



**Report focus**  
New empirical evidence concerning infants and newborns in the family justice system in Wales

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# Born into care: newborns and infants in care proceedings in Wales



## About this report

This is the first in a series of reports for Wales about newborn babies and infants aged less than 12 months. It follows publication of *Born into care: newborns in care proceedings in England*, published in October 2018.

A standalone summary of this report, and a Welsh language version is available from [www.nuffieldfjo.org](http://www.nuffieldfjo.org)

The Cafcass Cymru data used in this study are available in the SAIL Databank at Swansea University, Swansea, UK. All proposals to use SAIL data are subject to review and approval by the IGRP. When access has been granted, it is gained through a privacy-protecting safe haven and remote access system, referred to as the SAIL Gateway. Anyone wishing to access data should follow the application process guidelines available at: <https://www.saildatabank.com/application-process>

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## About the Nuffield Family Justice Observatory

The Nuffield Family Justice Observatory (Nuffield FJO) supports better outcomes for children in the family justice system in England and Wales by improving the use of data and research evidence in decision-making. We do this by:

- Supporting the analysis of national data and linking data from different sources to better understand the experience of children and families in the family justice system.
- Researching issues facing children and families and collaborating with others to bring about change in practice.
- Enabling decision-makers to access the latest data and research evidence.

Central to the Nuffield FJO's operation is a data partnership with the Centre for Child and Family Justice Research at Lancaster University, Population Data Science at Swansea University and the SAIL Databank.

The Nuffield FJO has been established by the Nuffield Foundation, an independent charitable trust with a mission to advice social well-being. The Foundation funds research that informs social policy, primarily in Education, Welfare, and Justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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## Foreword

The removal of a newborn baby into care is perhaps the most difficult, and brutal, decision that professionals can make to intervene in family life. It is right that we carefully monitor when and how such decisions are made.

But for too long the family justice system has been operating in the dark, with an incomplete picture of the nature, and consequences of, decisions made about children and their families in the family court.

That is why the Nuffield Family Justice Observatory has been established; to ensure that data and research evidence inform decision-making about children in the family justice system.

This study provides the first-ever picture of the extent to which newborn babies and infants are subject to care proceedings in Wales, and how this has changed over time. It complements a report that the Nuffield Family Justice Observatory published last year that looked at these trends in England.

*Born into care Wales* provides insights that will be of great interest to policy makers and practitioners across the social care and family justice systems in Wales. It offers a starting point for discussions about how to ensure that more babies are able to be safely cared for by their parents and that any intervention by the family justice and social care system is designed to avert potential harm.

Taken together the reports for England and Wales allow for regional and national comparison. Overall, the picture of a high proportion of infant cases issued close to birth is similar for Wales and England, but the incidence rate is higher in Wales. And, perhaps surprisingly, the pattern of use of legal orders in England and Wales looks strikingly different.

*Born into care Wales* is a product of the Nuffield Family Justice Observatory data partnership with the Centre for Child and Family Justice Research at Lancaster University, Population Data Science at Swansea University and the SAIL databank. I am grateful to the team for producing such an important report and look forward to continuing our work to build a more complete picture of why children come into the family justice system, their experience of it, and their outcomes.



**Lisa Harker**  
**Director, Nuffield Family Justice Observatory**

## 1. Introduction

This report provides new evidence about newborn babies subject to care proceedings under Section 31 of the Children Act 1989<sup>1</sup> (s.31, CA 1989) within the first two weeks of birth in Wales. Given the limited published statistics about the broader population of infants aged less than 12 months in the family justice system in Wales, new empirical evidence about this group of very young children is also reported.

Based on population-level data collected routinely by the Children and Family Court Advisory and Support Service Wales (Cafcass Cymru) between 2011 and 2018,<sup>2</sup> the frequency of newborn cases, case characteristics and legal outcomes are reported, drawing comparisons with the broader category of infants.

Changes in the frequency and pattern of legal orders over time and differences between local authorities and court areas in Wales are also reported. In addition, the proportion of cases in which an older sibling has previously been the subject of care proceedings is provided ('subsequent infants'). This is the first independent analysis to use population-level data held by Cafcass Cymru, and further analyses will build on this foundational work.<sup>3</sup>

Although frontline practitioners in Wales will be familiar with cases of infants who are subject to care proceedings, national statistics do not *differentiate* infants further by age, despite an emphasis on effective early intervention to prevent developmental harm. National statistics published by Welsh Government do not make specific reference to newborns; rather all infants are grouped together as a single category – "under 1 year".<sup>4</sup> In addition, it is difficult to discern trends over time from national statistics, regarding the volume of infants appearing in care proceedings in Wales or changing patterns of legal order usage.

There continues to be considerable concern about the volume of care proceedings coming before the family courts in England and Wales. This was captured in the *Care Crisis Review* (Family Rights Group, 2018), but is also central to the work of the Improving Outcomes for Children Ministerial Advisory Group in Wales.<sup>5</sup> The primary objective of this report is to ascertain the timing of care proceedings and outcomes for the very youngest children in care proceedings in Wales, however, findings are also highly relevant to questions about care demand. As will be evidenced in this report, infants constitute a high proportion (30%) of

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<sup>1</sup> If a local authority intends to remove a child from his or her parents' care or assume parental responsibility, the local authority must apply for a care order. Care orders are applied for and authorised by the family courts under s.31 of the CA 1989.

<sup>2</sup> In Wales, the Children and Family Court Advisory and Support Service (Cafcass) Cymru advises the court on all public law proceedings concerning children. That this data is based on the total volume of public law cases coming before the family courts in Wales makes this an invaluable dataset for research. The responsibility for Cafcass Cymru transferred to Welsh Government, following the passing of the Children Act 2004; in 2019, Welsh government authorised the deposit of Cafcass Cymru public and private law data within the SAIL Databank.

<sup>3</sup> Effective collaboration between the Nuffield Family Justice Observatory and Cafcass Cymru is enabling on-going exchange regarding data quality and scope. Over time, the aim is to improve the scope of the data, but also to ensure that the research team's understanding of the data is informed by the practice expertise of frontline colleagues.

<sup>4</sup> For example, Welsh Government (2018) *Experimental Statistics: Children looked after by local authorities, 2017-18*, SFR 112/2018: <https://gweddiill.gov.wales/docs/statistics/2018/181122-children-looked-after-local-authorities-2017-18-en.pdf>.

<sup>5</sup> See *Safely reducing the numbers of children in care*: <https://gov.wales/reducing-number-children-need-care>.



cases of care proceedings in Wales and they may be known to services for the whole of their childhoods.

The work builds on a related report published by the Nuffield Family Justice Observatory and Lancaster University, which provided the first evidence on newborn babies<sup>6</sup> and infants<sup>7</sup> in the family justice system in England (Broadhurst et al., 2018<sup>8</sup>; referred to throughout as: *Born into care England*). This earlier work uncovered an upward trend in the number of newborn babies subject to care proceedings in England. By asking similar questions about newborns and infants in Wales, it has been possible to draw some useful comparisons between England and Wales throughout this report. Although Wales has moved forward to devolve legislation regarding children's social care,<sup>9</sup> in both countries care proceedings continue to be authorised under the same legal framework, the Children Act 1989. Relevant sections of *Born into care England* are signposted for readers throughout this report.

The work of this report has been completed after the publication of the interim report and consultation questions from the President's Public Law Working Group for England and Wales.<sup>10</sup> This report made specific reference to the findings of *Born into care England*, and raised concerns about the increasing use of urgent interim care order (ICO) hearings and non-standard case management hearings.<sup>11</sup> Given practitioner concerns that both types of hearings, called on an urgent basis, may concern infants, we have added this particular line of investigation to this report. If a 'measured and planned approach' to care proceedings which concern infants is to be achieved,<sup>12</sup> a first step is to establish the current pattern of practice, and what needs to change.

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<sup>6</sup> In this report we have defined "newborns" as less than two weeks old in Wales, whereas in England "newborns" were aged less than 7 days old, given differences in the data available to the research team. However, in drawing comparisons, the trends are similar regarding the high proportion of infant cases issued in either the first or second weeks after birth.

<sup>7</sup> We were able to use the same definition of infants in England and Wales – infants are those aged less than 12 months old at the issue of care proceedings.

<sup>8</sup> *Born into Care England* is available to download: [https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/Born%20into%20Care\\_Final%20Report\\_10%20Oct%202018.pdf](https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/Born%20into%20Care_Final%20Report_10%20Oct%202018.pdf).

<sup>9</sup> The Social Services and Well-being Act (Wales) 2014 came into force on the 6 of April 2016 and applies to children and adults alike. Part 6 of the Act covers children who are accommodated or looked after. Local authorities also operate within the broader policy framework set by the Welsh government, which includes reducing the need for compulsory formal intervention in the lives of children and young people and strengthening the capacity of families to care for their children wherever it is safe to do so.

<sup>10</sup> Public Law Working Group: recommendations to achieve best practice in the child protection and family justice systems: interim report (June 2019). <https://www.judiciary.uk/wp-content/uploads/2019/07/Public-Law-Working-Group-Child-Protection-and-Family-Justice-2019-1.pdf>

<sup>11</sup> According to Practice Direction 12A, the case management hearing should take place between 12 and 18 days of the issue of care proceedings. However, local authorities may request an urgent ICO or preliminary case management conference, where the welfare of the child warrants an accelerated approach. The concern about an urgent approach to care proceedings, is that this may compromise decision-making as advocates and the Children's Guardian may have insufficient opportunity to make a robust assessment of the issues that the court needs to consider. Further details of the CMH are set out in Stage 2 of the Practice Direction 12A [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a#para1.1](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a#para1.1).

<sup>12</sup> The interim report of the Public Law Working Group stated the following in regard to cases concerning infants accompanied by a request for an urgent ICO or non-standard case management hearing (page 39): 'the need to issue in such cases may well be evidenced but a measured and planned approach could be achieved pre-birth which may have the potential to avoid the need for proceedings'.

The purpose of this first report is to stimulate collaborative discussions with stakeholders and support best practice regarding the very youngest children in the family justice system, building on initiatives currently underway in Wales. The production of new insights based on population-level data will always prompt fresh questions, but robust empirical evidence provides a solid empirical basis for consequent qualitative engagement with the detail of practice.

## Limitations

Studies based on administrative data are necessarily limited by the scope and quality of available data, which is collected primarily for organisational rather than research purposes. Data for this study has been provided by Cafcass Cymru and is restricted to care proceedings in Wales under s.31 of the Children Act 1989. The agency records all cases of s.31 care proceedings but does not capture the voluntary accommodation<sup>13</sup> of children under s.76 of the Social Services and Well-being Act (Wales) 2014,<sup>14</sup> because Cafcass Cymru is not involved with these cases. In order to produce a fuller picture of the number of infants separated from parents at (or close to birth) on account of child protection concerns, it would be necessary to link data held by Cafcass Cymru to other data held by Welsh government, which is currently not deposited in the SAIL Databank.<sup>15</sup> We have also dedicated a discrete section of this report to limitations regarding the recording of legal orders for children in Wales, with a recommendation that going forward, Cafcass Cymru links legal orders to individual children (rather than cases).<sup>16</sup> A key objective of the Nuffield Family Justice Observatory data partnership is to provide feedback to data providers on the scope and quality of the data and to demonstrate the value of data linkage – in order to maximise the utility of valuable administrative data assets.<sup>17</sup>

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<sup>13</sup> Infants and children can enter public care on a voluntary basis or through court order. A strict focus on S.31 applications will underestimate the total volume of newborn babies separated from parents within two weeks of birth, because a proportion of infants in Wales will enter care under S.76 of the Social Services and Well-being Act (Wales) 2014.

<sup>14</sup> In Wales, although care proceedings are still governed by the CA 1989, because the general responsibilities for the well-being of children are devolved to Welsh government, the voluntary accommodation of children falls under the Social Services and Well-being Act (Wales) 2014, S.76. Prior to the passing of this Act, children in Wales would have been accommodated under Part 3, s.20 of the CA 1989.

<sup>15</sup> A key challenge for Wales is to support the linking of Cafcass Cymru data to data on looked after children, including information on placement episodes and type. Historically, data concerning Welsh looked after children was collected by the Department for Education (England), with data now collected by the Welsh government, under devolved legislation.

<sup>16</sup> Although many “cases” concern one child only, cases can concern more than one child. This means that it is difficult to attribute legal orders to particular children. The team has found a way around this, for this report, but going forward, greater accuracy will be achieved, if orders are assigned to specific individual children, not cases.

