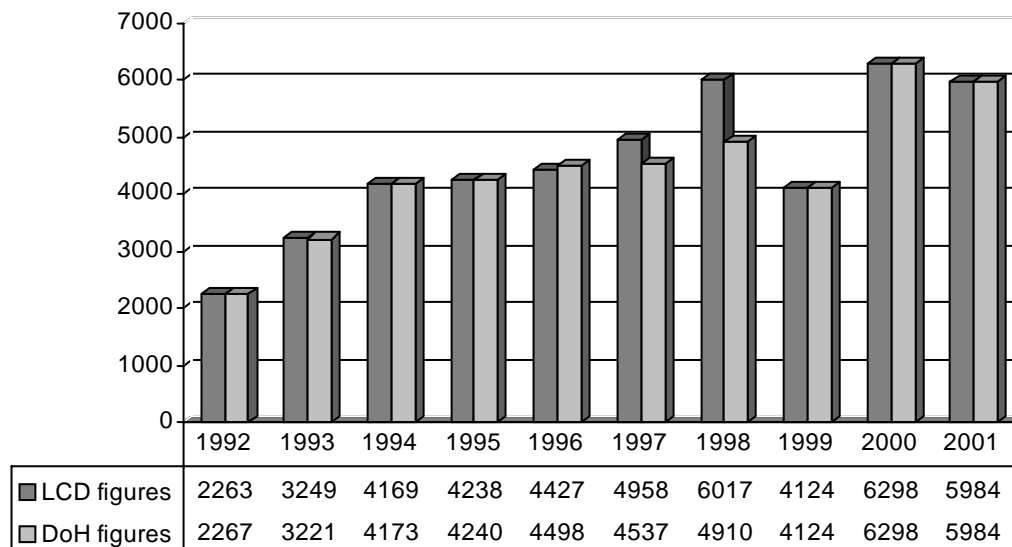
(Finlay, 2002: 7)

Delay also *closes options* for children. The chances for a successful adoptive or foster placement are greatly lessened by a lengthy court process, firstly because there are fewer carers interested in taking on older children and secondly because a long period in temporary care, or perhaps in series of temporary placements, is likely to make it harder for children to form good attachments later.

Update on numbers of proceedings

Two sources of information about the number of care proceedings and the number of care orders made are the Judicial Statistics, published annually by the Lord Chancellor’s Department (the source of the data in Beckett, 2001b, which looked at the years 1992-1998), and the annual Children’s Act Reports published by the Department of Health. There are some discrepancies between these two sources regarding the numbers of orders made so we therefore present the figures from both together in Figure (iv).

Figure (iv) Numbers of Care Orders Made per Year



Both set of figures show an upward trend annually from 1992-1998, followed by a drop in 1999, and then a rise to an unprecedented high in 2000. There is a modest drop again in 2001. Both sets of figures agree that the number of care orders made in 2000 represent an increase on the 1992 figure that was not far off three-fold. This is a striking change when one considers that it took place over a period of just eight years, albeit followed by a modest 5% drop again in 2001.

One possible explanation for the substantial, though temporary, downturn in 1999 is the Refocusing Initiative, following on from the publication of *Child Protection: Messages from Research* (Department of Health, 1995). The Refocusing Initiative was an attempt at shifting the dominant discourse of child and family social work from an adversarial approach to an approach which placed more emphasis on support and partnership, a similar shift to that attempted at the time of the implementation of the Act itself, which was also followed by a temporary drop in numbers of care proceedings. We have yet to see whether the smaller drop in 2001 is another 'blip', or the beginning of a new trend.

Threshold effects

An increase in number of care orders being made could mean either that the threshold at which care orders are made has lowered (we could call this a 'threshold effect'), or that there have been actual changes in family life 'out there' such that, even if the threshold is held constant, more children fall within it (an 'external effect').

Beckett (2001b) assumed that the growth in the number of care proceedings represented a threshold effect and certainly there can be little doubt that such effects *will* occur, because the 1989 Act permits a Care Order to be made where a child is 'suffering, or is likely to suffer significant harm' attributable either to '(i) the care given to the child, or likely to be given to him....not being what it would be reasonable to expect a parent to give to him': or '(iv) being beyond parental control' – and neither 'significant harm' or 'reasonable' expectations can be defined in ways that would eliminate subjective judgement.

