



What could a public health approach to family justice look like?

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Nuffield Family Justice Observatory for England & Wales

Teresa Williams, Director of Strategy, Cafcass England

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The Nuffield Family Justice Observatory

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

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

Development team

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

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

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research
in practice

Preface

Teresa Williams, Director of Strategy at Cafcass England, makes a compelling case for a public health approach to family justice in this important insight piece for the Nuffield Family Justice Observatory (FJO). Her focus is on private law cases which centre on disputes over where and how children spend time with their separated parents. She argues that a public health approach is the most effective response to the escalating numbers of children caught up in the family justice system. Two-thirds of the new cases that Cafcass deals with are private law cases. Cafcass data shows that one third of separating families are using the courts to resolve disputes rather than the one in ten that is usually cited. This data forces us to think about the wider system. Such an approach begins with the whole population; it enables prevention, early intervention alongside fast tracking those who are already at high risk. The article goes on to unpack the arguments and practicalities of implementing a public health to family justice, in particular parental conflict.

Having been heavily involved in the Early Intervention Foundation, the emphasis on family separation as a public health issue and the role of prevention and early intervention is very welcome. There are inevitably a number of challenges in translating this into practice. The first is to gear up universal services to recognise and respond appropriately to the signs of parental conflict and to see this as a part of the day job. What are the signs to look for and who should they refer to? Second is finding effective ways of working across professional groups – the article rightly identifies the need for family justice and health professionals to work together. We also need to engage those who work in schools who are in a strong position to respond to children and young people's mental health difficulties, some of which may be a result of parental conflict. Former approaches like 'Think Family' have the potential to join up services for parents and children and young people. Third, making the economic case for early intervention has proved difficult, particularly in times of austerity where funding has shifted to statutory services. This is partly because the organisation of the funding of public services means that investment in one service doesn't necessarily yield resource savings in that service but in another. Teresa William's call for a joint approach between health, justice and welfare in the next Comprehensive Spending Review could be one way to resolve this.

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Despite these challenges, there is lots of innovative work being tried on the ground as described in this insight piece. Pilots led by the DWP to bring public and voluntary sector services together at a local level with a focus on interparental conflict and Cafcass' work on Co-parenting Hubs in partnership with One Plus One to name but two. But, if we are to embrace a public health approach to family justice, it will involve some radical re-thinking. This article puts a spotlight on families caught up in the private law system, an area which has had less attention. It's a reminder that the Family Justice Observatory has a critical role to play in relation to families and children caught up in difficult separation both through analysing the data to illuminate the key issues as well as working with different sectors to test better and more timely approaches to resolving family conflict.

Carey Oppenheim

Carey Oppenheim is an advisor to the Nuffield Foundation and former chief executive of the Early Intervention Foundation.

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The family justice system in England and Wales continues to experience increasing demand while resources at best remain flat. This is especially true in ‘private law’ cases - typically involving disputes over the arrangements for children to live or spend time with their separated parents. These private law cases are more numerous than public law, and are increasing at a faster rate in all parts of England and Wales. In the 2017-18 financial year, Cafcass worked with 91,960 children in ‘new’ cases, of which two thirds were in private law cases. Private law applications increased by 3.8% between 2016-17 and 2017-18, and have risen by 23% since the Child Arrangements Programme (the Practice Direction which sets out procedure for resolving child arrangement disputes) was launched in April 2014. It is therefore clear that strategies for tackling demand will be needed at the national, as well as local levels.

There have been a number of calls for the adoption of ‘public health’ approaches to be applied to tackle some of the consequences of relationship breakdown, both here¹ and internationally². These consequences include the impact on children of harmful conflict between their separating parents and the potential for this to be exacerbated by the family court process. But less has been said about what this might look like in practice, certainly in England and Wales. This [second] insight piece for the Nuffield Family Justice Observatory revisits the rationale for a public health approach in private law to offer earlier help and better manage demand. It considers the extent to which the current family justice system for ‘private law’ cases is equipped to adopt these approaches, and starts to map out some priorities for embedding a public health approach.