<sup>17</sup> As part of the scoping study that preceded set-up of the Nuffield FJO a review of population-level datasets relevant for family justice research was completed: Jay, M.A., Woodman, J., Broadhurst, K. & Gilbert, R. (2017) *Who cares for children: population data for family justice research*. Available from: <http://www.nuffieldfoundation.org/towards-family-justice-observatory>.

## 2. Background

Newborn babies are entirely dependent on their caregivers for their safety and well-being. In cases where an infant is identified as being at risk of suffering significant harm from one or both parents, a decision may be made to issue care proceedings at birth under the Children Act 1989. This Act provides a framework within which a court can make a court order authorising the removal of an infant from his or her parents.<sup>18</sup> Although there is a UK and international literature concerning the broader category of infants (e.g. Ward et al., 2012), there has been very little analysis of the timing of public law proceedings in the lives of infants, despite considerable emphasis within policy on the developmental importance of infancy.

When a decision is taken to remove an infant from his or her mother at or close to birth, this presents particular challenges for professionals and is highly distressing for birth mothers, birth fathers and wider family networks. The removal of a baby from a maternity setting is a very particular form of State intervention and is under-researched. Issuing care proceedings at birth has been described as a severe form of intervention in family life by some judges in courts in England (e.g. [R \(G\) v Nottingham City Council \(2008\)](#)) and by the Council of Europe (2015). Recently the Public Law Working Group,<sup>19</sup> led by Mr Justice Keehan, has recommended a series of actions to achieve best practice, when infants are subject to pre-birth child protection procedures or are to be removed at birth. Arguably, mothers are poorly positioned to instruct a solicitor or appear in court within the first few days of giving birth. In addition, applications that are brought on a short notice basis following the birth of a new baby may not assure stability of care for a newborn. A small body of qualitative research reports both maternal and professional (midwifery) concerns with late preparation and planning for removals at birth, as well as maternal distress (Hodson, 2011; Marsh 2015; Everitt et al., 2015; Broadhurst et al., 2017). In this context, it is important to use available national data to begin to answer foundational questions about the frequency and profile of these cases and case outcomes.

The All Wales Child Protection Procedures<sup>20</sup> provide common standards to guide and inform child protection practice in each of the six Regional Safeguarding Children Boards in Wales. Section 4.6 of these procedures provides guidance on pre-birth referral, assessment and child protection conferences<sup>21</sup> where there are concerns about future risk of harm to an unborn child. Local areas in Wales have also developed their own policies and procedures to

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<sup>18</sup> s.31 of the Children Act 1989 enables the court to make an order placing the child in the care of the local authority if the child is suffering or likely to suffer significant harm and the harm is attributable to the care being, or likely to be, provided by the parent being below what it would be reasonable to expect.

<sup>19</sup> Public Law Working Group: recommendations to achieve best practice in the child protection and family justice systems (interim report, June 2019): <https://www.judiciary.uk/wp-content/uploads/2019/07/Public-Law-Working-Group-Child-Protection-and-Family-Justice-2019-1.pdf>.

<sup>20</sup> The national guidance can be found at: <http://www.childreninwales.org.uk/wp-content/uploads/2015/09/All-Wales-Child-Protection-Procedures-20081.pdf>. At the time of writing this guidance is undergoing review.

<sup>21</sup> A child protection conference is a formal meeting of professionals and parents and/or other family members in which a plan to safeguard a child is drawn up and agreed. The guidance stipulate that pre-birth child protection conferences should take place between 8 and 16 weeks before the estimated delivery date to allow for appropriate assessment and planning (section 4.6.2).

guide practitioners.<sup>22</sup> However, as yet, there is no published evidence regarding the effectiveness of local area or national procedures and protocols, specific to Wales. A recent review of local area guidance on pre-birth assessment in England, found guidance considerably varied in detail and quality (Lushey et al., 2018). Equally, pockets of excellent practice and innovation are insufficiently documented, despite anecdotal accounts that a range of agencies have taken steps to improve planning for care proceedings at birth,<sup>23</sup> to reduce distress for mothers and fathers and the extended family.<sup>24</sup> The publication of new empirical evidence can catalyse the sharing of good practice, and the best of local area guidance, which could be more evenly spread across Wales and further afield.

Not all cases of care proceedings at birth will result in permanent removal of infants from their parents' care,<sup>25</sup> but to-date valuable population-level data has not been sufficiently exploited in either England and Wales, or indeed in international jurisdictions with similar family justice systems. This means that little is known about the trajectories into and beyond care proceedings for the very youngest children in the family justice system. The Department for Education publishes annual data on unborn babies subject to both Child in Need and Child Protection plans in England.<sup>26</sup> Similar data was published in Wales until 2016<sup>27</sup>, when the Social Services and Well-being Act was introduced, repealing part 3 of the Children Act 1989. Data on Children Receiving Care and Support is now collated by the Welsh government from local authority returns. This includes the number of pre-birth child protection conferences convened,<sup>28</sup> but does not disaggregate further by age the number of children under one year old on the child protection register. Therefore, on the basis of current national statistics, it is not possible to answer many fundamental questions about the impact of the family justice system on infants' lives in England and Wales. This report demonstrates that valuable population-level data, produced by Cafcass Cymru, can be used safely to address questions about the scale of family court involvement in the lives of Welsh infants and the outcomes of care proceedings. Further research is planned which will link health and education data to children's family court records, to produce even richer insights.

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<sup>22</sup> For example: *North Wales Safeguarding Children Board: Multi-Agency Pre-Birth Pathway* <https://www.northwalessafeguardingboard.wales/wp-content/uploads/2016/11/160909-Multi-Agency-Pre-Birth-Pathway-V1.0.docx>.

<sup>23</sup> Both Cafcass and the NSPCC have separately developed new initiatives to improve pre-birth assessment. However, neither have progressed beyond the pilot stage, in terms of formal published evaluation. For example: Barlow, J., Ward, H. and Rayns, G. (2015) *Development and feasibility study of a pre-birth assessment model for use where there are concerns that an unborn child is likely to suffer significant harm, Report to NSPCC*, Universities of Warwick and Loughborough.

<sup>24</sup> For example, the agency Birth Companions provides support to disadvantaged women during pregnancy and at the birth of a baby: <https://www.birthcompanions.org.uk>.

<sup>25</sup> Infants subject to an interim care order at birth may be placed with kin, or in foster care or may in fact remain with parents. At the final hearing of care proceedings, these options also apply and adoption.

<sup>26</sup> Data on unborn babies in England can be found in the tables that accompany the Department for Education publication: *Characteristics of Children in Need in England* available from: <https://www.gov.uk/government/statistics/characteristics-of-children-in-need-2017-to-2018>.

<sup>27</sup> <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-in-Need/childreninneed-by-localauthority-agegroup>.

<sup>28</sup> <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Service-Provision/numberofprebirthchildprotectionconferencesconvenedduringtheyear-by-localauthority>.

## Legal framework

The Family Procedure Rules 2010<sup>29</sup> apply to both England and Wales. The Children Act 1989 is current and provides the broad framework regarding care proceedings for both England and Wales. In Wales, the UN Convention on the Rights of the Child was made part of domestic law, through the Rights of Children and Young Persons (Wales) Measure 2011. The following sections set out key duties and obligations under the Children Act 1989 regarding interim and final care orders, before devoting a discrete paragraph to Welsh-specific considerations, arising as a consequence of the devolution of social care legislation and policy.

### The grounds for making an interim care order

Applications to the courts for care orders are made under s.31 of the Children Act 1989. The grounds for making an interim care order (ICO) under s.38 of this Act are that the court must have 'reasonable grounds' to believe that the child has suffered or is at risk of suffering significant harm and that this is as a result of care provided by parents falling below a reasonable standard. In addition, the court has to take account of the welfare of the child and be satisfied that an interim care order is better than any other order, or no order at all (s.1 CA, 1989). This requires similar considerations as those required by Article 8 of the Human Rights Act 1998 that interference in family life is in the interests of the welfare of the child and must be proportionate. Key messages from case law<sup>30</sup> are that separation of a child from his or her parents should only be ordered by an interim care order if the child's safety 'demands immediate separation' or 'interim protection'. In addition, the importance of clear and timely planning on the part of the local authorities has been stressed in published judgements. This is to ensure that the parents are prepared for care proceedings at birth and have had sufficient time to seek legal advice. The making of an interim care order does not automatically mean that the infant will be removed from the parents. It will mean that the local authority will share parental responsibility with the parents but in some cases the parents, or just the mother, will remain together in a residential placement, specialist foster placement or with relatives, for a period of assessment.

### Permanent removal of the infant from parents

If the local authority is seeking the *permanent* removal of the baby from his or her parents, the court will have been presented with evidence to support this option during the care proceedings and the parents will have had the opportunity to challenge this and make other proposals. At the final hearing, the court, as in all care cases, will need to be satisfied that there is evidence that the child has suffered or is likely to suffer significant harm as a result of parental action or inaction. The court then, as with an interim order, needs to consider what is in the interests of the welfare of the child and which order, if any, will be most appropriate (s.1 CA 1989) and whether the making of that order will be proportionate (Article 8, Human Rights Act 1998). This means that the full range of possible orders and

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<sup>29</sup> [https://www.justice.gov.uk/courts/procedure-rules/family/rules\\_pd\\_menu](https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu).

<sup>30</sup> There are a number of key decisions which have provided guidance to aid interpretation of the legislation. These include *Re H (a child) (interim care order)* [2002] EWCA Civ 1932, *Re M* [2006] 1 FLR 1043, *Re K and H* [2006] EWCA Civ 1898 and *Re L-A* [2009] EWCA Civ 822.

placements should be considered. If a child is to be placed with relatives on a long-term basis, the courts may choose to place a child with relatives under a care order (kinship foster care)<sup>31</sup> or may make a special guardianship order. If a child is to remain in foster care, this is usually authorised through a care order. In Wales and England, care orders are sometimes used for children placed at home at the close of proceedings, but recent questions have been raised about whether this is a proportionate response to family restoration. In cases concerning infants, where the plan developed by the local authority is that the child should be adopted, it is common for a placement order to be made at the same time as the care order is made. A placement order enables the child to be placed with prospective adopters and deals with the issue of parental consent to adoption.

### **Timescales for completion of care proceedings**

Shorter timescales for the completion of care proceedings were introduced with the Children and Families Act 2014. Cases must now complete within 26 weeks, unless an extension is necessary to resolve the case justly. Again, case law indicates that following the removal of a baby at birth, it can be appropriate to extend proceedings beyond 26 weeks to further test parental capacity for change, rather than moving too swiftly to make a placement order.<sup>32</sup>

### **Welsh-specific legislative considerations**

Regarding the voluntary accommodation of children, the Social Services and Well-being (Wales) Act 2014 (the Social Services Act) passed by the Assembly repealed Part 3 of the Children Act 1989. Children in Wales are now received into care under s.76 of the new Act, rather than s.20 of the Children Act 1989. Although, children entering care on a voluntary basis are not the subject of this report, in order to capture the total population of children entering care at birth, research would need to capture those removed from parents care under the CA 1989, but also those who enter care with parental agreement under s.76 of the Social Services and Well-being (Wales) Act 2014.

The provision of services under Special Guardianship Orders is devolved, as is the regulation of adoption services. However, in the main, the Adoption and Children Act 2002 applies in Wales as it does in England.

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<sup>31</sup> Anecdotal accounts of the use of care orders in Wales suggest that many children are placed with relatives under care orders (kinship foster care) which may help explain the lower use of special guardianship, when England and Wales are compared.

<sup>32</sup> Re P (A Child) [2018] EWCA Civ 1483.



### 3. Study objectives, ethical approval and methods

#### Objectives

Focusing specifically on **cases of newborns subject to s.31 care proceedings within the first two weeks of life and drawing comparisons with the broader population of infants**, the objectives of the study were to:

- a. quantify the volume and proportion of newborn cases and incidence rates over time
- b. describe variation in newborn incidence rates between Designated Family Judge (DFJ) areas and local authorities over time
- c. Identify the number of newborn cases in which an older sibling had previously been subject to care proceedings ('subsequent infants')
- d. identify the proportion of newborns subject to urgent Interim Care Order (ICO) hearings or non-standard case management hearings (CMH)
- e. quantify the duration of care proceedings over time
- f. describe the pattern of legal orders made and trends over time

The reporting of this study is informed by the RECORD checklist,<sup>33</sup> which sets minimum standards for observational studies that are based on administrative data. Good practice guidelines for the secondary use of administrative data as set out by the UK Statistics Authority (2015)<sup>34</sup> were also a key reference. Reasonable assumptions have had to be made in our use of and interpretation of the administrative data and these are explained in relevant sections of the report.