Given the existence of this large subjective element it is to be expected that those who determine whether the threshold criteria have been met - principally the local authority staff who bring care proceedings, and the judges and magistrates who decide whether to make an order – will not be immune to external pressures. Our judgements inevitably err in one

direction or the other, and a range of external factors will determine which direction we prefer to run the risk of erring in. (Similar psychological factors, incidentally, are almost certainly at play when it comes to delay. See Beckett, 2001c.)

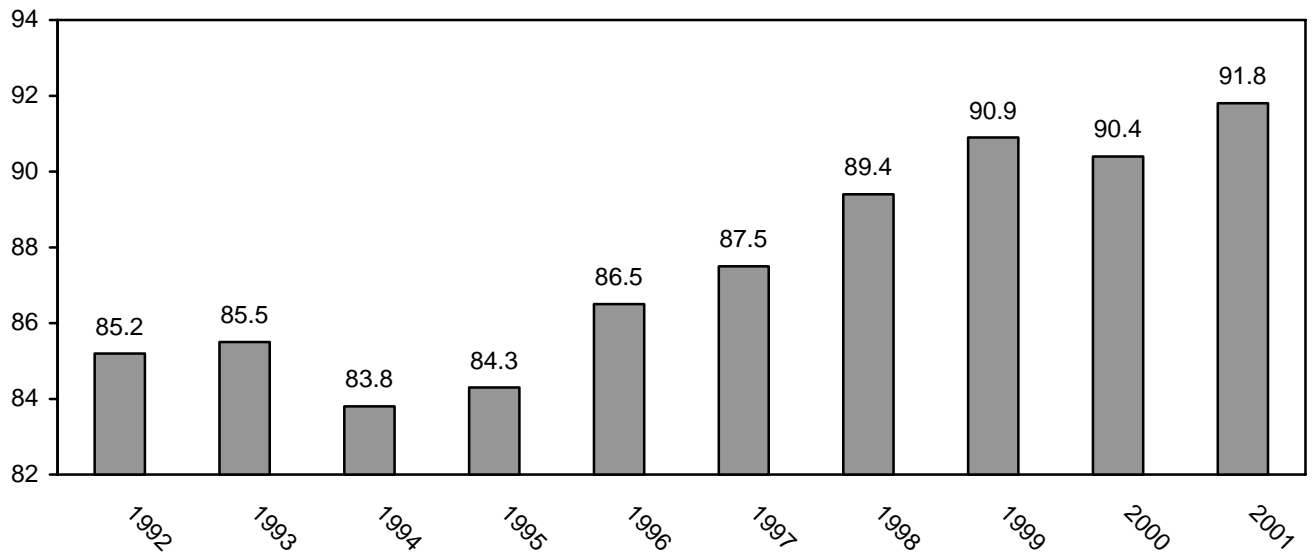
Among the factors that might result in a lowering of the level of the threshold are:

- (1) While agencies may be criticised for being too interventionist, individual professionals are much more likely to be pilloried for failing to protect a child than for acting over-zealously.
- (2) Child protection agencies do not feel mandated to take the risks involved in trying to work to prevent family breakdown.
- (3) Care orders may be used for different purposes than those originally intended. For instance there may be more use of care orders to gain control of situations where it is not necessarily intended to remove a child.
- (4) There may be an increasing awareness of the harmful effects on children of certain types of parental behaviour which mean that child protection agencies are more likely to intervene in such cases than they were in the past.

Beckett (2001b) also discussed whether the increase in number of care orders made simply represented a change in the thresholds operated by local authorities, or whether it also represented a change on the part of the *courts*. The answer seemed to be that it was both. The Judicial Statistics showed that, between 1994 and 1998, care orders being made by the courts not only increased in number but *as a proportion* of all care applications dealt with

(89.4% in 1998, as against 83.8% in 1994). Fig (v) updates those figures to 2001 and shows the trend continuing.

Fig (v) Care Orders made as a Percentage of Care Applications



External Effects

We now believe that it would be a mistake to assume that the increase in the number of care orders is necessarily *all* to do with changing thresholds. Rapid changes taking place in society may have meant that – even if some notional ‘objective measure’ were used – more children would be found to have been at risk of ‘significant harm’ as the last decade progressed.

