Rethinking Child Protection Strategy: Progress and next steps

Keynote address: Transparency Project Conference, 3rd June 2016, The Priory Rooms, Birmingham 'Where do we go from here?'

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Abstract

This paper explores the findings from the Economic and Social Research Council funded project 'Rethinking Child Protection Strategy' together with our proposals for next steps. Our findings indicate that the current strategy requires urgent review and reform.   The three areas of investigation in our project are (1) referral and assessment trend analysis; (2) evaluation of the outcome and impact of adverse event analysis, with a focus on Serious Case Reviews; and (3) evaluation of risk assessment in child protection and safeguarding work.   Our findings show the current strategy of conflating child protection with safeguarding at the early stages of referral and assessment have not resulted in more efficient or proportionately more detection of child abuse that the question of consent has been inadequately considered under the new Continuous Assessment framework, and the focus on risk does not provide a consistent or reliable method of abuse prediction or prevention. The current strategy is inefficient and does not adequately address the question of child abuse. This paper explains the data findings and also introduces four new theoretical findings produced during the lifecycle of the project. A summary of how we are disseminating our findings is given together with next steps for this research agenda.

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Introduction

In 2015 I gave a keynote paper at the first Transparency Project Conference in London (Devine, 2015a). In this paper I outlined the research funded by the Economic and Social Research Council that I am undertaking in the field of child protection and safeguarding together with my co-Investigator Stephen Parker.[2] At the time of the paper in 2015 our project, 'Rethinking Child Protection Strategy' was in its early stages: we had completed the first of three major sections but nevertheless we had significant findings to share. These findings are available in the paper that I gave about them in 2015 (Devine, 2015b) and in our Working Paper, *Rethinking Child Protection Strategy: Learning from Trends* (Devine and Parker, 2015).

In summary, we had established that over the 25 years since the Children Act 1989 came into force the impact of England's referral and assessment system had enabled approximately 5% of families to be referred each year. However, this had not led to the expected reduction in child abuse as the efficiency ratio of referrals to detections had dropped over the period from 24% to 7% (Devine and Parker, 2015). This raises fundamental questions about the appropriate strategy for a system designed to (a) minimise unnecessary government interference into private family life; and (b) address the issue of child abuse.

Since I gave that paper, further stages of 'Rethinking Child Protection Strategy' have been completed, and we are now reaching the final stages of data collection and analysis before producing our final results in three interim Reviews and a final project Report. These further areas of investigation cover what we consider to be key elements of influence in child protection and safeguarding policy: the increasing use and reliance on risk assessment and the use of retrospective adverse event analysis, mainly Serious Case Reviews but also Public Inquiries and the Child Death Review Process.

As the theme of the Transparency Project's 2016 Conference is 'Where do we go from here?' this paper aims to address two questions:

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1. To provide an update to the ongoing research we are undertaking in 'Rethinking Child Protection Strategy'; and

2. To place this into the context of suggesting practical steps that should be taken to address problems with current child protection strategy. In practice this second question both arises from and can be answered alongside the first question: in academic terms it refers to scoping the potential pathways to impact of our work.

Government strategy: conflating child protection and safeguarding

In the current climate of heightened concerns about historic child abuse, highlighted by the Independent Inquiry into Historic Child Sexual Abuse (IICSA) and the current government's consultation on mandatory reporting, Reporting and acting on child abuse and neglect (HMGov, 2016) it is easy to forget that only a decade ago there were serious concerns about over-intrusive policy and legislative direction in safeguarding and child protection that had been introduced by the Children Act 2004 (Anderson *et al* 2006, 2009). Eileen Munro and Nigel Parton warned:

> 'England is in the process of introducing a mandatory reporting system but not based on any notion of child abuse but on the basis of "a cause for concern", which is not defined in the legislation. The new policy of "safeguarding" children has a much wider remit than just "protecting" children from abuse or neglect.' (Munro and Parton 2007:14)

The concern was that the framework for protection of children under s.47 Children Act 1989, and the framework for providing services for children in need under s.17 Children Act 1989 was being expanded to include all children in the 2004 Act. This raised questions of privacy and family autonomy that were not resolved in the 2004 legislation and enabled an unprecedented high level of surveillance and intervention at a level far below the s.47 threshold. It represented a major strategic change. The former strategy was more restrictive, based on ideology of minimal intervention. The principle underpinning the Children Act 1989 was to:

> '…realign[s] the balance between families and the state so as to protect families from unwarranted state interference …' (Allsop, 1990:41-46)

The state was to interfere coercively only when the threshold of 'reasonable suspicion of significant harm' under s.47 was reached. All other intervention was to be consensual and based upon a principle of partnership working between parents and the state. Unless the state has a lawful reason via a power or a duty to interfere into private life, any such interference is *de facto* unlawful and *ultra vires* unless it is consensual. The Children Act 2004 and subsequent statutory guidance created the ostensible gateway for expanded intervention but it remains the case that unless the threshold for s.47 has been reached interventions should be consensual, not coercive.

