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Public engagement event at Bristol Family Justice Centre, 21st July 2016 debating the motion ‘Is the child protection system too risk adverse?’

Risk and (un)reliability in child protection and safeguarding

Lauren Devine and Stephen Parker

Participants

Speaking for the motion

Anthony Douglas CBE. Since 2004 Anthony has been Chief Executive of Cafcass, the national agency charged with articulating the voice of the child in family courts throughout England. Cafcass employs the most number of social workers of any UK organisation, responsible for 120,000 children annually. He was an economist and a journalist prior to becoming a social worker and has written 4 books on UK social care. He is a Visiting Fellow of the Universities of East Anglia and Plymouth and is a member of the national Family Justice Board and the national Adoption Leadership Board.

Dave Hill. Dave is a social worker of 36 years standing, Dave is the Director of Children and Adult services at Essex County Council and President of the Association of Directors of Children's Services (ADCS).

Speaking against the motion

Susan Jacklin QC. Susan is a barrister practising from 1 Garden Court Family Law Chambers, Temple, London. She is also an associate tenant at St. John’s Chambers, Bristol. She specialises in all aspects of family finance in the context of relationship breakdown and private law disputes regarding the care of children. She has extensive experience of the child care system through sitting as a part-time judge (‘Recorder’) and through representing parents, local authorities and guardians as an advocate in care cases until 2011. She was Chairman of the Family Law Bar Association for 2014-2015.

Gemma Kelly. Gemma is a family barrister specialising in children work from 1 Garden Court Chambers in London. She undertakes public and private law

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proceedings for local authorities and parents in equal measure. She has a particular interest in cases involving complex medical evidence.

**Expert Panel**

The expert panel are **Dr Lauren Devine**, Barrister and Senior Lecturer in Law, and **Mr Stephen Parker**, Senior Lecturer and Research Fellow in Law from the Centre for Legal Research (CLR), University of the West of England, Bristol. They are the Principal Investigator and co-Investigator of the Economic and Social Research Council-funded project 'Rethinking Child Protection Strategy'.

**Stephen Parker**

“Risk assessment in child protection and safeguarding is at the core of the child protection system.

It is a key decision making tool, from which flow consequences with wide ranging impacts.

They determine referrals into children's services

They determine what interventions are needed, and

In court they determine a child's future but also of their siblings, parents and wider family.

In many cases the consequences are permanent.

Similarly to the aircraft industry, safety is considered paramount however there are stark differences in the levels of accuracy that are applied. These are some basic aerospace principles:

- We all expect aeroplanes to be safe.
- We expect the risk assessments the aerospace industry use and the regulators apply to guarantee that safety.

2 Economic and Social Research Council grant number ES/M000990/1 for £202,487
• In aerospace, risk assessments are standardised and where risks can be measured they are.

• Not only are the identified risks assessed but the mitigation actions are also fully considered.

• The consequences of acting to prevent the risk need to be properly taken into account.

• In industry, assessments are mostly made using cost benefit analysis to decide the best approach to take.

• Combining risks is not a trivial matter. 1 + 1 does not equal 2 in risk assessment.

• Each decision will have pros and cons. Risk assessment is only the start.

There is a very big difference between the accuracy involved in assessing risk in the aerospace industry and the methods by which risk is assessed in child protection. Given the consequences, more rigour needs to be applied to the factual basis of risk calculations and their accuracy. Some key questions need to be addressed:

• What, if any, level of risk is acceptable in child protection?
• How is the confidence limit of risk assessment calculated in child protection? and
• How does this translate to the standard of proof required in public family proceedings which are decided ‘on the balance of probabilities’, which require more than 50% certainty. It is far from clear that this is clearly articulated in many cases.

In relation to child welfare, today there is so much emphasis placed on perfect parenting that it is difficult to see the exact point at which parenting becomes ‘risky’.

Dr Lauren Devine

“We are funded to investigate child protection strategy to decide whether it is justified. As part of that project we are looking at the use of risk assessment in child protection and

Dr Lauren Devine is a Barrister and Senior Lecturer in Law at the University of the West of England. She is the author of ‘The Limits of State Power and Private Rights: Exploring Child Protection and Safeguarding Referrals and Assessments and is the Principal Investigator of the Economic and Social Research Council-funded project ‘Rethinking Child Protection Strategy’.
safeguarding work and how serious case reviews influence risk policy.