¹ Meier, R., *Relationships: the missing link in public health* – Relate, 2013 on behalf of the Relationships Alliance

² Salem, P., Sandler, I., and Wolchik, S. *Taking Stock of Parent Education in the Family Courts: envisioning a public health approach.*

Rationale for a public health approach to private family law

While the arguments for a public health approach to family justice are reasonably well known in many quarters, it is perhaps worth rehearsing them here. Public health approaches are typically characterised by taking a ‘whole population’ approach to the health, safety and wellbeing of citizens, rather than only focusing on those who are currently suffering or presenting for treatment. They seek to ensure that the maximum benefit is achieved for the largest possible number of people. In the case of private law cases, this would mean considering the extent to which the wider population of families – not just those who seek to resolve disputes in the family courts - are able to separate with minimum harm to dependent children, but also find strategies to promote children’s wellbeing while families reconfigure.

The Children & Family Court Advisory and Support Service (Cafcass) advises the courts in England (Cafcass Cymru provides a similar service in Wales) on the best interests of the children in both public and private law proceedings. Cafcass practitioners seek to understand the unique circumstances of each child: what helps and hinders their wellbeing and the family and other factors that might be contributing. This is leading to better recognition of the need to better understand **variability of risk and protective factors** in private law cases as they impact upon children’s outcomes, and the need to **tailor services appropriately**. The evidence base on this is growing, but we need to do more to improve our understanding of how the experience of changing family structures – including the formation of new relationships and blended families, and the reconfiguration of bonds with wider kin, as well as the breakdown of existing ones - impacts on a wide range of outcomes for children, including their lived experience³.

It is also understood that the journey of a case through the family justice system is just one small part of a dynamic family process. Multiple factors can contribute to conflict in a family (e.g disadvantage, unemployment, changes in household or family composition through the breaking or forming of relationships, or housing issues) and ongoing conflict can manifest itself in a number of ways with short and long-term consequences for a child (including in health, educational attainment, employment and criminality). As a result, the court offers both a **limited (and relatively late) intervention window** and a wide variety of factors outside the court will influence the achievability and sustainability of any agreements reached. In fact the court process itself risks escalating conflict to a point where it becomes

³ Bryson, C; Purdon, S and Skipp A: Understanding the lives of separating and separated families in the UK: what evidence do we need. Nuffield Foundation, May 2017

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harmful and there is a strong argument for diverting applications to alternative dispute resolution where there are no child protection or welfare concerns.

These factors suggest that a greater focus on '**early intervention**' may help so that some of the risk factors can be tackled at a **whole population** level. A recent report reviewing available data on separating families estimated that the 'whole population' equates to around 2% of households with dependent children that separate each year (Bryson et al, 2017)⁴. On the basis that there are around 6.3m households with dependent children in England and Wales, that is something like 125k separations per year. Given that Cafcass dealt with 42k new private law applications last year in England alone, this suggests that a third of separating families are using the courts, far more than the 'one in ten' usually quoted. This is an example of where a stronger evidence base can lead to more focussed policy and practice, and highlights insufficient use of existing data.

A whole population approach could be useful for at least three reasons. First, it would recognise and alleviate some of the underlying strains on family life – not least those relating to austerity and social inequality - which may exacerbate breakdown or its harmful consequences. Second, it would provide early help to prevent some lower risk cases from escalating to the stage where they need the relatively expensive and 'last resort' approach of the family courts. And third, it would help ensure that high risk cases - which may, for a variety of reasons, not reach the courts – are identified and fast-tracked to get the right help. Primary prevention services targeted at the general population is therefore likely to be the best way of ensuring that we support the right children at the right time and in the right way, which involves improving the 'infrastructure' of family life – including relationships, parenting capacity, adequate housing, and income. In this way, public health approaches can make an effective contribution to demand management strategies which typically involve: more efficient allocation of resources to those with greatest need; reduction of waste and misuse of resources; reducing excessive consumption - for example by those who use services that they want rather than need; and greater participation and control from those using services.