One of the reasons for the expansion in the 2004 Act was to address the question of parents whose parenting was considered inadequate and who did not want to engage with social work, but had not reached the s.47 threshold. The 1989 legislation was clear on this point: until the s.47 threshold has been reached, coercive measures cannot be used. However, since the 2004 Act successive versions of the statutory guidance *Working Together to Safeguard Children* (HMGov, March 2010; DoH, April 2010; DfE, 2013; DfE, 2015) progressively eroded this boundary by enabling very low level referrals based on theoretical risk estimates. Social work assessments used the consensual framework laid out in *Framework for the Assessment of Children in Need and their Families* (HMGov, 2000), applying it to all cases, making risk estimates. The Children Act 2004 thus enabled a massive expansion to the categories of children who potentially fell under the remit of *Working Together to Safeguard Children* statutory guidance. Formerly these categories were restricted to children who were either 'in need' under s.17 or 'suffering or at risk of suffering significant harm' under s.47. Following the 2004 Act all children are now in a category which could be referred. This is a consequence of the expansion of 'safeguarding' as a separate but related concept to those of 'child in need of protection' and 'child in need'.

In addition, the current post-Munro (Munro, 2011) position conflates need and risk into one Continuous Assessment. It is therefore difficult to see where the boundaries of need and risk lie, and consequently difficult to establish where consent appears in this process. Our analysis shows that the consequence of this strategy is an increasingly large number of families referred to Children's Social Care Departments, mainly by agencies covered by s.11 Children Act 2004 (Devine and Parker, 2015a).

These referrals are mainly found not to be cases of 'reasonable suspicion of significant harm' but many are nevertheless assessed as if they do reach this threshold. We consider the current position to be at least potentially unlawful in respect of the interference itself and any associated data sharing that takes place in cases where consent is not explicitly given and which falls below the s.47 threshold (Devine, 2015c).

Our funded projects

'Rethinking Child Protection Strategy' is the second funded project we are running to investigate issues relating to the means by which families are entered into the child protection and safeguarding 'system'. The first project focussed on an earlier stage of the system by conducting empirical research with education professionals in schools to evaluate their safeguarding training, and how that translates into referrals.

The 'Safer Children?' Project

This project was established with funding from an Early Career Researcher Grant from the University of the West of England, Bristol. It aimed to lay the groundwork for Rethinking Child Protection Strategy, but its impact and reach has been much wider than we originally envisaged. There is a final project Report available entitled 'Safer Children? Translating the duty to safeguard children into child protection referrals: Evaluating safeguarding training effectiveness and outcomes in an education setting' (Devine and Parker, 2016a).

This project investigated the impact of s.11 CA 2004 and related statutory guidance which introduced what amounts to a mandatory reporting requirement on schools and education providers. We looked at how schools understand their duty to refer children to Children's Social Care Departments by investigating:

- ❖ The training and information available for referrers;
- ❖ The systems and processes schools have for referring children; and
- ❖ Finding out teachers' views about referring children.

The results provided data and information about how teachers, who are not specialists in child abuse, feel about this aspect of their work. There was an overall finding that teachers felt that high quality training was necessary, but it was less

clear that this was what teachers felt was available. Child protection and safeguarding training is frequently provided by private, profit-making self-appointed experts.

The training package we looked at for our project contained a number of factual and legal errors and we observed many statements in the training that made strong assertions without producing evidence they were correct. When the sources of those claims were investigated it was found that the statements were misleading and were being used to contribute to a strong message in the training to refer children in circumstances which did not reach either a ss. 47 or 17 threshold, and also did not relate to any recognised risk factors in relevant literature that would merit referral. The high false positive rate in using risk prediction as a basis for referral was not explained, leaving education professionals unsure of the grounds for referral and the outcomes and consequences of it. The training and referring processes were felt to be:

- ❖ Inadequate, in terms of knowledge of what/when to refer;
- ❖ Fostering a general feeling that referrals are random and inaccurate, based on 'risks' or 'signs' that teachers frequently did not consider amounted to abuse or a risk of it;
- ❖ A general feeling that it is too simplistic to assume that 'a referral = a good outcome', leaving unaddressed problems for the referring school and the family for ongoing relationships;
- ❖ That the cost of training is high and can be low quality, unregulated, and sourced from profit making providers.

Taking these results into account we concluded there was an opportunity for a research-led social enterprise to be established to address the need for high quality, non-profit making training together with support for referred families. Consequently at the end of this project HEFCE offered us start-up funding for a research-led social enterprise initiative. The SAFER Initiative was launched in April 2015, and is now established as Solutions for Safeguarding CIC. It will be launched nationally in late 2016.

'Rethinking Child Protection Strategy'

We followed this project with our current large-scale secondary data analysis, investigating areas we identified as influential for strategy. Our focus has been on data analysis of the following areas:

- ❖ Longitudinal trend analysis to measure the impact and outcome of policy;
- ❖ Failure analysis – responding to adverse events by obtaining and analysing the findings of Public Inquiries, Serious Case Reviews and the Child Death Review Process. We have measured the breadth and scope of the findings and recommendations and their impact on practice and outcomes;
- ❖ Risk prediction estimates.

