

#### Report focus

Insights from a series of workshops held with local authorities across the country to explore reasons behind marked regional variations in infant care proceedings

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# Discussion paper: What explains marked regional variations in infant care proceedings?



## **About this discussion paper**

In October 2018, Nuffield Family Justice Observatory (Nuffield FJO) published 'Born into care: Newborns in care proceedings in England', the first ever national study of newborn babies (under one week old) in the family justice system in England, led by the Centre for Child and Family Justice Research at Lancaster University.

The report uncovered a sharp increase in the number of newborns being subject to care proceedings in England—but also revealed marked regional differences in the number and rate of infants being removed from their parents' care.

To explore the factors that might lie behind these regional variations, a number of workshops were held with professionals from 57 local authorities in the North East, North West, London, the West Midlands, and Yorkshire and Humber. Claire Mason and Professor Karen Broadhurst from the Centre for Child and Family Justice Research facilitated the workshops and summarised the themes. The insights are shared in this discussion paper.

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## **About the Nuffield Family Justice Observatory**

Nuffield FJO 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. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance 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-founder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

Nuffield FJO has funded this project, but the views expressed are those of the authors and not necessarily those of Nuffield FJO or the Foundation.

## **About the Centre for Child and Family Justice Research**

The Centre for Child and Family Justice Research is based at Lancaster University and co-hosted by the Department of Sociology and School of Law. The Centre carries out primary empirical research that aims to improve the lives of children, young people and families.

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## Executive summary

A series of workshops with professionals from 57 local authorities across the country delivered some key and consistent messages regarding the regional variations in the number of infants being removed from their parents' care.

Discussions converged around five core themes: austerity and family poverty; pre-birth practice; residential assessment and parent and baby foster placements; relationships with maternity services; and the Public Law Outline and care proceedings.

Participants highlighted that 10 years of austerity had reduced the availability of preventative services and had limited the resources that can help families stay together—a significant concern in the North East in particular.

Across all regions, there was consistent evidence that practitioners viewed pregnancy as an important window for preventative intervention—but access to preventative services was found to differ considerably across England. Several local authorities referenced a general shift in practice towards initiating pre-birth assessments at an earlier point in pregnancy—but it was widely accepted that the nature, timing and quality of these assessments varies greatly.

The use of parent and baby foster carer placements and assessment centres is another issue that differs significantly across the regions. Whereas in many London local authorities, families were routinely offered a placement before separation was considered, in other parts of the country, particularly the North East and Yorkshire, there appeared to be fewer placements available.

Practices of discharging mothers and babies from maternity units also varies considerably across the country. In some regions, standard discharge policy is adhered to stringently, whereas greater flexibility is evident in other regions, with hospitals allowing mother and baby to remain longer on the ward, pending arrangements being finalised.

Careful adherence to the Public Law Outline (PLO) was seen as important in terms of encouraging a planned approach to care proceedings. However, there were marked differences between local authorities in whether care proceedings were issued at birth. In some cases, local authorities preferred, wherever possible, to offer residential or foster care placements for parent(s) and baby as an alternative to separation at birth.

All local authorities were mindful of the importance of issuing care proceedings shortly after birth, if the plan was for the immediate removal of a baby from their parents' care. Across the board, local authorities described a decrease in the use of section 20 voluntary accommodation, as a result of recent case law.

In addition, a number of local authority regions outside London highlighted that the closure of family law firms had resulted in less choice for parents seeking legal representation both before and during care proceedings.

## Regional variations in infant care proceedings

'Born into care: Newborns in care proceedings in England' was published in October 2018 by the Nuffield Family Justice Observatory. The report was the first in a series of publications focusing on the very youngest children in the family justice system. The Centre for Child and Family Justice Research at Lancaster University has led the series, in collaboration with the Rees Centre, Oxford University, Research in Practice and the Secure Anonymised Information Linkage (SAIL) Databank at Swansea University. The series now comprises:

- Broadhurst, K. et al. (2018). *Born into care: Newborns in care proceedings in England*. London: Nuffield Family Justice Observatory
- Alrouh, B. et al. (2019). *Born into care: Newborns and infants in care proceedings in Wales*. London: Nuffield Family Justice Observatory
- Griffiths, L.J. et al. (2020). *Born into care: One thousand mothers in care proceedings in Wales*. London: Nuffield Family Justice Observatory.