At Cafcass we have been reviewing our private law caseload against some of these demand management principles. For example, in a recent small-scale assessment of Cafcass case files in private law cases, it was estimated that around one quarter of cases contained no serious safeguarding concerns. According to this measure of need, at least, we have to question whether a very expensive – and stressful - dispute resolution through the courts is warranted, especially when the early stages of our private law process are the most

⁴ Bryson et al (2017 – op cit)

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resource intensive from a Cafcass perspective. Or whether with better information about alternative methods of dispute resolution, and the impact of the court process itself on all parties, some parents might be prepared to consider other options.

We also know from analysis of our private law case data that around a third of cases in private law return to court, suggesting that even if a solution is found to a dispute, this may not always translate into a problem solved. This does not mean that cases which return represent failures of justice, just as cases which do not return cannot necessarily be seen as a success. But we know enough from our analysis of these returning cases to conclude that interventions to change behaviour are likely to need to be developed as well as better ways of resolving disputes. For example, it would be helpful if disputing parties were supported to address underlying factors and behaviours which may be influencing family strain or adverse childhood experiences, so that any agreements made in court are sustained through positive post separation co-parenting, where it is safe to do so. Where it is not – for example in cases of domestic abuse - other forms of behaviour change intervention may first be needed. We would also need to better understand the motivations and circumstances of those intent on bringing cases to court, who have not so far proved amenable to diversion.

Interventions are also needed to help restore relationships and wellbeing among children and families. There is a growing evidence base documenting the longer-term health and mental health consequences of adverse childhood experiences including those – such as parental or substance misuse or mental health, domestic abuse and separation or divorce involving harmful conflict – that we regularly see in our private law caseload. Appropriate interventions will therefore, often need to be provided by health practitioners rather than justice system professionals. So, a final rationale for adopting public health approaches, is that we need to draw on the resources and expertise of the health system if we are to improve outcomes for children and families. A joint approach between health, justice and welfare to the next Comprehensive Spending Review (CSR) is a possible strategy.

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What does the FJS need if it is to deliver a public health approach?

Effective public health approaches in the family justice system need at least three key ingredients: understanding of the scale and nature of the problem to be addressed in the wider population; a mechanism for detecting, assessing and referring people to help; and some infrastructure for developing and testing effective interventions and scaling up approaches that have been shown to work.

The remainder of this article assesses how well developed these key ingredients are in the private law system.

1. Population data on the scale and nature of the problem (epidemiology)

What is it?

The study and analysis of the prevalence and distribution (the who, when and where) and risk and protective factors associated with the 'problem' to be solved. In this case the 'problem' in question is harm to children which has been shown to be associated with harmful parental behaviours associated with and potentially exacerbated by relationship breakdown. These include domestic abuse, substance misuse mental ill-health and inter-parental conflict. Importantly, an epidemiological approach would consider these factors in 'in tact' as well as separating families and examine when and how in the process of separation and family reconfiguration the risk of harm to children is greatest, and opportunities for wellbeing are best promoted⁵.

How are we doing?

We are blessed in the UK with relatively good population data on children and families, drawn from administrative records covering their access to health services, receipt of welfare benefits, engagement with social services and educational progress. We also have a range of longitudinal surveys at both individual and household level. Our internationally renowned birth cohort studies, which collect data about babies and follow them up over time, help us understand the processes of child development and the influence of various factors including

⁵ Bryson, C. et al (2017) – op cit

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parental circumstances and behaviour. We also have surveys such as Understanding Society which follow households over time to capture the dynamics of household formation and separation.

Data from these administrative and survey resources are increasingly being made available for further analysis, thanks to initiatives and investments from government and Research Councils UK which is seeing the creation of safe data havens to hold anonymised data securely, and to facilitate its reuse. Family justice data has been notable by its absence until recently – both because data in the family justice system is relatively under-developed and because the data sets that do exist are under exploited. This is changing with greater attention now being paid to the need to improve data on the intersection between family separation and the use of the family justice system to resolve disputes. Cafcass and Cafcass Cymru – as the organisations which advise the family courts in England and Wales respectively on all private law cases involving dependent children – have invested heavily in their case management systems, and have already been making this data available for research purposes on an ad-hoc basis. For the most part, research using our data has focused on public law issues, most notably the recent analysis of the changing prevalence of newborns in care proceedings.