Taking the findings from these three key areas together, we can give a comprehensive explanation of how and why current policy is pushing towards increased numbers of referrals and assessments and why this is not resulting in proportionately increased detection of child abuse despite the apparent high prevalence in England.

Using our findings in the context of the legal framework we are also working towards establishing the principles of, and recommending the framework for, a new legal and ethical model of state intervention. This new model will enable regional and national policymakers to draft policy in light of our findings, including those concerning the boundaries of consensual and non-consensual intervention.

Trend Analysis

In summary, our trend analysis showed that despite the intention of policy to refer children early in order to intervene and prevent family problems becoming abuse (Allen, 2011) the strategy of 'more in' may not result in less abuse. Prevalence studies routinely report a high incidence of abuse in their samples and these are used to estimate the amount of child abuse in the general population. The largest studies were conducted by the NSPCC (Cawson *et al* 2000; Radford *et al*, 2011) and the latest numbers relating to self-reported instances of child sexual abuse have been produced by the National Crime Survey (ONS 2016). All report a much higher prevalence of abuse than the number of children referred each year. It cannot be

assumed that the 'right' children are always referred (in fact our data suggests otherwise), leaving a very large proportion of abused children without any intervention, and a large proportion of non-abused children with unnecessarily intrusive levels of assessment in order to access basic services.

Our research shows that the strategy driving low level referrals is not significantly impacting on the apparently large amount of abuse present in the general population. The system is coping with this large number, the vast majority of which are not cases which reach a s.47 threshold even following assessment.   The conflation policy referred to above has not resolved this issue although it has resulted in many families being 'risk assessed' without giving informed consent, free from coercion including threat of escalation. As a result, the system's efficiency at the referral and assessment stage has significantly fallen, leaving the question of how 'significant harm' (serious child abuse) is to be addressed.

Figure 1 – Trends
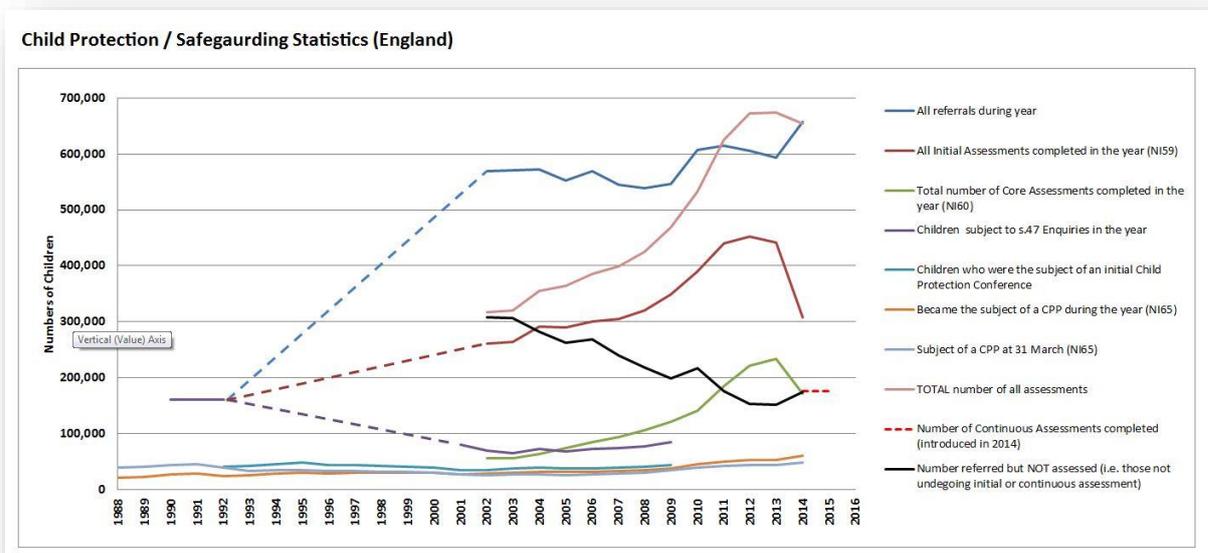
Responding to Adverse Events

One response to child fatalities and serious incidents of child abuse is to carry out a review. Reviews can be described as a type of failure analysis in which incidents of individual and systemic failure can be identified. Reviews also identify areas of practice that can be recommended for change, even if they did not contribute to the

death. The methods of review are via Public Inquiries, Serious Case Reviews and the Child Death Review Process. We have obtained and reviewed the recommendations of all available Serious Case Reviews. We established that findings are frequently vague and general, but inevitably slanted towards more intrusive and coercive surveillance and data sharing without understanding of the wider impact on all cases. They have also contributed to a culture of individual and organisational blame. This contributes to the fear of 'missing something'. Creating sanctions for under-interventions but few sanctions for over-intervention is not resulting in a balanced strategy.