The first *Born into Care* report not only revealed a sharp increase in the number of newborns subject to care proceedings (more than doubling from 1,039 in 2007/8 to 2,447 in 2016/17), but also uncovered marked regional differences in the number and rate of infants being removed from their parents' care, whether based on the overall rate or within a single year.

Based on an overall rate, the North West and Yorkshire and Humber recorded the highest incidence rates, each recording over 30 cases of care proceedings concerning newborns, per 10,000 live births in the general population (2008-2016, see Table 1, next page). In contrast, London and the South East recorded the lowest overall rates, at 18 per 10,000 and 20 per 10,000, respectively.

All regions demonstrated an increase in incidence rates over time but the size of increase was again different between regions (see Table 2, next page).

The greatest proportional increases were evident in the North East, North West and South West. The lowest increases were recorded by Yorkshire and Humber and London (Yorkshire and Humber consistently recorded high rates of newborn cases, whereas London recorded consistently low rates of newborn cases). There was unexplained fluctuation in the percentage changes for all regions over time.

What explains marked regional variations in infant care proceedings?

**Table 1: s.31 proceedings issued for newborns, expressed as a rate per 10,000 live births**

Region / Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	Overall rate (2008-2016)
North East	14	17	19	24	29	28	25	29	48	26
North West	16	21	22	30	32	41	38	42	50	32
Yorkshire and Humber	28	31	35	43	44	44	40	40	46	39
East Midlands	16	18	23	24	36	35	32	31	39	28
West Midlands	16	20	24	25	35	41	31	32	40	29
East of England	13	15	18	21	27	28	23	27	31	23
London	14	17	15	20	22	24	16	15	23	18
South East	11	16	16	18	26	23	19	21	26	20
South West	12	16	17	21	24	28	26	24	35	22
Total	15	19	20	24	30	32	27	27	35	25

**Note:** Based on (a) the number of infants subject to s.31 proceedings within one week of birth, per region and per calendar year (2008-2016) and (b) the regional total number of live births in England in each calendar year (2008-2016). Overall rate has been calculated taking into account the total number of live births across the 9-year window (2008-2016). Source: (ONS live births): [www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths](http://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths)