#### Ethical approval

The project proposal was reviewed by the SAIL Information Governance Review Panel (IGRP) at Swansea University. This panel ensures that work complies with Information Governance principles and represents an appropriate use of data in the public interest. The IGRP includes representatives of professional and regulatory bodies, data providers and the general public. Approval for the project was granted by the IGRP under SAIL project 0929. In addition, ethical clearance for the project was provided by Lancaster University. Cafcass Cymru, the data owner, also approved use of the data for this project. The agency considered the public interest value of the study, benefits to the agency itself, as well as general standards for safe use of administrative data.

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<sup>33</sup> Further details of the Record statement can be found at: <http://www.record-statement.org>.

<sup>34</sup> The UK Statistics Authority produces guidance on best practice in the use of administrative data [https://www.statisticsauthority.gov.uk/wp-content/uploads/2015/12/images-settingthestandar\\_tcm97-44370.pdf](https://www.statisticsauthority.gov.uk/wp-content/uploads/2015/12/images-settingthestandar_tcm97-44370.pdf).

All statistics are reported in aggregate form only. Following discussions with relevant policy and practice leads in Wales (local authority and Cafcass Cymru) and given Welsh government's commitment to transparency and open statistics, a decision was taken to name local authorities and the three Designated Family Justice (DFJs) areas in the analysis of variation.<sup>35</sup> However, due to small numbers in some local authorities and therefore to avoid disclosure, we have not published actual numbers of newborns per year.

## The SAIL Databank

Administrative data collected and maintained by Cafcass Cymru were acquired by the privacy-protecting SAIL Databank (Ford et al., 2009; Jones et al., 2017; Lyons et al., 2009). The SAIL Databank contains a wealth of *anonymised* health and administrative data about the population of Wales, accessible via a secure data sharing platform, all underpinned by an innovative and proportionate Information Governance model.

For each dataset within the SAIL Databank, including records from Cafcass Cymru, individuals' identities have been removed and replaced with a unique field for each person to enable linkage of their records across datasets. SAIL anonymisation and linkage methodology is described elsewhere (Lyons et al., 2009). All data within the SAIL Gateway are treated in accordance with the Data Protection Act 2018 and are compliant with the General Data Protection Regulation.

## Data source

The primary source of data was electronic case management data routinely produced by Cafcass Cymru, which, for the purpose of this study, was *not* linked to other datasets within the SAIL Databank.<sup>36</sup> All cases of s.31 care proceedings, which started between 2011 and 2018 (calendar years) were included. Electronic data of sufficient quality for research is not available before 2011. Relevant case information included: child's week of birth and gender, adult respondent's week of birth and gender, date of issuing the s.31 application and the case management hearing/urgent ICO hearing, local authority, date and type of final legal order.

## Analytical samples and timeframe

All child-level records, rather than just newborn records were included in the sample, so that we could identify numbers of children of all ages subject to care proceedings (Appendix 1), calculate the proportion who were infants, and in addition, establish whether newborns had an older sibling. The overall rationale for sampling has been to **retain as many usable**

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<sup>35</sup> This is a different approach to that taken for *Born into care England*, where the research team did not report at the level of the local authority. This issue remains subject to ongoing debate in England, given differences of opinion among policy and practice leads.

<sup>36</sup> Linkages to a range of health, demographic and education are now planned, building on the foundational work in this report. Further detail is provided in the discussion section of this report.



**records as possible** to answer the respective queries<sup>37</sup>. The rationale for each specific sample is explained in the respective sections below.

**Sample 1** comprised all **child-level records** related to cases of s.31 care proceedings **issued** between 1st January 2011 to 31 December 2018. This provided an 8-year retrospective observational window (2011 to 2018) comprising all children entering s.31 proceedings each calendar year (n=10,959 child cases; of which 3,266 were infants, including 1,399 newborns). This sample was used to quantify frequencies, calculate incidence rates for all children subject to care applications over time, and establish proportions of 'subsequent infants'.

**Sample 2** consisted of all **infant case-level records** related to s.31 care proceedings which **completed** between 1 January 2012 and 31 December 2018. Cases must be complete in order to be able to investigate case outcomes. Earlier legal order data (before 2012) was excluded due to small numbers. Hence, for legal orders, the length of our observational window was 7 years, comprising all completed s.31 proceedings concerning infants within each calendar year (n=2,612 cases). This sample was used for calculating case durations and categories of legal order outcomes.

## Variables and further data manipulation

The list of variables and levels of missing data for the study are detailed in Appendix 2. In brief, missing data is reported for all variables related to the child, case, local authority, legal orders and case durations. Levels of missing data were negligible for all variables except court hearings.<sup>38</sup>

**Age of child:** the age of a child at the start of care proceedings was calculated using the child's week of birth and the date the s.31 application was issued.

- An **infant** was defined as a child aged less than 12 months old.
- A **newborn** was defined as a child **aged less than 2 weeks** old at the issue of proceedings.

It is important to note that in this project, and given SAIL's approach to data anonymisation and data privacy protection, the team had access to the child's week of birth only (i.e. date of the Monday of the child's week of birth) instead of the child's actual date of birth.<sup>39</sup> This could mean that a child's calculated age is up to 6 days older than his or her actual age. For this reason, a decision was taken to use "less than 2 weeks" as the cut off point for the category "newborn" – rather than 7 days as in *Born into care England*. Although the

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<sup>37</sup> The use of different sampling timeframes maximized use of available records. Over time, and as further years of high-quality data are available, this necessity will be reduced.

<sup>38</sup> Given levels of missing data for hearings, we have restricted our analysis of court hearings to the period 2015-2018.

<sup>39</sup> The NHS-based Trusted Third Party (TTP) which manages the identities of individual's records in the SAIL Databank (the NHS Wales Informatics Service (NWIS), replaces the commonly-recognised identifiable items (including name, postcode and date of birth) for each person with an encrypted code and sends this, along with minimal information (on gender, area of residence and week of birth) to SAIL.

measures are slightly different, both serve to identify very early intervention in the lives of babies and have the same policy and practice implications, as we outline in the discussion.

To enable more precise calculation of the timing of care proceedings within the first year of an infant's life, the following age categories were used:

- newborns (less than 2 weeks).<sup>40</sup>
- 2 to 3 weeks.
- 4 to 12 weeks.
- 13 to 25 weeks.
- 26 to 38 weeks.
- 39 to 52 weeks.

For analysis conducted for all children, child ages were rounded down to the nearest year (i.e. 0 years to 17 years).<sup>41</sup>

**Incidence rates:** population estimates and live birth data produced by the Office for National Statistics (ONS) were used to calculate incidence rates according to year and child age categories (mid-year population estimates for children and annual live births). Live births rates were used for the analysis of incidence rates (newborns),<sup>42</sup> whilst mid-year population estimates were used for the rates per child age category (0 to 17).<sup>43</sup>

**Subsequent infants:** to differentiate infants according to whether they were “subsequent infants” (i.e. an older sibling had already appeared before the courts in s.31 proceedings), all children were linked to their mothers.<sup>44</sup> The team then established whether the mother had appeared in an earlier set of proceedings with an older child. We built on previous research to inform data restructuring (Broadhurst et al., 2015; Broadhurst et al., 2017). Allowing a 5-year observational window, we show the “subsequent infants” results for s.31 proceedings issued between 2016 and 2018.

**Urgent Interim Care Order (ICO)/ non-standard case management hearings (CMH):** given anecdotal concerns raised by practitioners that many urgent ICO or non-standard CMHs involve infants, we also calculated the proportion of newborns, infants and children subject to these hearings between 2015 and 2018 (due to high levels of missing data on hearing dates prior to 2015). Where there was less than 12 working days between the issue of the care application and the case management hearing or urgent ICO hearing, these were categorised as urgent or non-standard hearings.

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<sup>40</sup> In some cases an administrative record is produced by Cafcass prior to birth because the agency has been notified that a set of proceedings is forthcoming, these records have been included in the category “newborns less than two weeks” where the date falls within two weeks of birth.

<sup>41</sup> Due to the small number of children aged 16 and 17, we combined their results in one age category (16 and 17 years old).

<sup>42</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths>.

<sup>43</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>.

<sup>44</sup> A “mother” was defined as the “youngest female respondent” in the case because a ‘relationship table’ wasn’t available in the Cafcass Cymru data at the time of writing this report.

**Local authority and court areas:** The 22 Welsh local authorities that issued s.31 proceedings were mapped to the 3 Designated Family Judge (DFJ) court areas in Wales:

- *North Wales:* Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire, Wrexham
- *Swansea and South West Wales:* Bridgend, Neath Port Talbot, Swansea, Powys,<sup>45</sup> Carmarthenshire, Pembrokeshire and Ceredigion
- *Cardiff and South East Wales:* Cardiff, Merthyr Tydfil, Rhondda Cynon Taf, Vale of Glamorgan, Newport, Caerphilly, Torfaen, Blaenau Gwent and Monmouthshire.

**Legal order data:** final legal orders<sup>46</sup> were defined as the orders made at the final hearing of care proceedings, sufficient for the agency to close the case. Children can become subject to further orders beyond the final hearing, where fresh applications are issued. However, for the purposes of this first analysis in Wales, we have not extended our lens beyond the final hearing of care proceedings.<sup>47</sup>

Reduction of final legal order data was required, given the multiple combinations of legal orders that can be made for children at the close of proceedings. By rationalising the legal order data, we also ensured that children were only counted once. Categories of orders were created which reflect the typical outcomes for children at the close of care proceedings. Different groupings were used for analysis per year and across the whole period, and these are shown in Table 1.

- For *per year analysis*, orders were grouped into three categories, as numbers were too small to allow greater differentiation: “With Parents/Family Members”; “In Care” and “Placed for Adoption”
- For the calculation of totals *across the observational window* (2011 to 2018), it was possible to provide numbers and percentages against five categories of orders: “No Order/Case Withdrawn”; “With Parents”; “With Family Members”; “In Care” and “Placed for Adoption”.

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<sup>45</sup> Powys-North is in the North Wales DFJ area, while Powys-South is in the Swansea and South West Wales DFJ area. However, it wasn't possible to differentiate between the Powys-North and Powys-South cases using the Cafcass Cymru database. For analytic purposes, we included all Powys cases in the Swansea and South West Wales DFJ area.

<sup>46</sup> Final legal order data is a proxy, rather than actual indicator of the final permanency outcome for the child. Looking ahead and given the potential of the SAIL environment, it would be possible to link Welsh government Looked After Children Data to capture the actual permanency pathways and outcomes for Welsh children.

<sup>47</sup> For example, to ensure care proceedings complete within 26 weeks, the court might decide to make a care order at the final hearing and then subsequently make a placement order or special guardianship order. A recent case has been subject to considerable discussion regarding this practice: *Re P-S (Children)* [2018] EWCA Civ 1407. *Family Law Week* has also covered this case at: <http://www.familylawweek.co.uk/site.aspx?i=ed190497>.

**Table 1: Legal order categories (ranked according to level of intervention)**

Legal order (as recorded by Cafcass)	Analytic category (devised by research team) – 5 categories	Analytic category (devised by research team) – 3 categories	
Application Refused / Dismissed / Suspended	No order/case withdrawn	With parents/family members	
Order of No Order (ONO)			
Order not made			
Supervision Order (SO)	With parents		
Family Assistance Order (FAO)			
Residence Order (RO)			
Child Arrangements Order (CAO)	With family members		
Special Guardianship Order (SGO)			
Care Order (CO)	In care		In care
Placement Order (PO)	Placed for adoption		Placed for adoption
Adoption Order (AO)			

Cafcass Cymru is amending its data collection to record placement data. However, data collection for this report preceded this amendment. In the absence of precise data on placements, we can only draw inferences about the child’s actual permanency placement – based on the final legal order. It is likely that children subject to placement orders will subsequently be adopted, but in a small number of cases, a placement order will be revoked.<sup>48</sup> Likewise, whilst the majority of children on a Care Order are likely to be placed with unrelated foster carers, some may be with kinship foster carers or parents. This is an unavoidable limitation and is highlighted in the discussion section of this report.

In previous published work, members of the research team have reported limitations in the secondary analysis of Cafcass England data (Broadhurst et al., 2015). A further limitation specific to Cafcass Cymru is that they **record final legal order data by case**, rather than by child. Where a case concerns only one child, this does not raise problems for analysis (61% of cases). Where a case concerns more than one child, but orders fall into a single legal order category, this is also unproblematic. However, in 13% of all cases, the case recorded more than one child and more than one legal order category – in these cases we have had to infer the correct match between legal order and child, drawing reasonable assumptions. Our approach was to assign the ‘highest order’ (see Table 1 above) to the youngest child.

<sup>48</sup> Revocation means that a plan for adoption is over-turned.