Our overall finding is that Serious Case Reviews are costly, and provide no reliable research findings on which to base future policy to be applied generally in non-fatal cases. I published an article referring to these issues in 2015 (Devine, 2015c). The recently published *Wood Report* (Wood, 2016) broadly agreed that SCRs and CDRP are essentially unfit for purpose and are to be redesigned. A concern about the form this new design may take is the need for policy recommendations to continue to be based on transparent foundations. The evidence base from Serious Case Reviews is insufficient as it is clear that applying findings and recommendations relevant to the most serious cases to *all* cases is not an evidentially robust means of informing policy but at least there is some transparency over the reasons for the recommendations and the basis for them. Any failure to publish the basis for recommendation is a retrograde step which should be resisted. Although the findings of the *Wood Report* are not surprising, this is an example of sudden shift in government strategy in relation to child protection. The abrupt dismantling of ContactPoint in 2010 is another.

Without question Public Inquiry and Serious Case Reviews have been an important influence on the current strategy. These forms of adverse event analysis have been used since the 1940s in England to investigate important questions of child welfare (Sir Monckton, 1945). The findings have been used to influence policy, practice and to justify legislative change (Laming, 2003; Laming, 2009). More recently Public Inquiries and Serious Case Reviews have become heavily politicised, particularly in the context of introducing the *Every Child Matters* (DfE, 2003) agenda. They have also served to influence public opinion of the role of social workers in high profile cases. This public opinion is essentially negative, focussing on perceived social

work failures to intervene swiftly or sufficiently early to prevent a tragedy. A very recent notable instance is the case of Ellie Butler who was murdered by her father having been returned to her parents from the care of her grandparents (*C (a child)* [2016] EWCA Civ 798). Other notable cases are Peter Connolly, Khyra Ishraq and Daniel Pelka (Laming, 2009; Radford 2010; Lock, 2013). The public outrage in such cases cannot easily be reconciled with the equally strong public opinion which argues for the autonomy of private family life. The role of the social worker in thus caught between two opposing narratives where both action and inaction are equally open to criticism but professional and judicial sanctions only seem to apply to inaction leaving a power imbalance.

The use of serious case reviews to inform policy has clearly had a number of effects. What they have not done, however, is establish that there are particular risk characteristics in families subject to the reviews that substantially differ from other families that social workers come into contact with, or that exist in the general population (Brandon *et al* 2012). This is, of itself, an important finding which should have received much higher prominence in central and local policies for child protection and safeguarding.

Risk Prediction

I explained in my paper last year that risk prediction in child protection derives from germ theory. The idea that child abuse was an epidemiological problem and thus could be treated in the same way as a disease epidemic gave rise to the question of whether child abuse could be predicted, and eradicated via interventions based on the predictions. Investigating this theory forms the third and final section of 'Rethinking Child Protection Strategy'.

From the outset of the adoption of risk prediction in child protection, it was recognised that it would create a large number of false positives (families predicted to abuse their children who did not actually do so), and some false negatives (families predicted not to abuse their children but who did abuse them) (Browne and Saq, 1988). The theory gained in popularity following attempts to use child protection register (CPR) data to see whether there were characteristics in families known to have abused their children which could be looked out for in other families in order to predict abuse (Creighton, 1992). Over time, the use of risk prediction

became firmly entrenched into child protection and safeguarding practice and the initial caveats raised by the researchers who brought it into use were largely forgotten or ignored (see for example Browne and Saqi, 1988).

What we do know from our analysis is that risk prediction is sometimes right however it would also sometimes be right on any random selection criteria. Risk prediction is no more than a probability estimate and as such it is speculative, difficult to prove and even more difficult to disprove. Consequently the current strategy relies heavily on prediction estimates that will provide false positives, false negatives and many cases where it is not possible to state with certainty whether the risk predictions are accurate or not. This strategy is particularly risky in a framework that makes it mandatory for parents wanting services for a child 'in need' to be 'risk assessed' in order to access them. This is why the question of consensual assessment is so important as this scrutiny can escalate families into a more coercive process simply because they have certain characteristics.

To give an indication of the outcome of risk prediction on a sample, the following figure represents the accuracy level of a risk prediction exercise that was undertaken by other researchers. We did this analysis of the outcome of their sample predictions as part of our project as we wanted to look specifically at the outcomes of the predictions that they made and calculate an accuracy number. The findings indicate that the risk prediction wrongly predicted risk in over 97% of cases, and under predicted risk by missing 17.5% of abuse cases (i.e. 7/40).

Figure 2 – Risk (un)reliability tables

	Predicted to abuse 12.28%	Not predicted to abuse 87.72%	Total 100%
Abuse found	33	7	40
No abuse found	1,195	8,765	9,960
Total	1,228	8,772	10,000

predicted correctly
predicted incorrectly

Theoretical findings

In addition to the data findings, another objective of 'Rethinking Child Protection Strategy' was to investigate the theoretical issues underpinning child protection and safeguarding strategy. We established four theoretical findings that can be widely applied to contribute to understanding the system:

- ❖ The 'Theory of Child Protection';
- ❖ The 'Law of Diminishing Returns Ratio';
- ❖ The 'Welfare/Policing Dichotomy; and
- ❖ The 'Outlier Paradox'.