**Table 2: Year-on-year change in the rate of s.31 proceedings issued for newborns**

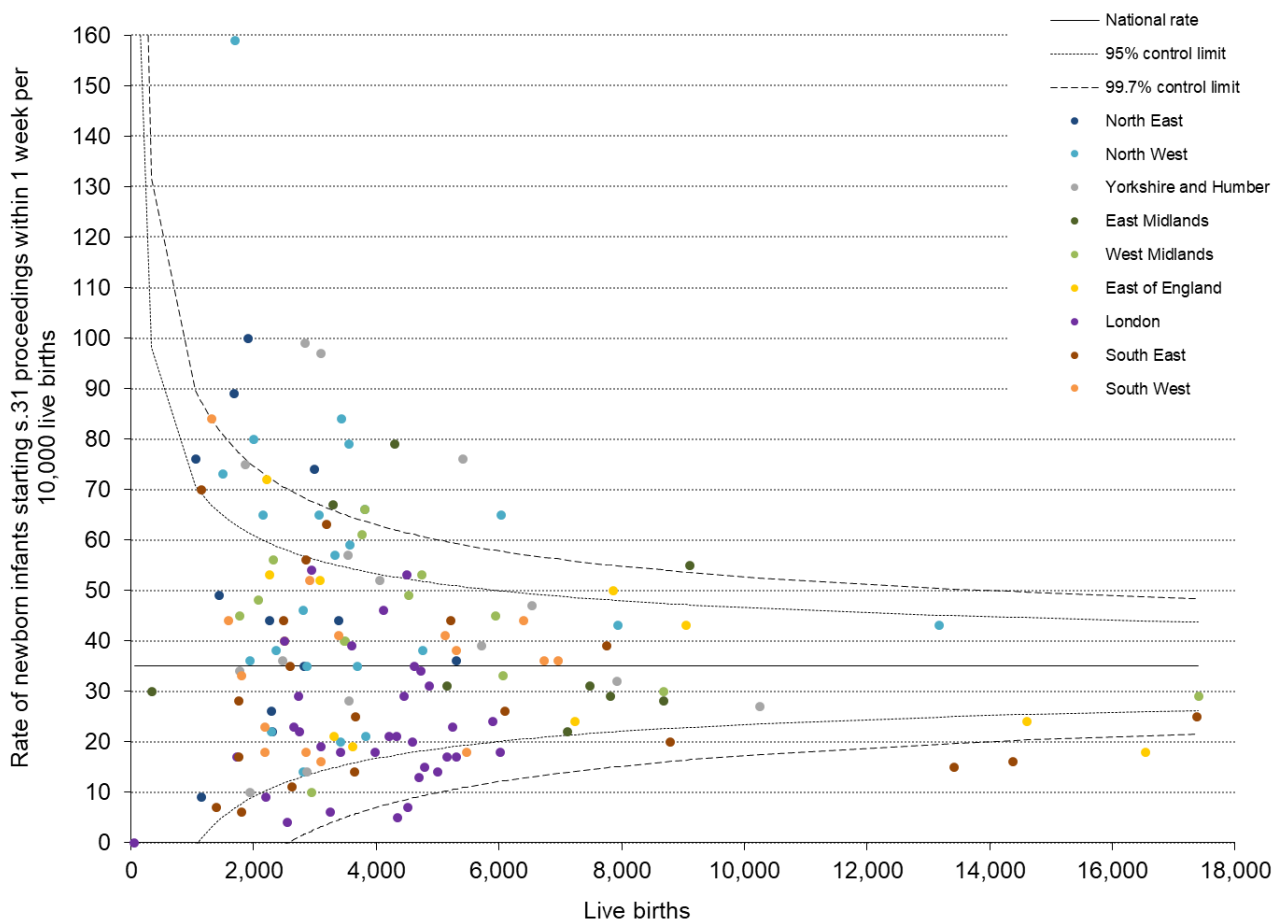
Region / Year	2008 to 2009	2009 to 2010	2010 to 2011	2011 to 2012	2012 to 2013	2013 to 2014	2014 to 2015	2015 to 2016	Average year-on-year change
North East	26%	10%	29%	20%	-3%	-12%	14%	68%	19%
North West	28%	4%	37%	7%	28%	-6%	10%	20%	16%
Yorkshire and Humber	11%	12%	24%	2%	0%	-8%	0%	14%	7%
East Midlands	16%	28%	4%	51%	-4%	-8%	-3%	26%	14%
West Midlands	26%	18%	4%	41%	17%	-26%	4%	24%	14%
East of England	20%	18%	15%	30%	2%	-16%	15%	17%	13%
London	19%	-10%	31%	12%	10%	-33%	-8%	55%	10%
South East	47%	3%	9%	47%	-11%	-19%	9%	26%	14%
South West	37%	4%	23%	17%	13%	-6%	-7%	45%	16%
Total	24%	8%	20%	22%	7%	-16%	3%	29%	12%

When looking at a single year (2016, the most recent calendar year), 16 local authorities in the North West, Yorkshire and Humber, the North East, the East Midlands and West Midlands were ‘outliers’, deviating significantly from the national average.

Compared to the average rate for England, which is 35 newborns per 10,000 live births, the rates for these 16 local authorities was significantly higher, ranging from 55 newborns per 10,000 live births to 159 per 10,000.

In contrast, there were five local authorities—in London, the South East and the East of England—with lower than average incidence rates in the same year. The rate range was five newborns per 10,000 live births to 18 per 10,000.