Given the team's knowledge of typical permanency decisions for very young children, it is reasonable to assume that given a choice between placement for adoption and another category of legal order, a very young baby is most likely to be subject to a plan for adoption. A series of sensitivity tests were run that did not indicate problems with our assumptions.

## Analytical process

Given the descriptive objectives of this study, data analysis comprised the calculation of frequencies, proportions and incidence rates.<sup>49</sup> Establishing frequencies and proportions was important to investigate the extent to which local authorities issue proceedings soon after birth (within two weeks). However, incidence rates provide a clearer picture of *the likelihood* of different age categories of infants in the general population, becoming subjects of care proceedings.

The same measures were used to probe variation between local authorities and the Welsh DFJ areas. Funnel plots were used to both assess and present variation. Funnel plots are a form of scatter plot in which observed rates are plotted against area population. The advantage of the funnel plot is that by overlaying control limits on the scatter plot, it is possible to differentiate local authorities and DFJ areas that fall within an *expected range*, from those that are *outliers* regarding the rates of s.31 proceedings.

Regarding "subsequent infants", as defined above, it was important to calculate the *proportion* of newborns who fell into this category compared to the proportion for other age categories of infants. Again, given the findings from earlier research, we anticipated a high proportion of "subsequent infants" would be newborns (Broadhurst et al., 2015; 2017; 2018). We also used descriptive statistics to capture the frequency of legal order outcomes against the categories defined above, for all age categories of infants, and to calculate case durations.

## Validation

There are no published national statistics based on the finer infant sub-populations in care proceedings in Wales. Statistics produced by the Ministry of Justice (MoJ), such as the Public Law Applications to Orders (PLATO) Tool,<sup>50</sup> were a useful source of reference although they do not differentiate by child's age. The report has also been subject to peer review by academic and practice colleagues (local authority and Cafcass Cymru) in Wales.

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<sup>49</sup> A frequency is the number of times a particular value for a variable has been observed to occur. A proportion describes the share of one value for a variable in relation to a whole. The incidence rate is a measure of the frequency with which an event occurs in in any given timeframe, in the general population (of babies/children).

<sup>50</sup>[https://public.tableau.com/profile/moj.analysis#!/vizhome/ChildreninFamilyJusticePublicLawApplicationstoOrdersTool\\_0/FrontPage](https://public.tableau.com/profile/moj.analysis#!/vizhome/ChildreninFamilyJusticePublicLawApplicationstoOrdersTool_0/FrontPage)

### 3. Findings

#### Volume of cases and changes over time

Infants aged less than 1 year constituted 30% (or **3,266**) of all of the approximately 11,000 children entering care proceedings in Wales between 2011 and 2018 (see Appendix 1 for a table of all children in care proceedings in Wales).

In 2011, **154** newborns were subject to care proceedings within the first two weeks of birth (Table 2 below). By 2018, this number was **259**, a percentage increase of 68%, although there were fluctuations in the intervening years. Between 2011 and 2018, a total of **1,399 newborns** were subject to care proceedings in Wales.

Regarding the *proportion* of infants who were subject to proceedings as newborns, in 2011 **40%** of all infants coming before the courts in s.31 proceedings did so in the first two weeks after birth. This proportion remained roughly stable until 2015, and then started to rise, reaching **52% in 2018**. Reading across all infant age categories presented in Table 2 below, by far the largest proportion of infants in care proceedings fell into the category “newborns”.

**Table 2: Infants (under one year old) subject to s.31 proceedings by age category at the issue of proceedings, per year [2011 to 2018]**

Year Infant's age	2011	2012	2013	2014	2015	2016	2017	2018	Total
Newborns (under 2 weeks)	154 [40%]	147 [37%]	134 [39%]	142 [40%]	131 [38%]	232 [48%]	200 [43%]	259 [52%]	1,399 [43%]
2 to 3 weeks	33 [9%]	53 [13%]	38 [11%]	27 [8%]	32 [9%]	47 [10%]	51 [11%]	42 [8%]	323 [10%]
4 to 12 weeks	81 [21%]	73 [18%]	53 [16%]	61 [17%]	49 [14%]	57 [12%]	74 [16%]	71 [14%]	519 [16%]
13 to 25 weeks	55 [14%]	51 [13%]	48 [14%]	52 [15%]	68 [20%]	70 [14%]	57 [12%]	53 [11%]	454 [14%]
26 to 38 weeks	27 [7%]	33 [8%]	37 [11%]	38 [11%]	31 [9%]	47 [10%]	48 [10%]	37 [7%]	298 [9%]
39 to 52 weeks	35 [9%]	42 [11%]	30 [9%]	32 [9%]	34 [10%]	30 [6%]	37 [8%]	33 [7%]	273 [8%]
<b>Total</b>	<b>385</b> [100%]	<b>399</b> [100%]	<b>340</b> [100%]	<b>352</b> [100%]	<b>345</b> [100%]	<b>483</b> [100%]	<b>467</b> [100%]	<b>495</b> [100%]	<b>3,266</b> [100%]

Note: Age of infant has been calculated at the issue of the s.31 proceedings and rounded down to the nearest week. In some cases, an administrative record is produced by Cafcass Cymru prior to birth, because the agency has been notified that a set of proceedings is forthcoming, these records have been included in the category “under two weeks” where the date falls within two weeks of birth.

If the categories “newborns” and “2-3 weeks” are combined, proceedings were issued within 4 weeks of birth for **more than half (53%)** of all infants. In 2018, 60% of infant cases were issued within 4 weeks. The high proportion of infant cases issued close to birth is similar to the picture for England (see *Born into care England*, Table 2, page 21); in both countries intervention appears to be **weighted to the very early weeks** of an infant’s life.

Table 3 below demonstrates the year-on-year change in the volume of cases of care proceedings, according to infant age categories. This shows that the greatest average year on year change is for infants who are newborns, although an increase is evident across most infant age categories. The **rate of increase for newborns is 11%** compared to a range of 0-9% for all other infant age categories.

**Table 3: Year-on-year change in the number of infants (under one year old) subject to s.31 proceedings by age category at the issue of proceedings [2011 to 2018]**

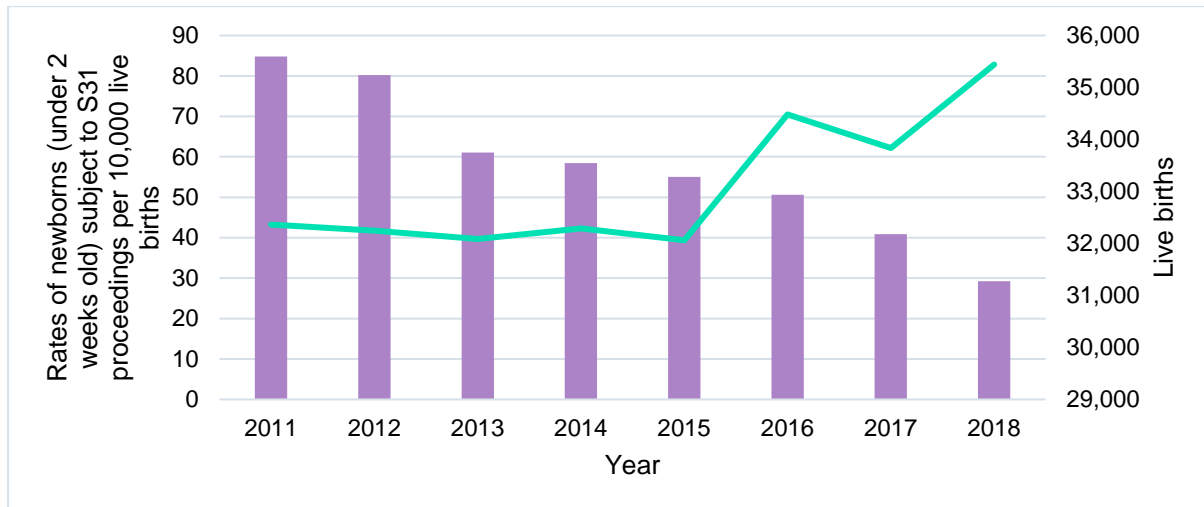
Year Infant's age	2011 to 2012	2012 to 2013	2013 to 2014	2014 to 2015	2015 to 2016	2016 to 2017	2017 to 2018	Average year-on-year change
Newborns (under 2 weeks)	-5%	-9%	6%	-8%	77%	-14%	30%	11%
2 to 3 weeks	61%	-28%	-29%	19%	47%	9%	-18%	9%
4 to 12 weeks	-10%	-27%	15%	-20%	16%	30%	-4%	0%
13 to 25 weeks	-7%	-6%	8%	31%	3%	-19%	-7%	0%
26 to 38 weeks	22%	12%	3%	-18%	52%	2%	-23%	7%
39 to 52 weeks	20%	-29%	7%	6%	-12%	23%	-11%	1%
<b>Total</b>	<b>4%</b>	<b>-15%</b>	<b>4%</b>	<b>-2%</b>	<b>40%</b>	<b>-3%</b>	<b>6%</b>	<b>5%</b>

Note: where the value is given as a minus, this indicates a reduction in a given year compared to the previous year.

Regarding incidence rates, these are expressed as the number of cases of newborn care proceedings per 10,000 live births in the general population. Figure 1 below visualises the trend, alongside the decreasing number of live births in Wales during the period. In 2011, for every 10,000 live births in Wales, **43** newborns became the subject of care proceedings within two weeks of birth. The incidence rate remained fairly static at around 40 per 10,000 live births until 2015, **then increased rapidly, and had almost doubled to 83** cases per 10,000 live births in 2018. This means that over time, as in England, newborns in the general population have become more likely to appear in care proceedings soon after birth.



**Figure 1: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per year [2011 to 2018]**



In order to compare incidence rates in England and Wales, we calculated the number of babies who became subject to s.31 proceedings within four weeks of birth, per 10,000 live births, in each country (Table 4).

**Table 4: Incidence rates, s.31 proceedings within four weeks of birth (per 10,000 live births), per year, England and Wales [2010 to 2018]**

Incidence rate	2010	2011	2012	2013	2014	2015	2016	2017	2018	2011 to 2016
Wales		53	57	51	50	49	85	78	96	57
England	31	35	41	44	38	40	48			41

We can see that in every year, for which there is comparable data, the incidence rate was higher in Wales than in England. In 2016, the most recent year, 85 babies were subject to s.31 care proceedings in Wales per 10,000 live births, compared with 48 babies per 10,000 live births in England.

**To summarise:**

- **Infants aged less than one year comprise around 30% of all s.31 cases in Wales; if children are grouped into one-year age categories, this is by far the largest category of children appearing before the family courts**
- **Cases of newborns under two weeks of age in the family justice system comprised a substantial proportion of all care proceedings issued for infants in Wales: in 2018, this was 52%.**



- Overall, the picture of a high proportion of infant cases issued close to birth is similar for Wales and England. However, the incidence rate (number of newborns per 10,000 live births) is higher in Wales than England.
- Over time, a greater proportion of care proceedings concerning infants have been issued for newborns in Wales.
- The likelihood of newborns in the general population becoming subject to care proceedings in Wales remained fairly static from 2011 to 2015, at around 40 cases per 10,000 live births. The incidence rate then increased rapidly, and by 2018 had more than doubled to 83 cases per 10,000 live births.

### Variation by court area

For infants subject to care proceedings as newborns, variation was probed by calculating incidence rates for the three Designated Family Judge (DFJ) areas. Incidence rates rather than frequencies were calculated, as meaningful comparison can only be made by adjusting for population size.

There are **differences in incidence rates for newborns across DFJ areas** and over time – whether we consider an overall rate (2011 to 2018) or rates by single year (see Table 5 below).