Our first theoretical finding was to identify a number of paradigms that, taken together, inform child protection and safeguarding strategy. This resulted in identification of the Theory of Child Protection (Devine and Parker, 2015b). Much of our data analysis involved investigating these individual elements to look at the evidential basis for these paradigms. The impact of basing strategy around the Theory of Child Protection decreases the efficiency ratio of the system in relation to child abuse which is directly at odds with the aim of current strategy. We identified this phenomenon as the Law of Diminishing Returns Ratio. We investigated the reasons for this, which led to identification of the fundamental and problematic dichotomy at the heart of child protection and safeguarding strategy; the Welfare/Policing Dichotomy' (Devine, 2015d). This identification enables suggestions to be made for future strategic direction which could address the problem identified in the Law of Diminishing Returns Ratio. We also considered the reasons why it is unlikely to be effective as a strategy. Having looked at assessment criteria and practice we observed the Outlier Paradox in relation to risk characteristics and the likelihood of effective social work for certain categories of the population.

The Theory of Child Protection

Although it is not explicitly stated in current strategy, it is evident that there are some underlying key principles that, taken together, create a 'theory of child protection'. There are five elements evident in the theory:

1. The belief that a high prevalence of child abuse exists and can be defined and identified. Several major studies have been conducted by the NSPCC to support this contention (Creighton, 1992; Cawson *et al*, 2000; Radford *et al* 2011);

2. The state has a moral and statutory duty to identify child abuse, and to mitigate it by taking steps to protect a child once it has done so (Dingwall *et al* 1984; Eekelaar and McLean, 1994; Freeman *et al*. 1992). The legal position is set out in the Children Act 1989 in s.47;

3. In order to do so a system of risk prediction is possible with a sufficiently accurate confidence limit so as to justify coercive interventions. Arguments for this approach gained traction in the late 1980s, (Gough, 1988; Browne *et al*, 1988; Browne and Saqi, 1988);

4. Timely, consensual early intervention is an appropriate welfare response to mitigate the risks of future abuse in families identified as high risk (Allen, 2011);

5. Failure to predict and prevent serious cases of child abuse should be investigated by retrospective adverse event analysis which aims to find evidence of how points 1-4 can be 'done better'. The aim of the analyses, carried out by Public Inquiries, Serious Case Reviews and the Child Death Review Process is to strengthen the existing procedures. The most influential relatively recent public inquiry was *The Victoria Climbié Inquiry Report,* Chaired by Lord Laming (Lord Laming, 2003). Lord Laming was asked to produce the second Report, *The Protection of Children in England: A Progress Report,* (although this was not a public inquiry) following the death of Peter Connolly (Baby P) in 2007 (Lord Laming, 2009). In the second report he reiterates his findings in the earlier *Climbié Report* in relation to encouraging policies of surveillance and data sharing.

When these elements are linked into a sequence, they produce a self-justifying cycle which underpins current strategy. This is illustrated in the figure below.