For instance there would seem to be a number of reasons for believing that illegal drug use has been a fast-growing problem through this period. (See, for instance Bennett and Sibbitt, 2000). There are also many studies linking illegal drug use to increased incidence of child maltreatment (Chaffin et al, 1996, Wang and Harding, 1999). If drug use *has* been on the increase, and if there *is* a connection between drug use and poor parenting, then this would be

an external change which might bring about an increasing number of children being brought into public care, *even if the threshold for care had not been lowered.*

Rhetoric and Reality – Court Delays

In addition to the fatalism that has crept into discussion about the length of care proceedings which is detectable in some of the comments quoted earlier from Booth (1996) and Lord Chancellor's Department (2002), we have noticed several characteristic rhetorical manoeuvres that are used for dealing with this awkward issue in the Children Act literature.

One such manoeuvre is to 'change the goalposts'. For instance, in the Department of Health publication *The Children Act Now* it is suggested that 'there is some evidence from the later court studies that the time-scales originally set by the Children Act were unrealistic however laudable.' (Department of Health, 2001: 143) And yet before the 1989 Act, it was thought that three months was too long for children to wait - 'Three months may not be long for the adult decision-maker. For a young child it may be forever' (Goldstein et al 1980: 42-3) – and the Children Act was framed to take account of these concerns. Ten years later, are we now saying that these concerns were misplaced?

Another rhetorical manoeuvre used is the argument that there is nothing wrong with the legislation per se, only with the *operation* of the Act and its Rules, the conclusion reached by Dame Margaret Booth (1996) and lately by the Lord Chancellor's Department's *Scoping Study* (LCD, 2002: 53). This is a bit like being told by a car salesman, when the car you brought from him turns out not to work, that there is nothing wrong with the car itself, only the engine. Few customers, one imagines, would be satisfied with that as a response, even if the salesman then said he would try to put it right. This would be particularly so if he then

added that he could not guarantee the engine ever really would be fixed and that recurrence of difficulties was inevitable.

Another device is to speak of the Act as a success, and simply not mention the evidence to the contrary. A recent article by Professor June Thoburn in *Community Care* (11-17 October 2001: 36-7) was headlined 'The Good News on Children's Services' with a sub-heading 'Research shows that social workers have made a success of the Children Act 1989'.

Referring to the recently published *Messages from Research*, Thoburn writes that:

the main message is that the Children Act was successfully implemented in that its main provisions (closely based on the UN Convention on the Rights of the Child) were incorporated into practice.

Can this really be said, though, when we know that two of the key objectives upon which the Act is based have not been attained, and in fact patterns of practice have been moving in the opposite direction?

Another approach is what might be called 'positive reframing', evidenced by references to 'planned and purposeful delay' (Smith, 1997:170), and to delay occurring as a result of the 'careful and considered judgements being exercised in the preparation of evidence for care proceedings' (Department of Health, 2001: 56). There is both positive reframing and another device – 'minimising' - in the two statements that follow the one just quoted:

The careful approach has caused some delay in bringing cases to court. This may have had a detrimental effect on a minority of children who have been living in uncertainty' (Department of Health, 2001: 56)

Given that the number of children made subject of care orders is increasing and the average length of care proceedings is nearly a year, it seems misleading to refer to a 'minority living in uncertainty'.

Another manoeuvre is to speak as if good intentions were equivalent to actual outcomes. See, for instance, the following from an article by Carol Sheldrick:

However difficult the decisions that have to be made, it is of paramount importance that no undue delays occur, since they may drastically reduce the options for a child. *Fortunately the Children Act 1989 recognizes this* and imposes the duty of no undue delays on courts, lawyers and professionals. (Sheldrick, 1998: 263, our emphasis).

Delay *does* reduce the options for a child, but the fact that the Children Act recognises this can surely only be regarded as fortunate if it has some practical effect?