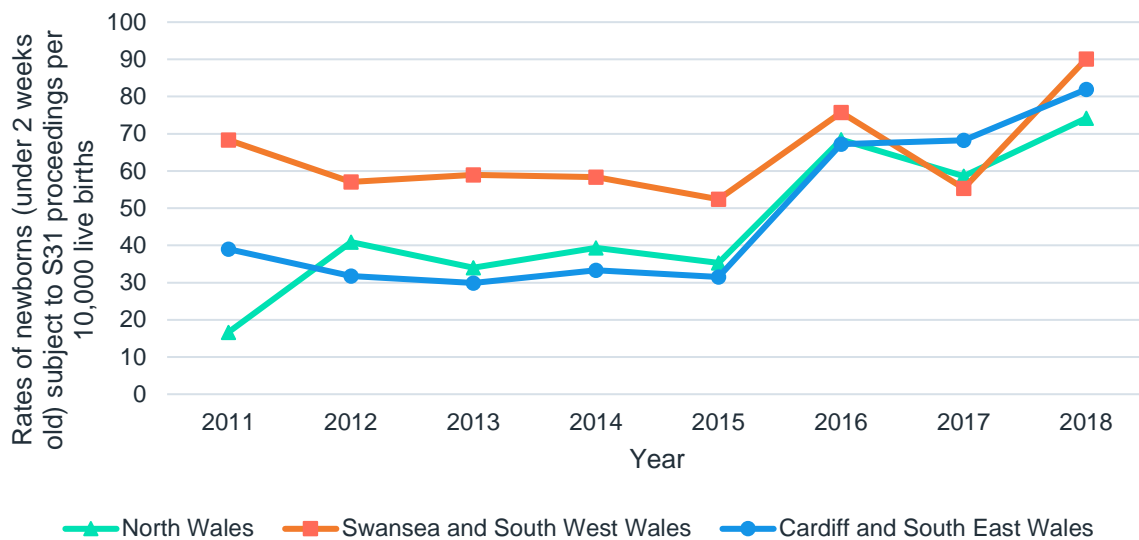
Based on an overall rate (for the period from 2011 to 2018), the **Swansea and South West Wales DFJ area** recorded the highest incidence rate, of 64 cases of care proceedings concerning newborns per 10,000 live births in the general population. **Cardiff and South East Wales DFJ area** and **North Wales DFJ area** had lower overall rates, at 47 per 10,000 and 45 per 10,000, respectively.

**Table 5: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per DFJ area, per year [2011 to 2018]**

	2011	2012	2013	2014	2015	2016	2017	2018	Overall rate (2011 to 2018)
North Wales	17	41	34	39	35	68	59	74	45
Swansea and South West Wales	68	57	59	58	52	76	55	90	64
Cardiff and South East Wales	39	32	30	33	31	67	68	82	47
<b>Total</b>	<b>43</b>	<b>42</b>	<b>40</b>	<b>42</b>	<b>39</b>	<b>70</b>	<b>62</b>	<b>83</b>	<b>52</b>

If we consider incidence rates over time (Figure 2), the Swansea and South West Wales DFJ area recorded the highest incidence rate for newborns every year between 2011 and 2018 except 2017. Both Swansea and South West Wales and Cardiff and South East Wales DFJ areas show a slight decrease in their incidence rates between 2011 and 2015, followed by an upward trend. The trend in North Wales DFJ area is an almost linear increase between 2011 and 2018. The differences in the rates between the three DFJ areas appear to converge in the more recent years (2016 to 2018).

**Figure 2: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per DFJ area, per year [2011 to 2018]**



Although all three DFJ areas saw an increase in incidence rates over time, the size of the increase was different between areas (Table 6).

The **North Wales DFJ area has recorded the highest average year-on-year change** in its incidence rates (34%), while the Swansea and South West Wales DFJ area has recorded the lowest (8%). The Cardiff and South East DFJ area recorded a 17% average year-on-year change in its incidence rates between 2011 and 2018.

In addition, from Table 6 below, *fluctuations* in percentage change are noteworthy. Between 2015 and 2016, all three DFJ areas showed a marked increase in newborn cases, which warrants further analysis.

**Table 6: Year-on-year change in the incidence rates of s.31 proceedings issued for newborns, per DFJ area and year [2011 to 2018]**

	2011 to 2012	2012 to 2013	2013 to 2014	2014 to 2015	2015 to 2016	2016 to 2017	2017 to 2018	Average year-on-year change
North Wales	146%	-17%	16%	-10%	94%	-14%	27%	34%
Swansea and South West Wales	-16%	3%	-1%	-10%	45%	-27%	63%	8%
Cardiff and South East Wales	-19%	-6%	11%	-6%	114%	2%	20%	17%
<b>Total</b>	<b>-4%</b>	<b>-5%</b>	<b>7%</b>	<b>-8%</b>	<b>81%</b>	<b>-11%</b>	<b>33%</b>	<b>13%</b>

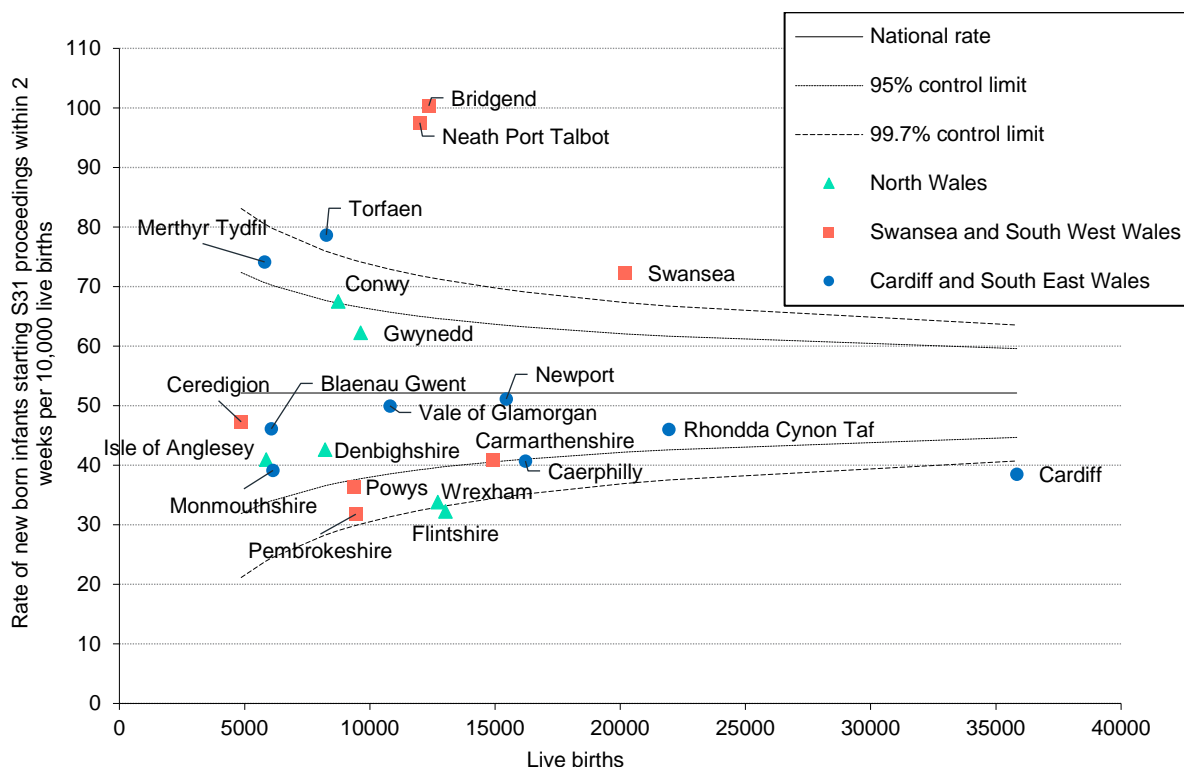
**To summarise:**

- There were differences in the rates of care proceedings issued for newborns across the three Welsh DFJ areas (2011 to 2018).
- All three DFJ areas saw an overall increase in incidence rates over time, although the trends varied.
- Swansea and South West Wales DFJ area recorded the highest incidence rates but saw the lowest average year-on-year increases.
- The difference in incidence between the three DFJ areas appears to converge in the more recent years.
- Between 2015 and 2016, all three DFJ areas recorded a marked increase in newborn cases, which warrants further investigation.

## Local authority level variation

To examine variation at the local authority level, a funnel plot (Figure 3) visualises the incidence rates of care proceedings for newborns, using data from 2011 to 2018. This differentiates the local authorities that fall within an expected range, from those that are *outliers* regarding the rates of s.31 proceedings. The numbers of live births and rate of care proceedings for newborns in each local authority are shown in Appendix 3.

**Figure 3: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per DFJ area and local authority [2011 to 2018]**



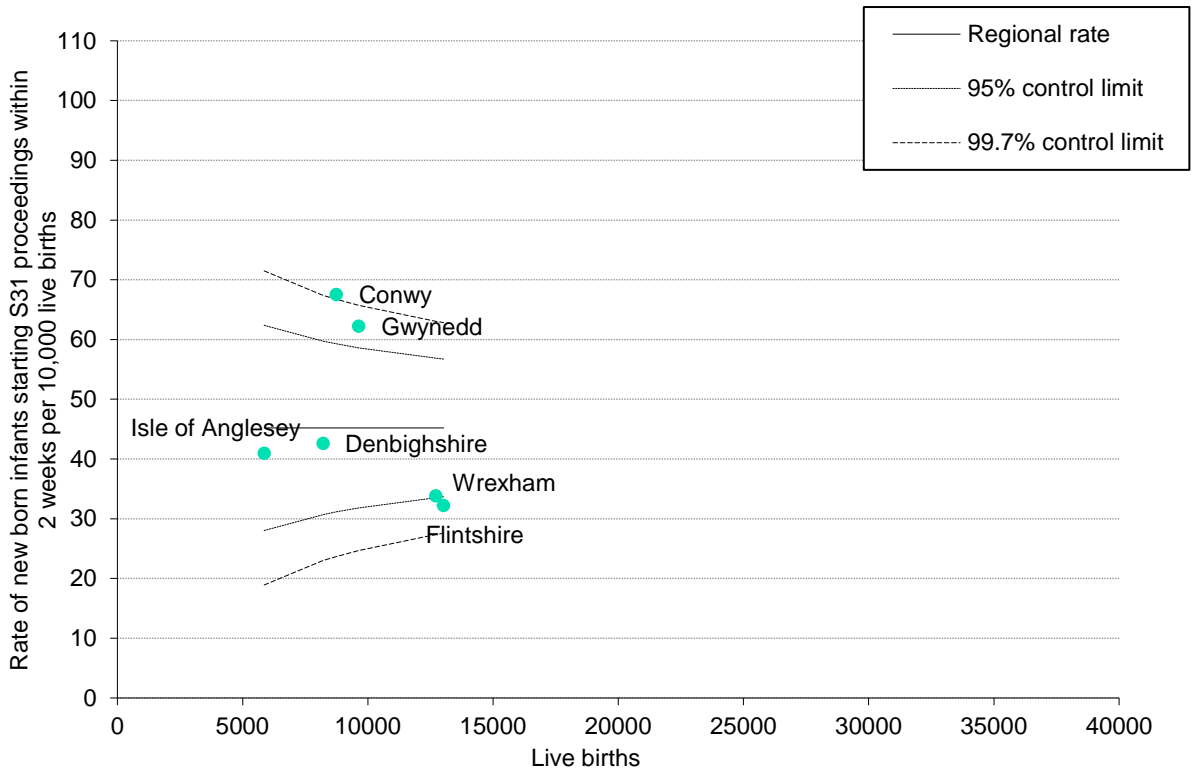
In Figure 3, four local authorities (Bridgend, Neath Port Talbot and Swansea in the Swansea and West Wales DFJ area, and Torfaen in Cardiff and South East Wales DFJ area) diverged significantly from the national average, appearing above the upper outer line on the funnel plot. Compared to the average rate for Wales, which was 52 newborns per 10,000 live births, the rates for these 4 local authorities were significantly higher (the rate range for the outliers is **72 newborns per 10,000 live births to 100 per 10,000**).

In contrast, there were two local authorities (Flintshire in North Wales DFJ area and Cardiff in Cardiff and South East Wales DFJ area) with lower than average incidence rates, falling below the outer line at the bottom of the figure. The rate range for these outlier local authorities was **32 newborns per 10,000 live births to 39 per 10,000**.