- Our starting point is to recognise that the ‘child protection system’ is not a single ‘thing’ – it is a collection of stages which have different purposes and thresholds in order for a family to progress to the next stage. The law places a duty on local authorities to make enquiries where a child ‘is suffering or is likely to suffer significant harm’ (s.47 Children Act 1989). It is the ‘is likely to’ that requires a future prediction. Difficult, so an approach needed to be found to enable local authorities to fulfil this duty. How did they do this?

- By focussing on risk. Focussing on risk in child protection is a very neat theory. But it is a theory, not a science. It requires someone to say what is ‘risky’ and what is not, and how risky are the ‘risky’ things. It is a compelling idea that it is possible to predict, and therefore prevent at least the majority of child abuse. However, 25 years after the start of the use of risk in child protection the ‘science of risk’ is unreliable, uncertain and no more than an indication of what might happen, not what will happen. A neat theory, but the NSPCC’s prevalence estimates over the same period do not indicate that it has resulted in a reduction in detected child abuse. A reasonable question is how and why we are in this position?

- The use of risk in child protection was introduced in the late 1980s. It was warned at the time that basing child protection decisions on identification of risk would result in a large number of false-positive cases, and some missed cases. It was assumed that the stages of the child protection system would identify and remove the false positive cases based solely on risk prediction. This was an over-optimistic assumption. A test study was done at the time on 10,000 cases to see how many ‘risky’ cases went onto abuse their children. They were wrong in over 97% of cases. This warning has been forgotten. Why?

- Risk is not a ‘thing’ any more than ‘child protection’ is a single thing – Risk assessment is a probability estimate. It is important to remember that ‘risky’ families probably do not abuse their children (remember the 97%+ statistic). On the other hand, families who are not ‘risky’ sometimes do. This is how some cases are missed, and how many families are escalated through the stages of the child protection system towards litigation on the basis of what might happen, rather than what has happened.

- Our project investigates how adequate the system is at each stage in detecting and discarding these cases. There are numerous stages to the child protection system. They can be seen as an inverted triangle. A large
volume of cases ‘drop out’ of the system at the early stages. The key stages are:

- **Assumption** – where the false positive results go into the system
  - Referral (reasonable **suspicion** of significant harm, based on **observation of a risk** ‘sign of abuse’);
- **No filter for false positives**

**Investigatory** – where, in theory, the false positives are discarded.

- Assessment (an assessment (**inquiry**) into all aspects of family life to see if a risk exists and if further action should be taken);
- Conference & CPP (the stages at which evidence should be produced – however the evidence may be evidence of a risk)

- **Some filter for false positives**

**Adversarial** – where, in theory, any remaining false positives are discarded

- Litigation (this stage is **adversarial**. This is where arguments should be tested, and unreliable evidence rejected).

- **Some filter for false positives.** So not only is risk assessment of itself unable to be particularly accurate, or reliably measured to an appropriate confidence
limit but it is very difficult to disprove. These features in a theory are a recognised test for ‘pseudoscience’ (Popper, 1962)

- In summary, there is no guarantee that false positives will be filtered out, and no-one knows how many false positives have been acted on. This is an injustice for those children, their parents and for society. However, it is certainly also risk adverse.

- What about false negatives? These are the missed cases. When these result in a serious case, a SCR takes place. Analysed together these reports show the consequences for individual children. However, they also show that there are no particular characteristics in these cases that are not also there in non-serious cases and in the general population. As a risk prediction method, all this tells us is that we can’t rely on characteristics to predict risk. The policy solution is to treat all cases as if they fall into this most serious category. There is no statistical evidence that this has reduced child fatalities, but it serves to draw more false positives into further stages of the child protection system.

- Rejecting risk altogether would be wrong, and contrary to legislation. However, there is an urgent need for a radical strategic rethink in policy and practice about how each stage of the child protection system manages false positives and false negatives. This re-think needs to take place in the context of justice and fairness.”