**Figure 1: s.31 proceedings issued for newborns, 2016 (rates per 10,000 live births, per local authority)**



**Note: Each coloured dot corresponds to a single local authority. The average rate and control limits have been calculated using the rates of all the local authorities in England.**

All other regions fell in line with the national average. The rate range for local authorities departing significantly from the expected average is considerable, and warranted further exploration.



## What we did

To explore regional variations further, we held eight workshops with professionals in the North East, North West, Yorkshire and Humber, London and the West Midlands. Due to time and resource limitations, it was not possible to hold workshops in every region—we therefore concentrated on outlier areas. (See Table 3 for details.)

The workshops were set up in the spirit of collaboration and open enquiry, and were convened by designated family judges (DFJs). They provided a space for professionals, including strategic leads, to deliver feedback on the regional variation findings, and enabled us to gain insights into the factors that may lie behind them.

**Table 3: Number of workshops and participating local authorities by region**

Region	Workshops	Participating local authorities
North East	2	12
North West	2	13
London	2	21
West Midlands	1 *	6
Yorkshire and Humber	1 **	5
Total	8	57

**Notes:** \* This workshop took place as part of a broader (virtual) Local Family Justice Board (LFJB) meeting. As such, discussion time was more limited, and there were fewer participants than at some of the other workshops. \*\* This workshop took place virtually.

At each workshop, the research team presented visualised data for each participating local authority on the volume and rates of newborns and infants subject to care proceedings under s.31 of the Children Act 1989 (2007-2017).

Discussions were structured around the following questions:

1. What are your thoughts regarding the rising number of newborn applications nationally and the regional variation? How do you account for it? Should we be concerned?
2. How do you account for the incidence rates in this region when compared to national figures?
3. What are your thoughts regarding your particular local authority rates compared to others in your DFJ region?
4. Why are care proceedings (typically) issued at birth in your local authority?
5. What are the challenges you face as practitioners regarding pre-birth assessments and interventions at birth?
6. What interventions do you have access to for vulnerable women during pregnancy? Where are the gaps?



7. What local area protocols are currently in place regarding pre-birth assessment and removal at birth, and, in your view, are they adequate/effective?
8. What are your thoughts regarding how care proceedings are currently managed for newborns?
9. What part do maternity services play in this picture?
10. What other data would you like to be made available/what data can you access to help you understand local area policy and practice?

## **Factors that were identified as relating to variance**

### **1. The general context of practice: austerity and family poverty**

When asked why more infants are appearing in care proceedings, professionals made explicit reference to the impact of 10 years of austerity—this had reduced the availability of preventative services and increased family vulnerability. The situation was seen as a double jeopardy, impacting on all children, and infants in particular, given that keeping an infant safe in the community requires a high level of support and supervision.

The workshops suggested that effects are most acutely felt in the North East (where incidence rates for infant removal are higher), and there were widespread concerns about the decimation of early help services being seen across many Northern local authorities.

Councils have been hit with shrinking public service budgets, and diminishing revenues from business rates, and differential council tax returns, were also described as disadvantaging councils outside of main cities.

In a number of local authority areas, spend was seen as skewed towards compulsory intervention, with budgets heavily weighted to the provision of substitute care rather than early help.

A particular concern was that some local authorities reported the closure of specialist domestic violence and drugs and alcohol services, as well as limited access to adult mental health provision.

All these factors mean the kind of intensive help needed to support parents with the very youngest infants is unavailable.

### **Participants also described the harsh realities of family life, where combinations of housing, income and service cuts are increasing family breakdowns.**

Intergenerational poverty was cited as a critical issue, given low rates of social mobility in towns and rural areas. The additional burden that Universal Credit places on some families was also raised. Furthermore, the resettlement of vulnerable migrants, or women escaping domestic violence, into poorer areas of England (where housing is cheaper) was adding to a concentration of need in low-resource communities.

Ofsted is considered central to driving local authority social work practice, and is seen as a significant contributor to regional variation. A number of local authorities in the North East,

North West, and Yorkshire and Humber thought that Ofsted intervention had led to more defensive and overly risk-focused practice, which was likely in part to account for the rise in care proceedings initiated.