If we consider the incidence rates for local authorities within their respective DFJ areas, we see a different pattern in Swansea and South West Wales DFJ area than the other two court

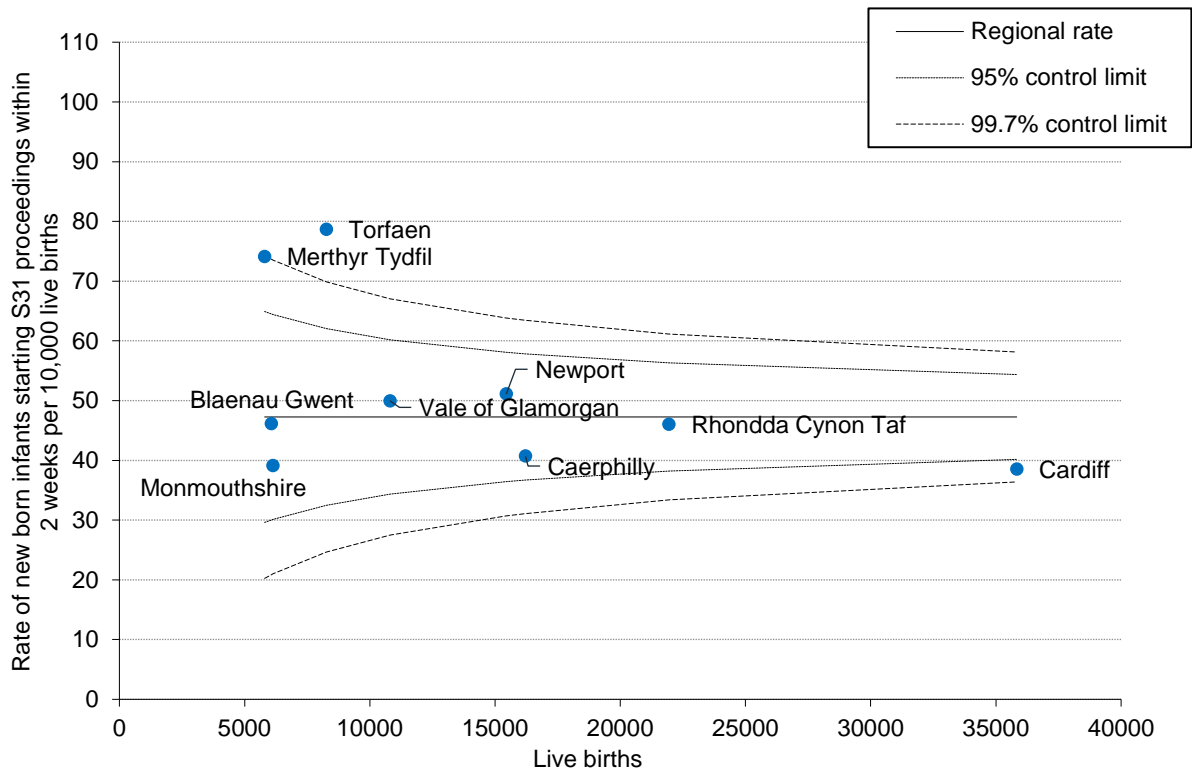
areas. Figure 4 shows that there was little variation between the local authorities in the North Wales DFJ area, with only Conwy a high outlier.

**Figure 4: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per local authority [North Wales, 2011 to 2018]**



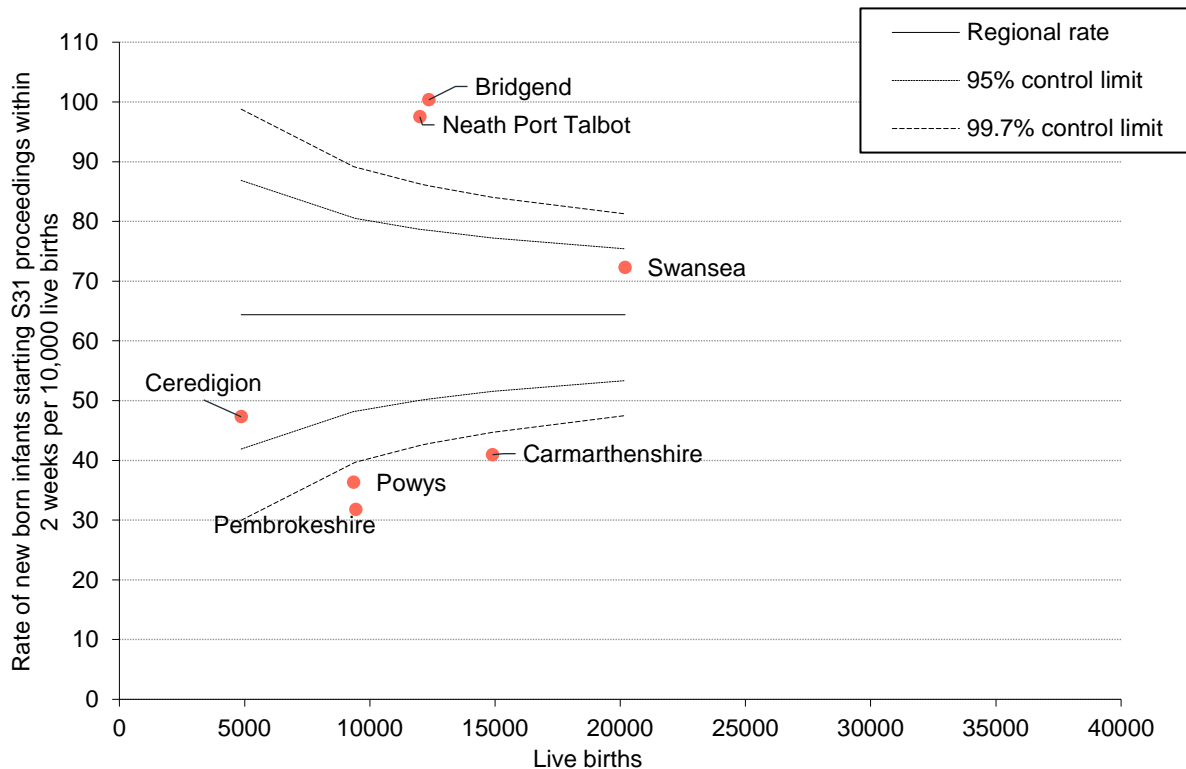
Similarly, there was little variation between the incidence rates of newborns entering care proceedings in the local authorities in the Cardiff and South East DFJ area, with only Torfaen a high outlier (Figure 5).

**Figure 5: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per local authority [Cardiff and South East Wales, 2011 to 2018]**



However, there was significant variation in the incidence rates of newborns entering care proceedings between the local authorities in the Swansea and South West DFJ area. The area average was 64 newborns per 10,000 live births, but as can be seen in Figure 6, only two of the seven local authorities (Swansea and Ceredigion) fell within the expected boundaries of this.

**Figure 6: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per local authority [Swansea and South West Wales, 2011 to 2018]**



In Figure 6, Bridgend and Neath Port Talbot were very high outliers, appearing above the upper outer line on the funnel plot, with incidence rates of 100 and 98 newborns per 10,000 live births, respectively. In contrast, Carmarthenshire, Powys and Pembrokeshire were very low outliers, having lower than average incidence rates (falling below the outer line at the bottom of the figure). The rate range for these low outlier local authorities was **between 32 and 41 newborns per 10,000 live births**.

Variance against *within* DFJ area averages, as well as variance against *an overall* average for Wales, both require further analysis.

### To summarise:

- A minority of local authorities departed significantly from the national incidence rate of 52 newborn cases per 10,000 live births. However, the rate range for outliers was marked between 32 and 100 newborn cases per 10,000 live births.
- In North Wales DFJ area and Cardiff and South East Wales DFJ area, there was very little deviation in local authority rates from the area average.

- However, in Swansea and South West Wales DFJ area, there were a number of very low and very high outlier local authorities, falling outside the expected boundaries of the area average incidence rate of newborns entering care proceedings.
- Further analysis is needed to understand why some local authorities, particularly in Swansea and South West Wales DFJ area, recorded rates that diverged significantly from an expected average.

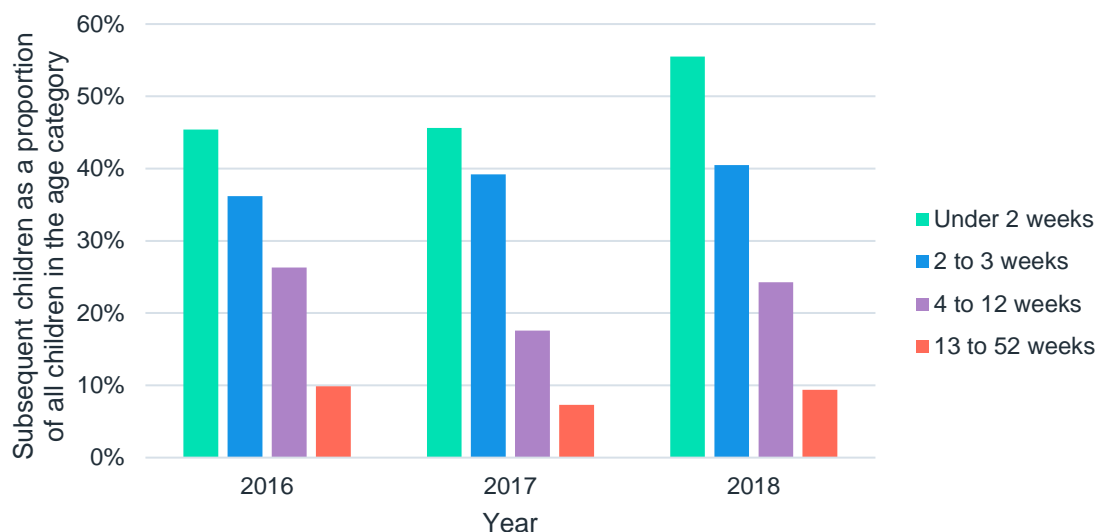
## Case characteristics

### “Subsequent infants”

Figure 7 below indicates that a high proportion of infants subject to care proceedings within two weeks of birth, were born to mothers who had previously appeared before the family courts in s.31 proceedings regarding an older sibling. Between 2016 and 2018, **49% of newborns were “subsequent infants”**. Generally, the younger the infant, the higher the likelihood of being a “subsequent infant”, and the proportion of older infants was very small at 9% (infants aged between 13 and 52 weeks). This observation is in line with the finding reported in *Born into care England* (p28).

However, it is also important to note that if 49% of newborns were subsequent infants, **51% of cases concerning newborns did not fall into this category**. Published research indicates that recurrence is most likely to be evident within 2-3 years of a set of proceedings (Broadhurst et al., 2015; 2017). Therefore, having allowed a 5-year retrospective window, it is reasonable to assume that our 49% estimate is sufficiently accurate. The implications of this point are discussed further in the final discussion section of this report.

**Figure 7: Proportion of “subsequent infants”, per infant age category, per year [2016 to 2018]**





## Urgent ICO hearings and non-standard case management hearings

A non-standard case management hearing or an urgent ICO hearing was recorded for **61% of newborns between 2015 and 2018**, compared to 37% of older infants and 36% of all children aged 12 months and above. Half of all the newborns (**52%**) **had an urgent hearing within 7 days of the care application during this period.**

## Case duration

Between 2012 and 2018, 52% of infant cases completed within 26 weeks. Figure 8 indicates a general trend towards shorter care proceedings for all age categories of infants from 2012 to 2017. In 2012, only **12%** of cases concerning infants completed within the current statutory timeframe of 26 weeks,<sup>51</sup> whereas in 2017, **this percentage had risen to 70%**, decreasing slightly to 63% in 2018.

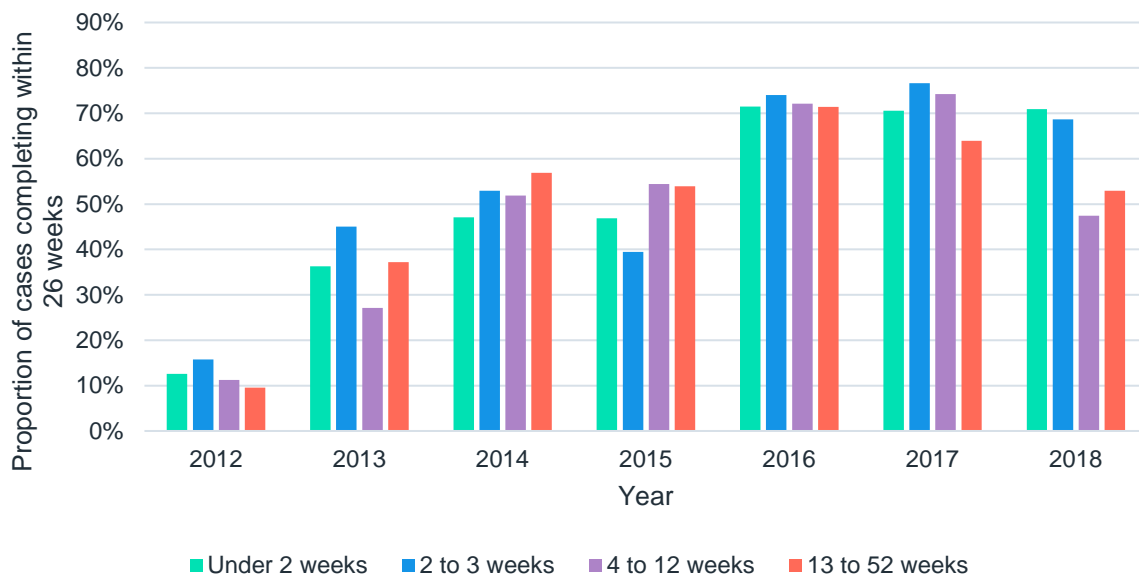
The infant age category with the highest proportion of completions within 26 weeks was those aged 2-3 weeks, with 77% of cases completing within 26 weeks in 2017. However, overall, few differences are observed between the age categories of infants.