Figure 3 - The Theory of Child Protection
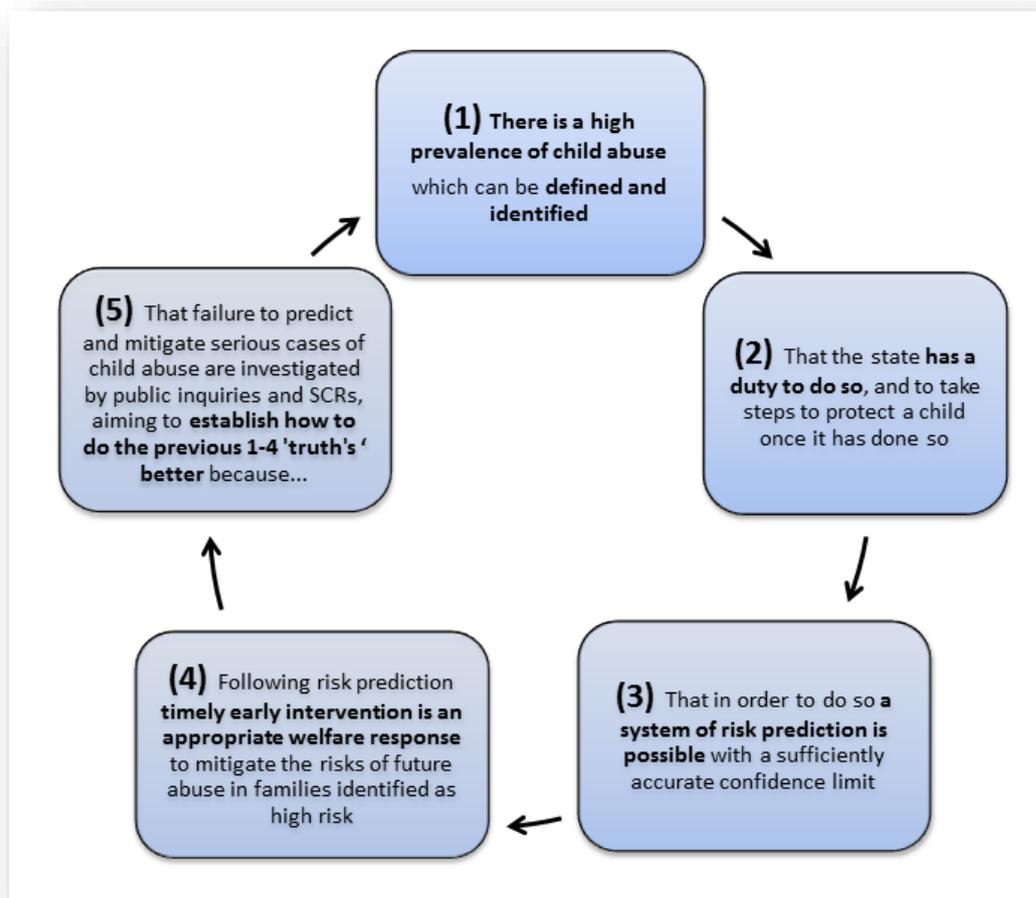
Strategies encouraging referrals are informed *inter alia* by identifying risk characteristics, identified from analysis of the characteristics of abused children and their families (Creighton, 1992) and findings from enquiries into fatal cases of child abuse (Brandon *et al,* 2012). Policy emphasises early referral, early intervention via secondary tier interventions, and escalation to the tertiary and quaternary interventions should parents fail to engage with social work recommendations and requirements for change. The resultant risk-adverse position should, on the face of it, significantly reduce the prevalence of child abuse in the overall population and in the referred families, particularly as policy, set out in *Working Together to Safeguard Children* (DfE, 2015) together with the *Public Law Outline 2014* (MoJ, 2014), aim to avoid escalation through the child protection processes by addressing parental insufficiency at an early stage.

Although this strategy is intended to reduce the prevalence of child maltreatment it is less clear that it does so. Studies do not evidence a reduction in reported child abuse prevalence in the general population (Cawson *et al*, 2000; Radford *et al,* 2011). Our referral and assessment trend data since the Children Act 1989 came into force shows that the increasing emphasis on early referrals in order to deliver the programme of rationed early intervention services has not resulted in the expected statistically significant reduction (Devine and Parker, 2015a). Although detected child abuse has increased slightly, our analysis showed that overall there has been a significant reduction in the child abuse detection ratio in referred children from 24% to 7%. We found that applications for s.31 Children Act 1989 care order applications have slightly increased, but this increase is also disproportionately low when compared against the increased referrals and assessments. The strategy formed from the Theory of Child Protection thus seems to result in a less effective strategy than was envisaged.

The Law of Diminishing Returns Ratio

Our data shows that the strategy of referring children at increasingly low thresholds of concern, particularly on the basis of apparent 'signs of abuse' results in diminishing return in relation to the amount of detected child abuse. When matched against prevalence estimate numbers, most significantly those produced by the NSPCC (Cawson *et al*, 2000; Radford *et al,* 2011) the current strategy appears not to be reaching many of the children for whom the system was designed. However the system is 'catching' many children for whom the system was not designed.

- ❖ In terms of performance, the increased number of referrals is resulting in an increased number of families who are subject to assessment, but no directly proportionate increase in the amount of detected child abuse;
- ❖ There could be several reasons for the increase in referrals. It is too early in the project to draw firm conclusions but some of the reasons could be due to an increase in child abuse; an increase in need compared with 1991/1992; or a change in what constitutes good enough parenting such that referrals would be made in 2013/2014 in circumstances that would not have warranted referring in 1991/1992;

❖ The Child Protection Conference data, however, does not show a proportionate upward trend. The number of referrals significantly increased over the period but there is no significant proportionate trend in the number of families who progress to a conference, which is Gibbons *et al's* (1995) estimate of the point where substantiation is necessary in order for a family to progress beyond the assessment stage. Current strategy does not take account of the problem of false positives and false negatives. The number of assessments that progressed to a Child Protection Conference is relatively constant at 40,800 in 1991/1992 to 43,700 in 2008/2009 (a rise of 7.1%), followed subsequently by a rise to 65,200 in 2013/2014 (a further rise of 49.2%). This needs to be placed in the context of the number of referrals entering into the system which rose by 311% over the same period.

❖ The number of registrations following a Child Protection Conference has increased but there are changes in the categories of child abuse that are given as the reason for registration. Overall, much less 'core abuse' (physical and sexual) is detected.

