Two thousand babies

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Many people working in the family court system are aware of its increasing inability to protect families against unwarranted state interference. No research illustrates this trend more clearly than that of Professor Karen Broadhurst and her colleagues (Broadhurst et al, 2015, 'Connecting Events in Time to Uncover a Hidden Population: birth mothers and their children in recurrent care proceedings in England'). The research establishes that the number of infants subject to care proceedings at birth has risen sharply. Since 2008, the number of new-borns subject to a public law order within 31 days of their birth has increased from 800 a year to over 2,000 a year. The fastest growing sub-set is babies under 7 days old. The plan in almost all such cases is for immediate separation of mother and child.

Are there 150% more dangerous, psychotic or wholly un-helpable new mothers now than there were in 2008? The answer is, plainly, no. What is happening to the family justice system to cause this shift? We believe the following factors are at work:

- There is a sustained and powerful government drive in favour of adoption, with pressure placed on local authorities to increase the number of children adopted from care. Social workers are encouraged to focus more of their time and attention on infant removals.
- Frontline services for children and families are cut to the bone. Sustained direct engagement with parents and long term support is largely a thing of the past. Social services provide support over a short period and, if sufficient change is not shown, the response to continuing risk is removal. Research demonstrates that these families have complex and multiple needs and may require some degree of help over years, not weeks or months.
- Within proceedings, the numbers of experienced child care lawyers continues to fall. Those who remain are forced to take larger case-loads and much of their time is taken up with negotiations with the Legal Aid Agency. They are able to spend less and less time with their highly vulnerable clients. They have limited time to prepare their cases and face a very high test for obtaining independent clinical and welfare expert evidence.
- There is an intense focus by government on the need for speed – pushing care cases through the court process within 26 weeks of issue of proceedings. Despite the repeated concerns voiced by the higher courts, this research shows that justice is indeed being sacrificed to speed and on a significant scale. The government-appointed Family Justice Board is focussed on time targets and case throughput. At local level, it seeks to include judges in a managerial model where they are part of a partnership with local authorities and Cafcass (but not parents). The judge is treated by civil servants as the senior court resources manager, not as someone whose duty it is to remain impartial and to do justice in the individual case, without fear or favour.
- Almost two thirds (19,300) of all children who started to be 'looked-after' in 2014–15 (31,070) were voluntarily accommodated under s 20 of the Children Act 1989. Many of these children are also under one year old. The time spent with the child already placed away from its parents is being used by social work departments to start 'pre-proceedings' work, building their case before the 26-week clock starts ticking. Experts, if needed, are usually chosen and instructed by the local authority alone with no judicial

oversight of issues and instructions. There is no Art 6 fair trial protection, as there are no proceedings on foot, and the child has no independent voice or representation.

- The Cafcass policy of 'proportionate working' coupled with very high workloads, has substantially reduced the amount of independent investigation and assessment by children's guardians. As a result, guardians are less able to challenge poor social work or plans. The managerial culture of Cafcass mirrors that of the Family Justice Board, and does not give priority to the individual service provided to the children and the courts. For example, Cafcass has resisted introducing a requirement that every child will be visited by his guardian at least once during their appointment. In 2011, the Justice Select Committee found that the organisation was not focussed on the best interests of the child. There has been no acknowledgment of that criticism, and no shift in the culture.

The erosion of the court process as a protection against the unnecessary removal of children is starkly demonstrated by this research. Urgent consideration needs to be given to the help these young mothers receive during pregnancy and in pre-proceedings, as well as after care proceedings are concluded. The message from the research is that, once the case concluded and the baby was permanently removed, the mothers were left with no support. Bereaved mothers often have another baby to assuage their grief and loss. These mothers undergo the same loss, and official indifference to their plight helps to create a tragic cycle of repeated removals.