Setting parents up to fail: punishing hopeless parents is integral to care proceedings

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It has become increasingly apparent that public law care proceedings are undergoing significant change. One aspect of this refiguring of care proceedings involves the emergence of punitive attitudes and varying kinds of punishment imposed on parents in such proceedings. Of course, punishment applied to parents in care proceedings detrimentally affects them and their children in the short- and long-term; this results in a cycle of inter-generational problems and further care proceedings.

The first part of this article draws attention to and provides an explanation of how parents and their children are punished by care proceedings. This article also argues that punishment in care proceedings itself is problematic as it serves to reinforce class based processes of social, familial and economic regulation. Rather than punishing parents and their children, parents should be supported to enable them to provide adequate care for their children at home.

The second part argues that the reforms outlined in the family justice review: a system with children and families at its heart are rooted in penal policy and will have significant social, familial and economic ramifications for parents and their children. This article concludes by raising a number of potential solutions to a family law system that is in need of overhaul to support parents and their children at home rather than punishing them.

Failures of current care proceedings

Profile of parents and children in care proceedings

Research of care proceedings over many years demonstrate that parents involved in care proceedings require support and assistance as they often have complex and multiple problems (see Brophy et al 1999: 2003; 2005: 2009; 2012; Harwin et al 2011; Hunt et al 1999; Masson et al 2008). Often families are from the most impoverished households where parents and children are at the bottom of the social and economic strata. Many parents live a destitute life. To compound this, many of their problems are not properly assessed, diagnosed or treated until they are subject to care proceedings based on allegations of neglect and/or ill-treatment of their children.

Parents:
- 90% are below the poverty line.
- 60% have been abused as a child.
- 45% experience mental health problems.
- 35% lead chaotic lifestyles frequently associated with substance abuse.
- 35% have been through care proceedings with a previous child.
- 30% have been through the care system themselves when they were children.
- 27% have a physical disability.
- 25% care for a child with special educational needs.
- 25% suffer with drug and alcohol addictions.
- 20% have a learning disability (often not assessed prior to proceedings).
Children removed from their parents:

- Are three times more likely to lead chaotic lifestyles frequently associated with alcohol and drug abuse.
- Are twice as likely to have their children removed.
- 53% leave school with no formal qualifications.
- 49% are convicted of a criminal offence.
- 45% are assessed as having a mental health disorder compared with 10% of the total population.
- 20% who leave care between ages 16–19 become parents within one year compared with 5% of the total population.
- 20% will be homeless on leaving the care system.
- 20% will become prostitutes.
- 20% will be unemployed on leaving the care system.
- 13% achieve five A* to C grade GCSE’s compared with 47% of all children.
- 6% enter higher education.

Considering the problems encountered by the majority of parents and children subjected to care proceedings, an abundance of preventative and supportive steps are needed to ensure that parents are able to provide adequate care for their children at home. However, with 903 applications made by local authorities in January 2012, it is estimated that 10,500 children will be subject to care proceedings by the end of 2012, which indicates that the trend towards the removal of children from their parents has continued since 2008. In fact a prescribed or forced adoption culture and a stereotyping and silencing of birth mothers has existed across some decades of the twentieth century (see Page 1984; Kelly 2005; O’Halloran 2006).

One must consider why local authorities are readily removing children from their parents 4 years after baby P when statistics highlight that removal is not breaking the inter-generational cycle of intersectional problems. In fact, removal ensures that the next generation will encounter the same multiple and complex difficulties as their parents’.

Many cases before the court are based on allegations of neglect and emotional abuse, which could be remedied with specialist assessment and treatment packages as opposed to removal at first instance with a presumption of adoption. To tackle the problems that many parents experience, they require specialist family support services from child and family mental health services (CAMHS), psychological services, health visitors, children’s centres and in some cases contact centres. In the context of a recession these services are all suffering a reduction in resources and funding which will impact upon parents and children’s rights to family life.

**Link between poverty and care proceedings: undeserving parents**

Parents with an array of problems are often demonised by local authorities’ pre-care proceedings. They are stigmatised as hopeless, mad or even bad. As a result local authorities punish parents by refusing to invest in supportive and therapeutic long-term packages for parents to enable them to gather the requisite parenting skills required to care for their children and any future children that they may have; all of which would result in fewer children being removed from their parents care. Instead local authorities would rather remove children from their parents and place them in foster care at an annual cost of £1.25 billion (92% of the looked after children’s budget for the 2009/2010 financial year) with a presumption of adoption. Local authorities would rather children were reared by foster parents or adopters, who possess a degree of cultural, social and economic capital, with the hope that they will rear troubled children to conform to societal values and contribute to society rather than becoming societal dependants, like their parents.

However, research indicates that children removed from their parents experience more problems in the form of social, financial and health implications than their counterparts. Why, in that case, do local authorities prefer to financially support the removal of children from their parents when children will face further problems in the future? It seems that local authorities would rather punish parents for their failures than provide them with the support they need to learn how to parent. However, it is a particular class of parents and children who are punished. The statistical correlation between parents...
subject to care proceedings and poverty reflects how society punishes the most vulnerable and impoverished. Historically, the state punished the poor by incarcerating them in workhouses and removing their children at birth. Little has changed today, as oppressive state power legitimises the removal of children from destitute parents by labelling them as hopeless and undeserving.

In a class structured society it is ingrained in the consciousness of those in positions of power that we punish and stigmatise the poor. As a result, value judgments made by social workers are a reflection of internalised views, norms and morals advocated by society. Social workers justify their decisions to forcibly remove children from their parents on the basis that parents are undesirable primary socialisation agents.