But the simplest device of all is to ignore the issue altogether. Examples of this are found in the Children Act Reports (Department of Health, 2000, 2001, 2002). Despite each having a chapter headed Court Activity, there is no mention in any of them of the fact of increasing length of care proceedings, although the principle of avoiding delay is clearly stated. Given that the Children Act Reports are structured around the eleven objectives set out in *The Government's Objectives for Social Services* (Department of Health, 1999), the first of which is 'To ensure that children are securely attached to carers capable of providing safe and effective care for the duration of childhood', one might reasonably expect to see something about how delay in care proceedings impacts on this children's security. What for example is the relationship between length of proceedings and number of changes of placement, which is after all probably the most basic aspect of a child's stability? However in the most recent Children Act Report (2001), there is nothing to be found on the impact of delay in the chapter

on ‘Secure attachment and stability’, though the issue of frequency of placement change is highlighted:

The Department of Health has been concerned about the extent to which children and young people are moved between carers. Excessive moves undermine the opportunity to establish secure attachments although well- planned moves might be necessary to find the right placement for a child. Moves between placements also risks interrupting and continuity of school and hence undermines learning.’ (Department of Health, 2001: 1.12)

Rhetoric and Reality – Numbers of Care Proceedings

We now return to the question of the *number* of care proceedings. As we have already noted, it was generally expected that the 1989 Children Act would bring about a shift away from the use of compulsion and in the direction of working in voluntary partnership with parents. The increased use of compulsion that did in fact occur is therefore precisely contrary to this expectation. And yet discussion of the progress of the Act seldom seems to acknowledge this.

The advertising industry uses the term ‘smoke-screening’ to describe the manoeuvre whereby, for instance, a food product is proclaimed to be a ‘low fat food’, without mentioning the fact that it is extremely high in sugar. We do not suggest that those who write about the Children Act deliberately manipulate information in such a calculated way. Nevertheless we suggest that any discussion of the progress of the 1989 Act which draws attention to its successes without mentioning that the increase in the number of care orders is contrary to expectations, does in effect constitute ‘smoke-screening’ in this sense.

To give an instance, in a short article in *Community Care* (26th July- 6th August, 2001: 12) Mark Hunter looks at the Children Act Report for 2000 (Department of Health, 2001) and asserts that 'the number of children taken into care is falling'. Taken at face value this sounds as if the Children Act is having exactly the effect on the use of 'care' that was hoped for at the outset. But if we examine the statement more closely a different picture emerges. Firstly, the statement is inaccurate, since 'taken into care' is a term that properly applies to compulsory admission to the looked after system and the Report in question showed a very sharp *increase* in the number of care orders from 4,124 in 1999 to 6,298 in 2000. What would have been accurate would be to state that the overall number of children coming into the looked after system was falling because, although the number of care orders was increasing, the number of children being newly accommodated had gone down even more.

Put this way, though, the figures have a very different significance, since they show an increasing reluctance to offer accommodation as a service to children and families alongside an increasing willingness to take parents to court. This is completely contrary to hopes at the time of the Act's implementation that accommodation under section 17 would be a non-stigmatising service to families, available on the basis of need and purposely differentiated from 'care' by the use of the term 'accommodation', and that 'care' would be used more sparingly. Jean Packman and Bill Jordan reflected these hopes when they wrote of the Act that:

'Prevention' is recast in terms of preventing harm, preventing offending and preventing a need for compulsory intervention in families' lives through court orders... The 'last resort' has now shifted from the broad gateway of the child care system, to the locus of the courts, and the *imposition* of care and control. (Packman and Jordan, 1991: 323.)

Hunter's inaccurate assertion gives the impression that what Packman and Jordan hoped for from the Act has actually been achieved, but a more detailed look at the facts reveals that *precisely* the opposite is the case.

Within the Children Act Reports themselves, there are rhetorical manoeuvres which have the effect of deflecting attention from the failure of the Act to deliver on early hopes. In the Report for 1995-1999 (Department of Health, 2000) the shift away from voluntary 'accommodation' to compulsory 'care' is noted, but is rationalised by an extraordinarily convoluted argument which says that, since care is very costly and since working in partnership is better if possible, 'hard-pressed social services departments' would not take care proceedings without there being 'good grounds for doing so' (Department of Health, 2000: 41). The figures, the Report goes on to say:

suggest that local authorities are seeking the authority of a court order in situations where parents will not voluntarily co-operate with a child protection plan, or do not have the capacity to respond appropriately to their children's needs and the making of a care order is the best way of securing their safety and ensuring their health and development. (Department of Health, 2000: 41).