If 52% of cases of infant cases completed within 26 weeks, then **48% fell outside current statutory timescales for completion.** Further collaborative research is needed to establish the factors associated with short and longer timeframes for completion.

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<sup>51</sup> The Children and Families Act 2014 introduced a statutory timescale for care proceedings of 26 weeks. Practitioners must now adhere to this timescale unless an extension is necessary in order to resolve the case justly (s.32 (5) & (6) CA 1989). However, in practice, timescales were falling prior to the implementation of the new statutory timescale in 2014, due to messages from the Family Justice Review 2011 and widespread concern about delay in resolving care cases.

**Figure 8: Proportion of cases completing within 26 weeks, per infant age category, per year [2011 to 2018]**



**To summarise:**

- **Between 2016 and 2018, 49% of newborns were “subsequent infants”;** that is their mothers had already appeared in care proceedings concerning an older sibling.
- **Based on a 5-year observational window, 51% of newborns were linked to mothers who had not appeared previously in care proceedings.**
- **Newborns were more likely to be subject to urgent ICO hearings and non-standard case management hearings than older infants, or any other age category of children.**
- **There has been a general trend towards shorter care proceedings for all infants.**
- **Further qualitative research is needed to understand the impact of shorter timescales for care proceedings on decision-making specific to newborns.**

## Final legal orders

Table 7 shows the legal order category for newborns and infants at the close of care proceedings. Due to disclosure controls and low numbers, we grouped a number of order types into the category “With parents/family members”. Patterns of legal order use and trends over time are particularly noteworthy, suggesting a marked change in practice for newborns, but also the broader category of infants.

**Table 7: Final legal order outcomes, per infant age category, per year [2012 to 2018]**

Infant's age	Highest legal order in the case	2012	2013	2014	2015	2016	2017	2018	Total
Under 2 weeks	With parents/family members	25 [21%]	27 [19%]	25 [18%]	25 [15%]	31 [19%]	14 [7%]	28 [13%]	175 [15%]
	In care	34 [29%]	45 [32%]	53 [38%]	73 [45%]	96 [58%]	104 [54%]	141 [64%]	546 [48%]
	Placed for adoption	60 [50%]	69 [49%]	63 [45%]	64 [40%]	38 [23%]	75 [39%]	52 [24%]	421 [37%]
	Total	119 [100%]	141 [100%]	141 [100%]	162 [100%]	165 [100%]	193 [100%]	221 [100%]	1142 [100%]
2 to 3 weeks	With parents/family members	6 [18%]	9 [24%]	9 [28%]	6 [17%]	7 [14%]	5 [13%]	5 [12%]	47 [17%]
	In care	11 [33%]	14 [38%]	10 [31%]	16 [44%]	28 [57%]	22 [55%]	29 [67%]	130 [48%]
	Placed for adoption	16 [48%]	14 [38%]	13 [41%]	14 [39%]	14 [29%]	13 [33%]	9 [21%]	93 [34%]
	Total	33 [100%]	37 [100%]	32 [100%]	36 [100%]	49 [100%]	40 [100%]	43 [100%]	270 [100%]
4 to 12 weeks	With parents/family members	19 [30%]	14 [25%]	12 [18%]	12 [24%]	9 [16%]	16 [27%]	8 [17%]	90 [23%]
	In care	14 [22%]	18 [33%]	28 [42%]	30 [59%]	35 [61%]	27 [46%]	34 [72%]	186 [47%]
	Placed for adoption	30 [48%]	23 [42%]	26 [39%]	9 [18%]	13 [23%]	16 [27%]	5 [11%]	122 [31%]
	Total	63 [100%]	55 [100%]	66 [100%]	51 [100%]	57 [100%]	59 [100%]	47 [100%]	398 [100%]
13 to 52 weeks	With parents/family members	34 [41%]	33 [34%]	23 [20%]	38 [27%]	31 [23%]	18 [17%]	28 [21%]	205 [26%]
	In care	13 [16%]	28 [29%]	50 [44%]	62 [44%]	71 [53%]	65 [63%]	74 [56%]	363 [45%]
	Placed for adoption	35 [43%]	36 [37%]	40 [35%]	41 [29%]	31 [23%]	21 [20%]	30 [23%]	234 [29%]
	Total	82 [100%]	97 [100%]	113 [100%]	141 [100%]	133 [100%]	104 [100%]	132 [100%]	802 [100%]
Total	With parents/family members	84 [28%]	83 [25%]	69 [20%]	81 [21%]	78 [19%]	53 [13%]	69 [16%]	517 [20%]
	In care	72 [24%]	105 [32%]	141 [40%]	181 [46%]	230 [57%]	218 [55%]	278 [63%]	1225 [47%]
	Placed for adoption	141 [47%]	142 [43%]	142 [40%]	128 [33%]	96 [24%]	125 [32%]	96 [22%]	870 [33%]
	Total	297 [100%]	330 [100%]	352 [100%]	390 [100%]	404 [100%]	396 [100%]	443 [100%]	2612 [100%]

In 2012, at the start of the observational window, a high proportion of newborns, but also all other age categories of infants, were “placed for adoption” at the final hearing of care proceedings. In 2012, this category of final legal order was recorded for 50% of newborns. For all other age categories of infants, proportions of infants “placed for adoption” ranged from **43% to 48%**.

However, over time, there has been a drop in the proportion of newborns “placed for adoption”. For example, in 2018, only **24%** of newborns fell into this category at the close of care proceedings. This pattern is consistent for all other age categories of infants, demonstrating a marked change in the proportion of infants “placed for adoption” at the close of care proceedings.

When we examine the proportion of newborns “placed with parents/family members”, again the picture is of a decreasing proportion falling into this category. For example, in 2012, **21%** of newborns were “placed with parents/family members” but by 2018, this proportion had fallen to **11%**. Again, the trend is not dissimilar for other age categories of infants. We have completed limited analyses based on finer categories of family orders, given small numbers and the potential for disclosure. However, we can report that across our observational window, use of **supervision orders is low, with supervision orders made for only 4% of newborns at the close of proceedings**. Overall, the use of supervision orders is very low for infants.

Regarding newborns “in care”, the opposite trend is observed. In 2012, **29%** of newborns were subject to care orders at the close of care proceedings. However, by 2018, this percentage had risen to **64%**. Again, this trend is consistent for all infant age categories. For example, in 2012, 22% of infants aged 4-12 weeks were “in care” at the close of proceedings. However, by 2018, this percentage had risen steeply to **72%**. It appears that more and more infants are recording care orders at the close of proceedings. Given that Cafcass Cymru does not currently record the placement as well as the legal order, it is not possible to ascertain how many newborns and infants “in care” are at home or placed with kin. However, it certainly appears that over time, practitioners are **making far less use of the full range of legal orders** available under the Children Act 1989 at the close of care proceedings.

When we compare Wales with England (*Born into care England*, Table 6, p.33) although in both countries a range of legal orders are authorised under the Children Act 1989, there are marked differences in the pattern of legal orders made for newborns and infants at the close of proceedings. The starkest difference is in the use of care orders, with far fewer care orders recorded for newborns in England at the final hearing of care proceedings, than in Wales. This issue is discussed in more detail in the final section of this report.

#### **To summarise:**

- **In 2012, the largest proportion of newborns were “placed for adoption” at the close of proceedings. However, there has been a decrease in the proportion of newborns “placed for adoption over time” at the close of care proceedings.**
- **There is similarly, a decrease in the number of newborns “with parents/family members” at the close of proceedings.**

- **Use of supervision orders is low for all age categories of infants.**
- **There is a steep upward trend in the number of infants “in care” [subject to care orders] at the close of care proceedings. Over time, the Welsh family courts are making far less use of the full range of orders available under the Children Act 1989 for newborns and infants.**
- **There is a marked difference in the pattern of legal orders recorded for infants in Wales and England, with Wales making far greater use of care orders for infants at the close of care proceedings.**
- **Further work is urgently needed to understand why over time, practice has changed markedly regarding the use of care orders for infants and to establish more fully, the permanency placement for infants falling into the category “In Care”.**

## 4. Policy, practice and research implications

### Volumes, timing and urgency of newborn cases

Between 2012 and 2018 infants (under one year of age) comprised 30% of the overall population of children involved in s.31 care proceedings in Wales. This is **by far the largest category of children in care proceedings**, when divided into one-year age categories. Over time (2011 – 2018), the number of infants becoming the subjects of care proceedings is increasing, as are incidence rates.

Of these care proceedings concerning infants, a high proportion are issued in the very first weeks of life, with **an upward trend in newborn cases against all measures**. In 2018, over half of all cases of infants in care proceedings were issued for newborns (aged less than two weeks old). Between 2011 and 2018, the number of newborns subject to care proceedings almost doubled, with **1,399** newborns were subject to care proceedings during this period.

This new empirical evidence adds weight to current Welsh government objectives to safely reduce the population of children in care, and highlights that the window for thorough **assessment of parents' capacity to care for a new baby and tailored support must start at a timely point in pregnancy**. At the time of writing, evaluation of the effectiveness of both national (Welsh) and local area guidance regarding pre-birth assessment, support and planning does not appear to have been formally undertaken. Although some very helpful procedures are in place to guide multi-agency practice, it is not clear whether their potential is being realised.

Given concerns raised by the Public Law Working Group (England and Wales) and outlined in the introduction of this report, we calculated the proportion of newborns and infants that were subject to either urgent ICO hearings or non-standard case management hearings. **Far more newborns than any other age category of children are subject to proceedings that are accelerated in this way**. Although further analysis needs to be done to understand the detail of this finding, this again firmly indicates the importance of pre-birth assessment and planning. Requests for urgent hearings may be entirely reasonable given the vulnerability of newborns, but must be accompanied by adequate submissions to the courts, such that all parties have the opportunity consider and respond to presenting concerns. Urgent hearings, early in any case of care proceedings are challenging for the Cafcass Guardian (Cafcass Cymru) tasked to robustly represent the best interests of the child, for parents who must instruct their own solicitor, and for judges who ultimately decide whether immediate removal or the making of an order is a proportionate response.

Over time, we have also shown that care proceedings are becoming shorter for all infants. At present, there is no published research on how the 26-week rule impacts (or does not impact) on decision-making in regard to newborns or infants, but evidence about court duration further strengthens the argument that preventative action must start early in pregnancy.

## Subsequent infants

Between 2016 and 2018, **49% of newborns were “subsequent infants”; that is born to a mother who had already appeared in care proceedings concerning an older sibling.** This provides firm endorsement of Welsh Government investment in the Reflect initiative.<sup>52</sup> This programme aims to reduce parents’ repeat appearances in care proceedings and the number of “subsequent infants”. However, it is perhaps surprising that 51% of infants subject to proceedings at birth in our dataset were not identified as “subsequent infants”. Effective pre-birth assessment and the provision of preventative services to test parents’ capacity for change are critical in all cases. However, in cases that are new to the courts concerning newborns, assessment undertaken during pregnancy is the only source of evidence upon which the court can draw.

**Recommendation 1:** Given the dearth of empirical evidence to inform very early intervention in the lives of newborns, there would be considerable merit in reviewing the casefiles of a representative sample of cases of care proceedings issued for newborns. The review would aim to ascertain the challenges to, but also examples of good practice, focusing on the quality and content of pre-birth assessment, support and planning, the management of care proceedings and stability of permanency arrangements. This recommendation is in line with those made by the Public Law Working Group (England and Wales) regarding newborns<sup>53</sup> and would supply further insights relevant to both England and Wales.

## DFJ and local authority variation

We identified **marked regional differences in the rates at which infants and newborns were subject to care proceedings across the three designated family justice areas in Wales.** Related research has already reported a clear association between deprivation and rates of children entering public care in Wales (Bywaters et al., 2018; Elliott, 2017). It is highly likely that deprivation accounts for at least a proportion of the variance we have reported. However, further factors are likely to be at play including professional practice, available preventative services, and implementation of pre-birth guidance.

**Recommendation 2:** The programme of research carried out by the Nuffield Family Justice Observatory will generate insights into the issue of care demand and deprivation. Through collaborative discussion with stakeholders, this empirical evidence aims to enable services to respond to local needs.

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<sup>52</sup> Roberts, et al. (2018) *Evaluation of Reflect in Gwent: Final Report*. Cardiff: CASCADE. Available at: <https://sites.cardiff.ac.uk/cascade/our-projects/reflect/>

<sup>53</sup> Keehan, Mr Justice (2019) Public Law Working Group: Recommendations to achieve best practice in the child protection and family justice systems. Interim Report, June 2019.