This data and trend analysis (Devine and Parker, 2015a) raises some interesting questions about of the Theory of Child Protection. If it is the case that more children are being referred than are being abused then it does raise legitimate questions of the number of families subjected to screening; a process which is known to be stressful and in some cases harmful. There is a large body of literature highlighting harm caused by referral and assessment. Research findings consistently linked suspicion and investigation as causing harm rather than the wider issues of power relations and state interference, although it is sometimes difficult to separate out the harm caused by assessment from harm which occurs later in the process (Dale *et al,* 2005). Other research identified false positive cases as causing 'great suffering' (for example Jones, 2001:1395; Luza and Ortiz, 1991:108; Wakefield and Underwager, 1994 in Krivacska and Money (eds.), 1994; Prosser, 1995:9). Kaufman (2004, reprinted from original edition in 1986) describes the interrelation between shame and mental health in terms of object relations theory, interpersonal theory and draws on Tompkins's affect theory to provide a powerful and multidimensional view of

shame. Also drawing on his own clinical experience he explains the application of affect theory to general classes of shame-based syndromes including compulsive; schizoid, depressive, and paranoid; sexual dysfunction; splitting; and sociopathic disorders. Reports of such serious trauma arising from false positive referrals should not be ignored.

There are also categorisation questions about the use of s.17 measures to try to avoid the trauma of unwarranted s.47 investigations. Current strategy has introduced a framework where it is unclear whether s.17 assessments have become tantamount to a quasi-coercive stage, consequently rendering the clear divisions envisaged in the Children Act 1989, ss. 17 and 47 obsolete for practical purposes. If there is a tendency towards over-referral the ability of social workers to carry out timely and effective reports is compromised. Serious cases are likely to be missed. There are dangers in relation to both false positives and false negatives. The current strategy can be summarised as creating the Welfare/Policing Dichotomy whereby the attempts to conflate welfare and policing into one assessment have created an irreconcilable and dichotomous position.

The Welfare/Policing Dichotomy

The welfare/policing dichotomy was first mentioned in my article 'Considering social work assessment of families' published in the *Journal of Social Welfare and Family Law* (Devine, 2015d). The focus of the article was to comment on the conflation of ss.17 and 47 and insistence that welfare and abuse should always be considered to be on a continuum that must be considered together. I considered that resulted in an inadequate response to both family support and child protection. It is a fundamental principal that the rule of law is a moral and practical imperative not an option from which the state can opt out in relation to its policies of intervention and balance with private life. I argued that state intervention is not always positive and that coercive state interventions fall under a policing agenda rather than a welfarist agenda. This leaves the framework of assessment inadequate in relation to questions of due process and protection for families where children are not abused, but where coercive and/or non-consensual practice is applied. Such an approach is at least potentially unlawful.

The conclusion was that the interpretation of the law and the mixing of ss.17 and 47 was not the original intention of the legislation. This has been progressively eroded by successive policies. This raises an important but complex question: If the current system of assessment is potentially unlawful, what should be done to replace it? Detailed discussion of the issues was more complex than an article could deliver, and somewhat outside the scope of our project (which is an enquiry into, not a theoretical discussion about).

The Limits of State Power and Private Rights: Exploring Child Protection and Safeguarding Referrals and Assessments

The length required to address this question was more suited to a book. I have attempted to address the issues in my forthcoming monograph, *The Limits of State Power and Private Rights: Exploring Child Protection and Safeguarding Referrals and Assessments* (Devine, in press December 2016). The book explores in detail the concept and consequences of policing parents within a welfare model, making suggestions for a new model in relation to ss.17 and 47 statutory social work practice. This involves separating out the forensic investigative role from supportive social work with a focus on restoring professional and public confidence in the possibility of the state and families working together. This is a major change but is not fundamentally looking for a different outcome, although it is looking for a way to achieve better results in relation to addressing the problem of child abuse. The concept of early intervention is not challenged but its mode of delivery as a rationed service is. The rebalancing of services away from rationed, secondary tier interventions at a low level of need towards a focus on referrals that meet thresholds for ss.17 and 47, investigated separately with a differing framework which reflects their purpose, and the duties of the state.

In relation to family support a key question that the current strategy does not address is whether parents and social workers are 'working together' or 'reluctant partners'. Coercive practice at a low threshold of need is a barrier to achieving a productive relationship as well as an inefficient means of detecting child abuse. The consequence of a strategy that fails to address the welfare/policing dichotomy is a framework that inadequately addresses both s.17 and s.47 issues. A policing model embedded within a welfare framework provides both inadequate, forensic

investigation where a robust response is required at an early stage, coupled with inadequate due process considerations.

The attempt in the current framework to combine welfare and policing within the same assessment model derives from recognition that a s.17 or a s.47 response to all referrals provides an equally inadequate response, compounding both problems. Responding to this by conflating both, however, is unlikely to resolve the problems of either extreme. In certain situations both responses will work well as both were designed to respond to specific circumstances. Either will work well for the 'model service user' that ss.17 and 47 were designed for, but it works progressively less well for outliers. This insight led to our final theoretical finding, the Outlier Paradox.