In understanding the incidence rates, and particularly spikes in rates of infants in care proceedings within regional data, participants frequently cited serious case reviews as a contributing factor. Established under the Children Act (2004), the Local Safeguarding Children's Board can commission a serious case review (SCR) where a child has died or come to serious harm and abuse or neglect is the known or suspected cause. The SCR aims to identify what agencies can learn to improve the way they work together to safeguard children in the future.<sup>1</sup> Participants suggested that following an SCR, agencies responsible for safeguarding were likely to become more risk averse, leading to an increase in the number of children referred to children's social care, and the number of proceedings issued.

## 2. Pre-birth practice

All local authorities were keenly aware of the importance of providing help in pregnancy to promote infant and maternal health. Through effective pre-birth practice, professionals felt that parents could be supported to improve parenting capacity and stabilise lives.

A number of local authorities across the country reported that when they were unable to start intervention at an early point in pregnancy, issuing proceedings was more likely because the level of risk was unknown.

Several local authorities stated there had been a general shift in practice towards accepting referrals and initiating pre-birth assessments at an earlier point. However, this was not universal, and there remain clear differences between local authorities. It was widely accepted that the nature, timing and quality of pre-birth assessments varies greatly across the country.

It was however clear that resource constraints are the main reason for late intervention in pregnancy, rather than lack of awareness. Participants in some workshops also noted that even where there are services available, the offer is not sufficiently integrated. Members of the judiciary also noted that the detail of the work carried out within the pre-birth assessment period is not always evident in court paperwork.

Even in areas where new protocols aimed to operationalise a timely approach to help in pregnancy, participants reported that cuts to early services resulted in little being offered beyond assessment.

Conversely, in areas where resources could be invested in early help, specialist pre-birth teams or work was evident. Although the workshops did not enable any direct mapping of service provision onto rates of care proceedings, there were reports of preventative work from a number of authorities across each of the regions. Innovations included development of multi-agency pre-birth teams (e.g. domestic violence and mental health specialists), use

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<sup>1</sup> Under *Working Together to Safeguard Children* (Department for Education 2018), serious case reviews were replaced by child safeguarding practice reviews, and new guidance and criteria for carrying out reviews issued.

of family group conferences in pre-birth practice and provision of in-house family therapy and psychology services. London authorities generally reported more investment in both their in-house early help and family support services, as well as a larger pool of specialist services delivered by partner agencies.

In most cases, workshop participants considered pre-birth practice as a distinctive form of intervention—requiring knowledge and skills that are particular to pregnancy, the unborn child and preparation for parenthood. Developing a differentiated approach to pre-birth work was a work ‘in progress’ in many areas, with a number of local authorities reporting new protocols or specialist assessment pathways as under development.

In some workshops, it appeared that local authority social workers were primarily focused on assessment, and were less confident in their ability to offer psychosocial interventions aimed at building parental capacity or parental bonding with the unborn child. Practitioners were not always confident that parents with mental health difficulties were receiving timely help. A lack of data regarding the number of pre-birth assessments completed by the local authority and the subsequent pathway for the infant was noted.

A number of authorities had reorganised their pre-birth offer to families whose children had been previously removed from their care. In these cases, the referral by-passed front-door MASH and/or assessment teams and was allocated straight to a longer-term team, who may have a previous relationship with the family. Many saw this continuity of care as important.

### **3. Residential assessment and parent and baby foster placements**

The use of parent and baby foster carer placements and assessment centres varied greatly across the regions. In many London local authorities, families were routinely offered a placement in either an assessment centre or a parent and baby foster placement before separation was considered. In other parts of the country, particularly the North East and Yorkshire, such placements appeared much fewer in number because of budget restrictions and availability. Many local authorities described the considerable financial costs of placements where they were offered by the private or independent sectors.

In a number of workshops, questions of ‘what works’—in terms of both parent and baby foster care or residential assessment centres—were raised. Quality was described as considerably varied, and, in addition, it was not always felt that the needs of parent and baby were carefully matched to the placement. The latter was particularly true where planning was late or completed on an urgent basis.