## Legal order usage

The pattern of legal order usage over time is particularly noteworthy. There appears to be a **marked change in practice** in terms of the legal orders made for both categories of very young children which appears **out of sync with the ethos of the Children Act 1989, which provides a clear legal framework for the use of a wide range of orders**. In 2012, care orders were made in 29% of newborn cases, however by 2018 this figure had risen sharply to 67%, with an associated decrease in the use of other orders. As mentioned earlier, Cafcass data does not currently provide information on children's placements, and children on a care order may be placed with unrelated foster carers, with kinship carers, or at home with birth parents.

The following questions emerged:

- Why has practice changed in favour of care orders at the close of proceedings? Is the 26-week rule prompting this change?
- Where are infants on care orders living, with unrelated foster carers, with kinship carers, or at home with birth parents?
- Where infants are on a care order with unrelated foster carers at the end of proceedings, is this a planned long-term placement?
- Are care orders at home a proportionate approach to support for reunification? How might supervision orders be strengthened?
- If care orders are made for infants returned home or placed with family members, how long should they last and what is current practice regarding discharge of orders?
- What expectations are set for parents or kinship carers, if children living at home are classed as looked after children?

As stated in this report (p. 23), Cafcass Cymru is changing the way in which legal orders are recorded, which will enable greater accuracy in analysis. In addition, Cafcass Cymru is introducing and piloting a case closure form. This is an important step forward and will improve the scope of the data, as placement and contact details will be recorded. When we draw comparisons with *Born into care England*, there appear to be markedly different trends in the use of legal orders for newborns and infants at the close of proceedings (see Table 6, p33). In England, there has also been a drop in the number of children placed for adoption, but in contrast to Wales, an increase in the use of Special Guardianship.

Given very low rates of supervision order use in Wales (4% averaged across the observational window), and in the absence of published literature on use of these orders in Wales, the work of Professor Judith Harwin and colleagues (2018) on the use of supervision orders in England is relevant. Harwin et al., 2018, found that local authorities in the north of



England appear less confident in the use of supervision orders for children returned home than those in the South. The research team also found that professionals were not confident that supervision orders afforded children returned home sufficient protection, given that local authority powers extended only to 'advise, assist and befriend' the family. The new evidence reported here on the pattern of legal orders for newborns and the broader population of babies suggests further analysis is needed of practices in Wales concerning reunification and placement with family.

**Recommendation 3:** In consultation with professionals, the Nuffield Family Justice Observatory will work to enhance understanding of the reasons behind the changing pattern of legal orders for newborns and infants at the close of proceedings, children's placements and future trajectories.

### **Surfacing and spreading good practice**

New and innovative practices are emerging in Wales. Systematic description and evaluation of emerging initiatives is needed to enable best practice to be evenly spread across different regions of Wales and further afield.

## 5. Conclusion

This report has begun to build evidence about the very youngest children in care proceedings in Wales. In addition, this is the first report to draw comparisons between Wales and England in respect of this group of children. Understanding the impact of the family justice system on newborns and infants is critical, given that decisions made for these children may either resolve safeguarding concerns and deliver permanence, or lead to very lengthy involvement in public services. When intervention starts at birth, the whole of children's childhoods stretch ahead.

The research team have made use of valuable administrative data provided by the Children and Family Court Advisory Services Wales (Cafcass Cymru). In pioneering new statistics for Wales, the authors aim to bring research more closely in line with policy's emphasis on effective early intervention in the lives of infants to avert developmental harm. Welsh policy and practice colleagues require a rich and differentiated picture of infants and their families in the family justice system and beyond, in order to make the best, evidence-informed decisions.

## 6. Case List

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- [2002] EWCA Civ 1932
- [K & H \(Children\) \[2006\] EWCA Civ 1898](#)
- [L-A \(Children\) \[2009\] EWCA Civ 822](#)
- [P \(A Child\) \[2018\] EWCA Civ 1483](#)
- M (Interim Care Order: Removal) [2006] 1 FLR 1043
- [Nottingham City Council v LM and others \[2016\] EWHC 11](#)
- [G \(R on the application of\) v Nottingham City Council \[2008\] EWHC 152 \(Admin\)](#)
- Northamptonshire County Council v AS and Ors (Rev 1) [2015] EWHC 199 (Fam)

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## 8. Appendices

### Appendix 1: All children analysis

**Table 8: Children subject to s.31 proceedings by age category at the issue of the proceedings, per year [2011 to 2018]**

Year Child's age	2011	2012	2013	2014	2015	2016	2017	2018	Total
Less than 1 year	385 [31%]	399 [32%]	340 [33%]	352 [28%]	345 [28%]	483 [29%]	467 [28%]	495 [30%]	3,266 [30%]
1 year	117 [10%]	110 [9%]	78 [8%]	101 [8%]	119 [10%]	124 [7%]	103 [6%]	107 [6%]	859 [8%]
2 years	115 [9%]	106 [9%]	77 [8%]	80 [6%]	81 [7%]	107 [6%]	115 [7%]	100 [6%]	781 [7%]
3 years	79 [6%]	90 [7%]	67 [7%]	86 [7%]	81 [7%]	118 [7%]	95 [6%]	93 [6%]	709 [6%]
4 years	82 [7%]	72 [6%]	69 [7%]	59 [5%]	65 [5%]	86 [5%]	93 [5%]	88 [5%]	614 [6%]
5 years	60 [5%]	71 [6%]	51 [5%]	79 [6%]	58 [5%]	90 [5%]	87 [5%]	84 [5%]	580 [5%]
6 years	47 [4%]	61 [5%]	41 [4%]	67 [5%]	54 [4%]	77 [5%]	86 [5%]	83 [5%]	516 [5%]
7 years	53 [4%]	51 [4%]	40 [4%]	47 [4%]	53 [4%]	64 [4%]	76 [4%]	72 [4%]	456 [4%]
8 years	51 [4%]	44 [4%]	37 [4%]	59 [5%]	52 [4%]	76 [5%]	68 [4%]	73 [4%]	460 [4%]
9 years	36 [3%]	48 [4%]	39 [4%]	57 [5%]	52 [4%]	65 [4%]	72 [4%]	64 [4%]	433 [4%]
10 years	48 [4%]	29 [2%]	26 [3%]	41 [3%]	38 [3%]	60 [4%]	56 [3%]	71 [4%]	369 [3%]
11 years	39 [3%]	35 [3%]	31 [3%]	49 [4%]	42 [3%]	50 [3%]	73 [4%]	58 [3%]	377 [3%]
12 years	23 [2%]	32 [3%]	29 [3%]	34 [3%]	43 [4%]	62 [4%]	62 [4%]	55 [3%]	340 [3%]
13 years	35 [3%]	36 [3%]	29 [3%]	47 [4%]	38 [3%]	67 [4%]	68 [4%]	74 [4%]	394 [4%]
14 years	28 [2%]	30 [2%]	26 [3%]	45 [4%]	41 [3%]	55 [3%]	82 [5%]	74 [4%]	381 [3%]
15 years	20 [2%]	22 [2%]	26 [3%]	25 [2%]	35 [3%]	58 [4%]	65 [4%]	55 [3%]	306 [3%]
16&17 years	7 [1%]	9 [1%]	11 [1%]	14 [1%]	18 [1%]	14 [1%]	23 [1%]	22 [1%]	118 [1%]
Total	1,225 [100%]	1,245 [100%]	1,017 [100%]	1,242 [100%]	1,215 [100%]	1,656 [100%]	1,691 [100%]	1,668 [100%]	10,959 [100%]

**Note:** Age of child has been calculated at the issue of the s.31 proceedings and rounded down to the nearest year. Children whose s.31 proceedings were issued up to two weeks before birth have been included in the "less than 1 year" group.

**Table 9: Year-on-year change in the number of children subject to s.31 proceedings by age category at the issue of the proceedings [2011 to 2018]**

Year Child's age	2011 to 2012	2012 to 2013	2013 to 2014	2014 to 2015	2015 to 2016	2016 to 2017	2017 to 2018	Average year-on-year change
Less than 1 year	4%	-15%	4%	-2%	40%	-3%	6%	5%
1 year	-6%	-29%	29%	18%	4%	-17%	4%	0%
2 years	-8%	-27%	4%	1%	32%	7%	-13%	-1%
3 years	14%	-26%	28%	-6%	46%	-19%	-2%	5%
4 years	-12%	-4%	-14%	10%	32%	8%	-5%	2%
5 years	18%	-28%	55%	-27%	55%	-3%	-3%	10%
6 years	30%	-33%	63%	-19%	43%	12%	-3%	13%
7 years	-4%	-22%	18%	13%	21%	19%	-5%	6%
8 years	-14%	-16%	59%	-12%	46%	-11%	7%	9%
9 years	33%	-19%	46%	-9%	25%	11%	-11%	11%
10 years	-40%	-10%	58%	-7%	58%	-7%	27%	11%
11 years	-10%	-11%	58%	-14%	19%	46%	-21%	10%
12 years	39%	-9%	17%	26%	44%	0%	-11%	15%
13 years	3%	-19%	62%	-19%	76%	1%	9%	16%
14 years	7%	-13%	73%	-9%	34%	49%	-10%	19%
15 years	10%	18%	-4%	40%	66%	12%	-15%	18%
16&17 years	29%	22%	27%	29%	-22%	64%	-4%	21%
Total	2%	-18%	22%	-2%	36%	2%	-1%	6%



**Table 10: Incidence rates, all children subject to s.31 proceedings (per 10,000 child population) by age category at the issue of proceedings, per year [2011 to 2018]**

Year Child's age	2011	2012	2013	2014	2015	2016	2017	2018	Total
0 year	106	112	99	105	103	145	144	155	120
1 year	33	30	22	29	35	37	30	33	31
2 years	33	30	21	22	23	31	34	29	28
3 years	22	25	19	23	22	34	27	27	25
4 years	23	20	19	16	17	24	26	25	21
5 years	17	20	14	22	16	24	24	23	20
6 years	14	18	12	18	15	21	23	22	18
7 years	16	15	12	13	14	18	21	19	16
8 years	16	14	11	17	15	21	19	20	17
9 years	11	15	12	17	15	18	19	17	16
10 years	14	9	8	13	11	17	16	19	14
11 years	11	11	10	15	13	15	21	16	14
12 years	6	9	9	11	13	19	18	15	13
13 years	10	10	8	14	12	21	20	22	14
14 years	7	8	7	13	12	17	25	22	14
15 years	5	6	7	7	10	17	20	17	11
16 &17 years	1	1	1	2	2	2	3	3	2
Total	19	20	16	20	19	26	27	26	22

**Note:** Based on (a) the number of children subject to s.31 proceedings, per age band at issue of proceedings, per calendar year (2011 to 2018) and (b) the population aged 0-17 years in England, estimated per age category at each mid-year (2011 to 2018).

Source (mid-year population estimates):

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>

## Appendix 2: Missing Data

**Table 11: Level of missing data by case start year [2011 to 2018]**

Year	2011	2012	2013	2014	2015	2016	2017	2018	Total
Number of records (children)	1243	1256	1020	1243	1216	1658	1696	1673	11005
Child's age	1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
Child's gender	<1%	<1%	<1%	<1%	<1%	<1%	<1%	2%	<1%
Local authority	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
At least 1 female respondent	1%	<1%	1%	1%	<1%	2%	3%	4%	2%
CMH/Urgent ICO Hearing Date	93%	92%	83%	26%	10%	6%	4%	6%	35%

**Table 12: Level of missing data by case end year [2012 to 2018]**

Year	2012	2013	2014	2015	2016	2017	2018	Total
Number of records (cases)	686	792	726	896	915	971	1056	6042
Legal order	13%	9%	7%	6%	5%	4%	9%	7%
Case duration	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%
Age of youngest child	<1%	<1%	<1%	<1%	<1%	<1%	<1%	<1%

### Appendix 3: Local authority incidence rates

**Table 13: Incidence rates, s.31 proceedings issued for newborns (per 10,000 live births), per local authority [2011 to 2018]**

Local authority	Live Births (2011 to 2018)	Number of infants subject to s.31 proceedings within 2 weeks of birth per 10,000 live births (2011 to 2018)
Blaenau Gwent	6070	46
Bridgend	12356	100
Caerphilly	16214	41
Cardiff	35831	39
Carmarthenshire	14896	41
Ceredigion	4863	47
Conwy	8737	68
Denbighshire	8213	43
Flintshire	13027	32
Gwynedd	9636	62
Isle of Anglesey	5861	41
Merthyr Tydfil	5800	74
Monmouthshire	6134	39
Neath Port Talbot	11999	98
Newport	15451	51
Pembrokeshire	9441	32
Powys	9350	36
Rhondda Cynon Taf	21943	46
Swansea	20194	72
Torfaen	8262	79
Vale of Glamorgan	10806	50
Wrexham	12708	34

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