In accepting the increased use of care orders as necessary and appropriate, the report is moving away from what was originally seen as the ethos of the Children Act, but it fails to acknowledge this. Nor is there any acknowledgement of the implications. If more care orders are being made, and if this is acceptable, this means one of two things. *Either* too few care orders were being made in the past – and the drive to reduce the number that accompanied the 1989 Act was a mistake – *or* the numbers of parents who will not co-operate or 'do not have the capacity to respond to their children's needs' has been rapidly increasing. Important, difficult, fundamental questions are therefore skated over.

Perhaps the most striking example of a text which acknowledges the increased use of care orders while at the same time maintaining that the 1989 Act is working, is *The Children Act Now: Messages from Research* (Department of Health, 2001). This is a key document, presented to practitioners as a reliable summary of current research and its implications for practice. Section 2 summarises the findings of twenty-four different research studies. Section 1 provides an overview. In the course of this overview, the following assertions on the use of Care Orders and care proceedings appear. We number them for ease of reference:

1. ‘...it is clear that the intention of the Act to alter the balance between care orders and voluntary arrangements did succeed in the first four years of implementation. However... the balance has moved back towards a steady increase in children looked after on Care Orders... [and] a growing decline in [the use of accommodation] from 1996 onwards.’ (Pages 48-9)
2. ‘...inappropriate use of accommodation caused delays to the process of safeguarding children through court proceedings.’ (Page 52)
3. ‘...a return to the 1985 position of care orders being used excessively is [to be] avoided.’ (Page 53)
4. ‘The research shows that the Act has achieved its purpose of raising the threshold for court intervention. The children who were being brought before the courts had very serious problems.’ (Page 55)
5. ‘The careful approach has caused some delay in bringing cases to court.’ (Page 56)
6. ‘In the area of court processes, implementation of the Children Act 1989 has been generally successful.’ (Page 58)
7. ‘...there is scope for moving away from an adversarial model within cases of child welfare.’ (Page 59)

8. 'Care Orders are used more frequently than they were before the Act. However there has been a rise in the proportion of cases ending in no orders. The findings inspire some confidence that... once court proceedings begin, there has been a genuine shift in attitude towards consideration of the impact of an order on the child's welfare.' (Page 62)
9. 'Slow progress has been made in achieving the balance between voluntariness and compulsion.... There is evidence from Children Act statistics that the balance is changing' (Page 143)

The sum total of these assertions is incoherent. We are told implicitly that the increased number of care proceedings is not the result of a threshold effect (for this would require that the threshold be *lowered*, while assertion 4 says that the opposite is the case), but we are not told what *has* caused it. As to whether it is to be welcomed or not, we are given contradictory messages. On the one hand we are told that care orders are being used appropriately and even, notwithstanding the increased numbers, *more sparingly* than in the past (for this is the implication if the threshold is indeed higher than formerly). We are even being told that care orders are not used when they should be (assertions 2 and 5). But on the other hand, we are being told that it was right to seek a shift from compulsion to 'voluntariness' and that there is still scope for moving away from an adversarial approach (assertions 3 and 7.)

Then again, while increased numbers of proceedings and increased delays are acknowledged, we are nevertheless told that 'in the area of court processes, implementation of the Children Act has been generally successful' and there has been a 'genuine shift of attitude.' (6 and 7)

Assertion 8 is a particularly good example of 'smokescreening'. As evidence that the balance between compulsion and voluntariness is working we are offered the increased use of orders of no order. The fact is that in 2000, 177 orders of no order were made in care applications, as against 6,298 care orders, and were the outcome in less than 3% of cases (Judicial Statistics

2000, LCD, 2001). A small increase in the numbers of orders of no order is surely of very little significance when set against the very *large* increase in the number of care orders over the same period, or the increased percentage of care applications ending up with care orders being made, as illustrated by Fig (v) earlier.

Yet it feels as if ‘the Children Act is working’ is somehow a fixture in discourse in this area, a non-negotiable aspect of the message around which the facts must simply be fitted in.

Conclusion

As we have shown, it is a matter not of opinion but of indisputable fact that the 1989 Act has failed to deliver on two aspects of its early promise - reducing court delay and reducing the use of compulsion in child care social work – even though at the time of the Act’s implementation these would have been seen as two of the most important components of the new era that this new law was supposed to usher in. And not only has the Act failed to deliver change in the desired direction in these two areas; it has also been followed, in both cases, by steady and fairly rapid change in the *opposite* direction. These should be very serious problems. Court delay is not a mere administrative nuisance but a real threat to the well-being of children, while the increasing use of care proceedings represents a steadily increasing use of state power into the lives of families, predominantly the families of the poor, which has repercussions far beyond the families concerned into the whole nature of the relationship between social work agencies and the public they are supposed to serve. What is more, when the increasing number of cases is taken together with the increasing duration of cases it is not hard to see that the time, resources and working culture of social work agencies will inevitably become more and more narrowly focussed on the business of ‘going to court’, as long as these trends continue.