The Outlier Paradox and the Model Service User

The Model Service User is one for whom the framework is designed, and who will be helped by it. The Outlier Paradox refers to the phenomenon that the current strategy becomes less effective for service users the further they are from the 'mid-point' of the Model Service User. This creates a paradox. The characteristics of the Model Service User are not based on evidence based outcomes: as the aims and statutory duties of s.17 and s.47 are different the characteristics required of the Model Service User are correspondingly and similarly different. Conflating assessments suggests new and different Model Service User characteristics. The Public Law Outline (MoJ, 2014) provides insight into these characteristics. The new Model Service User has parental insufficiencies that they cannot address themselves, who acknowledges this is the case and who agrees with and adopts social work requirements for change within relatively short time prescribed time frames and accepts coercive social work interventions despite not having reached the threshold of significant harm.

In contrast, the outliers are service users who fall on two outer edges of the spectrum. At their most extreme these will be:

a) Those who have no difficulty meeting their children's needs and who are mistakenly referred; and

b) Those who are systematically, covertly and deliberately abusing their children and who are correctly referred.

Both positions represent extremes but conversely may present similar features to social workers. For example both are likely to fail to engage with social work assessment, but for different reasons. Models of social work in such circumstances become methods to create an environment of compliance where 'insight into problems' and 'showing capacity to change' are key requirements. Both categories of outliers will exhibit similar resistance. Failure to do those things can cause escalation into the litigation states of the Public Law Outline (MoJ, 2014). This paradox merits closer examination, which we are currently undertaking in order to map detailed characteristics to give further insights into this phenomenon.

Next Step for the Research Agenda

At the start of this paper I set out its two aims, the second of which was to place our research into context by suggesting practical steps that should be taken to address problems with current child protection strategy. In practice this second question both arises from and can be answered alongside the first question: in academic terms it refers to scoping the potential pathways to impact of our work. The majority of the paper has detailed progress and findings in relation to the project. We have, where possible, brought these findings to the attention of policy makers:

- ❖ We have issued the first of four Economic and Social Research Council Ministerial Evidence Briefings http://eprints.uwe.ac.uk/25492/ (Devine and Parker, 2015b)
- ❖ We have given written evidence to the All Party Parliamentary Group (APPG) for Children for their Inquiry into Children's Social Care http://eprints.uwe.ac.uk/29089/ (Devine and Parker, 2016b)
- ❖ I gave a public lecture in at London South Bank University http://eprints.uwe.ac.uk/27648 (Devine, 2015e)
- ❖ We produced a working paper to invite comment and response on our initial findings http://eprints.uwe.ac.uk/25258 (Devine and Parker, 2015a)
- ❖ We have established Solutions for Safeguarding CIC in order to work directly with communities in terms of how education providers make referrals and how families respond to them.

- ❖ We are establishing an open forum symposia series which will start in 2016 and will be called the 'Mind the Gap' Symposia Series. It will be complementary to the annual conference and provide additional fora for focussed debate on topics of interest.

- ❖ We are hosting next year's Transparency Project Conference. The third annual conference will be held at the University of the West of England, Bristol on Friday, 9th June 2017.

- ❖ We have planned further projects, including a national review of social work assessment models in England to look at local level policies in the context of our identified welfare/policing model and outcomes on referrals and assessments.

- ❖ We are designing a new ethical/legal welfare intervention framework and recommending social work models that coerce compliance (unless there are clear grounds for dispensing with consent) fall into a category should be reviewed under the new 'lawful/ethical' framework.

- ❖ We are establishing the International Child Justice Project. This project will create an international map of the new ideological ethical/legal child protection system and will measure how countries adhere to it, and to the rule of law. This will creating a global measure and index by which countries' measures for child protection can be compared.

National Network for Safeguarding Futures (NNSF)

As well as policy influencing research findings, an important outcome of 'Rethinking Child Protection Strategy' was to create an opportunity to engage all levels of stakeholders in further research, debate, public engagement and awareness events. We will base the Network at the University of the West of England, Bristol, and will work with strategic partners to decide where things go from here. The Network will work with existing and future ideas, initiatives and support groups, and will explore funding opportunities. The NNSF will work in partnership with the Transparency Project.

Conclusions

This paper has provided an overview of progress, both with the research and plans to disseminate and create impact from it. The data analysis in respect of the trends, adverse event analysis and risk prediction estimates has provided evidence to suggest that the current strategy is not having the impact that it was intended to have in relation to addressing the issue of child abuse. Any complex and multi-factorial system must be considered as a whole, and not in terms of a superficial response to a problem. Child abuse is rightly considered a problem, but the solution is considered to be as simple as detecting 'signs' that indicate a risk and referring them early. This is undoubtedly a logical if simplistic response, but it does not take account of the complexity of the issue of child abuse, the unreliability of risk prediction and the important protections that families need from unwarranted state interventions. A new strategy is undoubtedly needed via root and branch review and reform of the system. The recommendations of our research will be for this to happen: it is time for change.

Project information

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