In some courts, it appeared that there was a general expectation that such placements ought to be routinely offered to all families at birth, so that evidence of parenting capacity could be fairly assessed after birth. To separate at birth was sometimes seen to pre-judge the outcome of cases. The financial challenge this presented for many local authorities was highlighted.

#### **4. Relationships with maternity services**

Practices of discharging mothers and babies from maternity units varied considerably across the country. In some areas, hospital discharge policy (any baby deemed medically fit to leave hospital ought to leave the hospital within 12 hours of birth, or similar) was adhered to stringently. Local authorities asking for a mother and baby to be kept on the maternity ward for longer had been faced with charges for an 'overnight stay'. Some hospitals were concerned about 'bed-blocking', with demand for maternity services threatening to overstretch supply. It was clear that in some hospitals, discharge pressures were shaping actions and decisions.

However, in the majority of hospitals, greater flexibility was evident. Flexibility was seen as critical to best practice in these very particular circumstances, given the need to coordinate any placement provision, issue care proceedings, and provide support to mothers, fathers and wider family. Workforce stability, within children's services and hospital settings, was seen as conducive to better coordination, planning and communication.

Where babies were placed in Special Care Baby Units after birth, further challenges were reported. In particular, there appeared to be tensions around supervising parent contact, and whether this was the responsibility of the hospital or social workers. To date, such issues have been marginal to debates about newborns and safeguarding.

Examples of excellent practice were shared, which indicates that strained relationships between maternity units and children's social care are not inevitable, but downward pressure on services all too often undermines professionals' best intentions. Specialist midwives were seen as contributing to best practice, and particular examples of close working relationships between children's services and specialist midwives were given. Social work teams seemed to greatly value the expertise brought by midwives with specialist knowledge of perinatal mental health and substance misuse and felt this helped with care planning and building relationships with families.

Like many aspects of this work, individual relationships are key. Participants discussed the importance of continuity of midwife and social worker in helping to build understanding between professionals, and between professionals and the family. Conditions that allowed for trusted relationships to develop seemed to support better collaborative working—this included low staff turnover within social work and midwifery teams, dedicated pre-birth social workers and specialist midwifery roles.

#### **5. The Public Law Outline (PLO) and care proceedings**

Regarding care proceedings issued at birth, local authorities understood the need for clear joint pre-birth planning with midwifery services. However, a sizeable proportion of care proceedings were described as issued on an urgent or short notice basis. Reasons for the latter were: the local authority had not been notified of a pregnancy; pre-birth assessment had been started, but a formal pre-proceedings process under the PLO had not; and babies were born prematurely. The role of the DFJ in providing oversight and reviewing practice was also described as highly influential. For example, one area reported a reduction in the use of emergency orders during the period following a change in the DFJ.

Careful adherence to the PLO was seen as important in terms of encouraging a planned approach to care proceedings. However, *how* local authorities are using this framework varies, and reflects the overall resourcing and approach to pre-birth practice, as discussed above. A number of local authorities described the focus of the PLO as seeking to divert cases through a further period of closely tailored intervention to ensure that every attempt had been made to avoid proceedings being issued at birth. In other local authority areas, the focus of practice within the PLO appeared to be primarily on preparing the case for proceedings to reduce delay once care proceedings were issued.

Most local authorities agreed that asking parents to consent to the placement of a baby with foster carers or with family members by way of voluntary agreement under s.20 of the Children Act was an important option. However, local authorities were consistently aware of case law and the need to avoid the use of s.20 where the case warranted compulsory intervention and immediate interim removal. Colleagues felt that, increasingly, s.20 is reserved for its original intended purpose under the Children Act 1989 (as a family *support* service) rather than as a route to permanent child removal. This resulting change in practice was commonly cited as an important contributing factor to the rise in the number of care proceedings being issued at birth.