Where next?

The establishment of the Nuffield Family Justice Observatory pilot phase from Spring next year, will catalyse a step change in the availability of population level data for epidemiological analysis. The Data Platform and Analytics Services, hosted at the SAIL databank at Swansea in collaboration with Lancaster University, will make available for secondary analysis anonymised data for private and public law that is consistent across England and Wales, and which will allow for analysis of local variation. The potential to link this data (using Welsh data initially) with other administrative and survey data sets in a secure environment, offers an exciting opportunity to better understand pathways into and out of the family justice system, and to make progress towards the ‘holy grail’ of understanding longer term outcomes for the children and families affected. We also need to better understand young people’s lived experiences in a holistic way. The Health Foundation’s Young People’s Future Health enquiry is just one example of a positive attempt to do this⁶. It listened to young people’s views on whether they have the right skills & qualifications, personal connections, financial & practical support, emotional support for a

⁶ ‘A place to grow: young people’s perspectives on the chance to grow up healthy across the UK’, (Health Foundation, 2018 forthcoming)

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healthy future. Cafcass is keen to find additional ways – to complement the important work of the Family Justice Young People’s Board - of sharing its rich insights on the circumstances, experience and outcomes of young people across the family justice system.

2. A consistent system of evidence-based assessment and referral routes:

What is it?

An effective public health system needs a way of identifying, for as much of the population as possible, those children ‘at risk’ of harm resulting from parental separation, so that early intervention strategies can be reliably put in place to promote wellbeing.

How are we doing?

There is increasing recognition of the detrimental impact on children’s outcomes that harmful inter-parental conflict (often in conjunction with other factors) can make on children’s outcomes. This is not simply a child protection or safeguarding issue. We should also be concerned about the impact on children’s wider wellbeing, and the potential for inter-generational consequences when children do not reach their potential.

As things stand, Cafcass and Cafcass Cymru are the main assessment and referral route for children who may be experiencing harmful parental behaviour in the private law system. Both organisations are working together to develop consistent frameworks, supported by evidence-based tools, to improve our assessment of risk and protective factors in private law. For example, Cafcass has recently published its ‘Child Impact Assessment Framework, which collates and extends existing practice tools in private law. This will continue to be updated as the evidence-base continues to improve on risk and protective factors and how these play out in increasingly complex family circumstances.

However, Cafcass can only be involved once directed by the courts, following an application to the court by one parent. As above, our best estimate is that this system reaches up to one third of separating households. This is a much greater reach than is commonly recognised, but still the minority of separating households and an even lower proportion of children in households ‘at risk’ of separation. In Cafcass’ experience, once cases reach courts disputes are often entrenched, and the opportunity to intervene is more limited. An application to court is in many cases part of a process of parents abdicating responsibility and starting to attribute blame. Reversing this process requires a significant cultural and

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behavioural shift, with better gate-keeping to prevent cases with no safeguarding or welfare concerns from escalating unnecessarily. The government's proposals for removing 'fault-based' divorce will be a major contribution in that direction.

To complement the work of Cafcass, a range of additional voluntary and statutory services – such as couple counselling, mediation and on-line resources – is available in the 'pre-court' arena, but on a somewhat patchy basis. We currently lack mechanisms for developing and agreeing consistent tools and approaches for evidence-based assessment of risk, across this wider network of services. And there is insufficient information-sharing between services to understand what interventions families may have tried before they reach court. Consistent referral routes would not only improve the user's journey, but could additionally enable professionals to understand what families have tried before and how to more appropriately tailor services in the future. Overall the current set up is certainly not a system of the sort envisaged under a public health approach.

Where next?

The Child Arrangements Programme (CAP) was first implemented in 2014 to facilitate and encourage the resolution of disputes outside of the court system and, where that is not possible, the swift resolution of the dispute through the court system. There is a compelling case to update the CAP to better manage the assessment and exemption process so that applications which should be dealt with through alternative dispute resolution don't end up in court, and to fast track cases where a child or vulnerable adult is at risk. A revised CAP could learn lessons from the Public Law Outline and place a time limit on those cases that go through the court system.