If things are to be otherwise in the future a rigorous analysis of the issues is required. For instance we need to know whether the increase in the number of care orders made each year is primarily the result of threshold effects or of external change, because the implications for policy are different in each case. If the increase is mainly the result of threshold effects, then periodic initiatives like 'Refocusing' aimed at reversing the downward drift of thresholds may be a remedy. If however, the increased number of care orders represents more children crossing the *same* threshold of harm, then the unpalatable choice for future policy is between *raising* the threshold – in other words *lowering* the standards of parenting deemed 'good enough' – or of accepting an increasing annual cull of families. What we have found, however, is that this rigorous analysis is frequently lacking in the literature. As we have shown, government publications, journalists, social work academics and other professionals seem frequently to avoid confronting the problem by using a variety of rhetorical devices. Such rhetoric may give a reassuring impression that progress has been made, but it does in fact *impede* real progress.

What seems to be lacking in a good deal of Children Act discourse is an awareness that vested interests are involved. In particular official publications will inevitably select and present data in ways that will reflect well on the government of the day and will tend to omit or gloss over less favourable data. In other words, government publications – even those presented as 'messages from research' or as guidelines for practitioners – will inevitably include an element of 'spin'. It is, at first sight a little more surprising to find that non-official publications, including those by social work academics, seem to include many of the same rhetorical characteristics, but there may be a variety of reasons for this. There seems, for one thing, to be a certain naiveté in social work discourse generally about the status of official publications: this may reflect the fact that social work, to a far greater degree than other professions, is actually the *creation* of public policy. (Medicine, by contrast, would continue to exist and be as much in demand as a profession, and would continue to draw on the same

knowledge base, even if there was no state involvement in healthcare at all). There inevitably exists a symbiotic relationship between social work academia and government because of a shared interest in the work of constructing the profession of social work, and in seeming to progress with this work. The various *Messages from Research* publications published by the Department of Health are instances of this symbiosis in practice.

In addition we should not discount the existence of a very human desire to want to believe in 'good news', even in the face of the evidence: a desire from which social work academics and other professional commentators are of course not immune. Many years ago Maurice Edelman (1965) drew attention to the ways in which the symbolic aspects of public policies can be in many ways more important than the *actual effectiveness* of those policies, and suggested that that the allegiance of interested parties to symbols of progress can often be greater was than their interest in whether actual progress has been made: 'Reality can become irrelevant for persons very strongly committed to an emotion-satisfying symbol,' (Edelman, 1965: 31). The symbol can therefore be a substitute for real change – rhetoric a substitute for reality – in a process that Cobb and Ross (1997: 34), who draw on Edelman, have called 'symbolic placation'. To quote Edelman again:

The laws may be repealed in effect by administrative policy, budgetary starvation, or other little publicised means: but the laws as symbols must stand because they satisfy interests that are very strong indeed. (Edelman, 1965)

This seems to us to be a concise description of *precisely* the kind of dynamic that seems to have occurred in relation to the 1989 Children Act: in relation to delay and the use of compulsion, the Act has in fact been 'repealed in effect', though it continues to be powerful as a symbol. We suggest, though, that an important function of academic social work should be to try as far as possible to stand outside this process. The inevitable symbiotic relationship

with government should not become the kind of ‘co-optation’ (Cobb and Ross, 1997: 37) that neutralises effective criticism of policy. ‘Political activities of all kinds,’ wrote Edelman (1965: 43), ‘require the most exhaustive scrutiny to ascertain whether their chief function is symbolic or substantive’. We are suggesting that the Children Act 1989 and subsequent policy needs to be subjected to rather more scrutiny of this kind.

Our purpose in drawing attention to the mismatch between rhetoric and reality, then, is to try to shift debate onto more solid ground where the substantial issues can be addressed that might really make a difference for the children and families who are the actual recipients of interventions under the 1989 Act.

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