There were also marked differences in use of parent and baby placements pre-proceedings. In London, more professionals stated that care proceedings were not issued routinely at birth if a mother (or parents) and baby placement or residential placement was available. In London, colleagues placed greater emphasis on testing parenting capacity following birth, by keeping parent(s) and baby together. Outside of London, in some regions, parent and baby placements and/or residential placements appeared few in number, leaving fewer options for social workers wishing to keep parents and baby together for assessment.

The differences between London and the North of England and areas of the Midlands can also be seen in the varied use of care orders at home. Outside of London, colleagues gave examples of applications for care orders that resulted in the baby being placed with parents or with kin. The use of care orders at home has been discussed by both policy makers and academics (e.g. Harwin et al. 2019) and has also been considered by the Public Law Working Group (PLWG).<sup>2,3</sup> A new sub-group of the PLWG, led by Professor Judith Harwin and Mr Justice Keehan, is also taking up the role of the court in child reunification.<sup>4</sup>

The workshops suggested that pressure to meet the 26-week timescale for care proceedings was impacting on the time available to work preventatively with families. This was also cited as a key reason for timely pre-birth assessment. In some cases, professionals stated that pressure to conclude care proceedings within the 26-week timeframe meant that the courts were granting care orders, but with an understanding that the local authority may then return to court to discharge the order in favour of a supervision order or special guardianship order, following the completion of further assessments.

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<sup>2</sup> Hodgson, S. Hayes, S. and Bunker, P. (2017). *Placement at home with parents: North West Audit Summary Report*, Sefton Council, Cafcass and Association of Directors of Children's Services (ADCS).

<sup>3</sup> Harwin, J., Alrouh, B. Golding, L., McQuarrie, T., Broadhurst, K, Cusworth, L. (2019). *The contribution of supervision orders and special guardianship to children's lives and family justice*.

<sup>4</sup> Harwin, J. and Justice Keehan. (2020). *Keeping families together, the role of the court in child reunification*.

Kin who put themselves forward to care for babies, part way through or at the close of proceedings, were seen as a cause of delay, but equally professionals were clear that where an infant could be placed safely with kin on a long-term basis, this option had to be properly and fairly considered. The President's Office has recently released best practice guidance and a report on special guardianship, which may in time influence special guardianship practice.<sup>5</sup>

The quality and availability of legal representation for parents was also seen as a key issue in the final outcome of care proceedings. Legal aid cuts have clearly affected both these considerations, with a number of local authority areas outside London describing the closure of family law firms and, consequently, less choice for parents seeking legal representation both before and during care proceedings.

## Concluding comments

This report is based on a thematic summary of workshop discussions held with 57 participating local authorities across five regions in England. While this exercise did not include a systematic mapping of service provision or review of local area cases, consistent messages could be drawn from the workshops, as summarised above.

According to professionals, several factors are responsible for regional differences in the number and rates of newborns and infants entering care proceedings. They include: austerity and poverty; timeliness and type of pre-birth help; the availability of parent and baby placements; adherence to the PLO; Ofsted and performance; and the quality of legal advocacy for parents. In addition, parents' experience of pre-birth assessment is shaped by the stability and consistency of the local area workforce and relationships between health and children's social care services.

Across all regions, there was positive evidence that pregnancy is viewed as an important window for preventative intervention, and there were examples of innovation in specialist pre-birth practice across regions. Specialist pre-birth teams were seen as highly effective, given the distinctive requirements of working with parents and the unborn baby. However, the discussions confirmed that access to preventative services—including the availability of dedicated pre-birth teams and residential and parent and baby placements—differed considerably across England. The extent to which professionals described effective relationships between social work, midwifery and other health services also varied markedly.

The professionals we spoke to broadly agreed on the practical measures that could be taken to lower rates of newborn and infant removal—but many are restricted by budget and resource constraints, rather than a lack of awareness of alternative ways of working.

Local area resources are thus highly consequential, and in keeping with growing concerns about *unequal life chances*, the upshot is that infants *do not* have an equal chance of being born into care for all the reasons described in this workshop report.

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<sup>5</sup> Public Law Working Group. (2020). *Recommendations to achieve best practice in the child protection and family justice systems: Special Guardianship orders*.