It would be valuable to consider what local and national arrangements would best ensure that children and families at risk of harm – including those who may be picked up as a consequence of parental separation – are identified early. One option is to extend the remit of Cafcass and Cafcass Cymru to work prior to a court application – this essentially represents building a public health approach 'backwards' from the family justice system (as represented by the courts). An alternative, or perhaps complementary, approach would be to start from a whole population approach by developing a universal offer up from the ground. Again, the start of such an approach is being developed by the Cafcass National Commissioning Team which is seeking to map and improve signposting to locally available services. But to do this at scale we would additionally need local forums that bring together family justice and health professionals - alongside other services for children and families – to commission or provide services that promote children's wellbeing as well as to 'safeguard' them. Local Family Justice Boards and Local Safeguarding of Children Boards each cover some of this territory but neither quite fulfil this remit.

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3. Develop, evaluate and make available effective interventions

What is it?

Effective mechanisms for assessment and referral need to be complemented by the availability of a range of services and interventions that have been shown to be effective. These can range from primary prevention interventions that seek to: prevent problems identified early from escalating; 'universal' information and education programmes to promote wellbeing, or tackle underlying causes at source; and restorative or therapeutic interventions that seek to reduce harm once it is experienced.

How are we doing?

It is welcome that the Department of Work and Pensions is investing in programmes which seek to reduce parental conflict, and that the Ministry of Justice provides Cafcass with funding to develop – often in partnership with other providers - information and education programmes for separating parents in the court system. For example, we now commission a Separated Parents Information Programme and a Domestic Abuse Perpetrator Programme. And we have other programmes in development: a pilot of a more intensive co-parenting programme for parents with more entrenched issues; and a Co-Parent Hub in partnership with One Plus One offering on-line resources to help couples improve their ability to co-parent effectively following separation. Again, we get good feedback on these interventions, but a constant refrain is that they would have been even more helpful earlier in the process. We are therefore working on the development of a Co-Parent Hub which will assist separating parents in their emotional readiness for agreeing arrangements for children following separation, and signpost parents towards appropriate NHS resources.

Very little effort or R&D investment has gone into designing restorative or therapeutic interventions for children who may have experienced heightened trauma or harm as a result of (or alongside) parental separation. We are still at the early stages of developing these interventions – developing possible models and their feasibility. Bigger challenges lie ahead in designing and undertaking trials which would enable us to robustly evaluate the effectiveness of these emerging programmes, and to work out how to scale them up.

Where next?

The family justice system is some way behind public health in the investment and infrastructure needed to develop evidence-based interventions. A reframing of the risk associated with family separation as a (public) health issue – not least given the mental health impacts for both children and parents – may help ensure appropriate investment as is

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starting to be the case in relation to family violence. And a public health approach requires a better recognition within universal services of the potential for conflict and the impact it has on children.

Conclusion

Overall then, the family justice system already has, or is starting to build, the essential building blocks that would be needed for a public health approach. While I have focused on private law for this article, the same arguments apply to public law, as evidenced by the new insights that emerge when a whole population approach is applied to topics such as the prevalence of newborns in care proceedings.

But even in the health arena we are still learning what an effective approach to developing evidence-based public health interventions in complex systems (which surely include the family justice) needs to look like given the difficulties of randomising trials in whole populations (Rutter, 2017)⁷. The emerging thinking is that we need to be better at asking how an intervention contributes to improving a system, rather than just asking whether it works to fix a specific problem, to make better use of 'natural experiments', and to focus on longer term outcomes to which a system contributes. The answers to these questions require investment in data, and better dialogue to understand how the different parts of the wider system can better connect, suggesting the Nuffield Family Justice Observatory has started down the right track.

⁷ Rutter, H. (2017). The need for a complex systems model of evidence for public health. In *The Lancet* issue 390. Retrieved from [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)31267-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)31267-9/fulltext)

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We fund research that aims to improve the design and operation of social policy, particularly in Education, Welfare, and Justice. Our student programmes provide opportunities for young people to develop skills and confidence in quantitative and scientific methods.

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