Social workers label parents as hopeless, parents internalise this label and it inevitably becomes a self-fulfilling prophecy. Meanwhile, their children are removed by people in positions of power and placed with middle class foster carers and adopters; all those involved in the removal process believe that their rescuing fantasy is fulfilled. With no financial or social power and a reduced family size, working class parents remain powerless and pushed further to the bottom of society by the judgments of middle class judges and magistrates.

**Current care proceedings**

Punitive attitudes towards parents in need of support are reflected by the large numbers of children removed from their parents through care proceedings. Although care proceedings take an average of 55 weeks before the case is resolved, there is a presumption of adoption as soon as care proceedings are first initiated by the removal of a child.

Once care proceedings commence, parents find themselves overwhelmed by a system which seeks to punish them for their failings as parents. Parents’ failings are often a reflection of the fact that they do not know how to care for children themselves, many parents having been removed from their parents at an early age. Rather than providing parents with the support they require to become better parents, they are subjected to care proceedings and bombarded with assessments, reports and reviews which judge their parental failings. The social worker many parents believed was assisting and supporting them often produces a report condemning them as hopeless.

**Section 38(6) of the Children Act 1989: support not assess**

Section 38(6) of the Children Act 1989 (1989 Act) empowers the court to order or prohibit an assessment of the child. Although the section refers to assessment of ‘the child’, the wording of s 38(6) has been given very wide interpretation by the courts to include assessments of parenting capacity. Only the crudest tools are used to assess failing parents and families, including residential family centre assessments, independent social workers, psychiatric and psychological experts, ordered by s 38(6).

The funding available for any assessment is strictly controlled by the Legal Services Commission which often means that the choice of an assessment or an expert to carry out the assessment is a balancing exercise between the time scale for a report, the individual needs and increasingly, the cost of producing a report. Parents are therefore robbed of an opportunity to choose an assessment and even an expert based on knowledge, expertise and experience of a case.

Residential family centre assessments cost tens of thousands of pounds for a 6 week assessment. They are ordinarily agreed when parents are at risk of neglecting their children rather than physically or sexually abusing them. Parents and children are placed in an artificial environment and monitored 24/7 by a range of experts, from social workers to psychologists. In some residential units, the doors must be kept open whenever parents are with their child, whilst being monitored by a camera.

Parents may have learning difficulties and many struggle to adapt to the environment. Parents may not have cared for their child for a considerable period of time prior to entry into a residential assessment unit. Many parents have never cared for their child 24 hours a day, other
parents last cared for their child full-time during an earlier period in the child’s development cycle. This difficulty is particularly acute where parents are caring for their child who has over the course of the proceedings grown from a small baby into a demanding toddler. In addition parents are involved in extremely stressful care proceedings and understand that the weight placed on the outcome of residential assessments by the family courts means that they will make or break their case. The onus is on parents to achieve and to demonstrate their value as parents.

The cost of these units is astronomical and courts are cautious in ordering residential assessments. It is certainly cheaper to order psychiatric, psychological or independent social worker assessments which assess parents in isolation from their children. However, assessments provided for under s 38(6) of the 1989 Act, conclude with the evident, that parents cannot adequately meet their children’s needs because parents are perceived as failures; this does little to help parents. Instead such assessments merely legitimise the need for care proceedings.

Parents are often trapped in a no win situation: if a psychiatric or psychological report concludes that the parents have mental health problems, they are labelled mad and the child cannot wait while his/her parents undertake treatment. If a report claims that they have no mental health problems, then logic dictates that they are merely ‘bad’, unable to put their children’s needs first, selfish and beyond redemption. The result: the permanent removal of their children.

When therapeutic treatment is recommended by experts to improve parenting skills, parents are told by the courts that there is no way of funding this treatment, the child cannot wait for his/her parents to undertake treatment and court proceedings are not the forum to allow parents the opportunity to become better parents. After all ‘there is no Art 8 right to be made a better parent at public expense’ according to Lord Scott in Re G (Interim Care Order: Residential Assessment) [2005] UKHL 68, [2006] 1 FLR 601, at para [24]. Instead court proceedings are an appropriate forum to punish parents by spending extravagant amounts of money assessing and highlighting their perceived failings without providing them with the therapeutic services they need to meet their identified shortcomings.

Public bodies continuously refuse to fund therapeutic treatment recommended by expert assessments and the courts do not have jurisdiction to order a public body to fund such treatment. Lord Scott explained in Re G, at para [13], that ‘a programme focused on the treatment and improvement of the mother and her parenting skills cannot … be regarded for s 38(6) purposes as an assessment’ of the child. It is a fundamental failing of the 1989 Act and in particular s 38(6) not to provide the court with power to direct appropriate support or therapeutic packages to aid parents.

Judges have reiterated that the child’s timetable is paramount. The court of appeal in Re T (Residential Parenting Assessment) [2011] EWCA Civ 812, [2012] 2 FLR (forthcoming) reaffirmed that parents should not be granted additional assessments on the basis that they should be given every reasonable opportunity to put forward a positive case. The President of the Family Division made clear in this case that the court will not wait for parents, even where there is the possibility that the child will be able to return to his/her birth family within 12–24 months. Tied to this notion that the child cannot wait is that the parents do not deserve the delay. Parents are seen as culpable and beyond redemption, this prevents social workers and courts from rewarding them with assistance.

Courts have also begun to tackle the so-called proliferation of assessments themselves. In accordance with the Public Law Outline, courts prevent parents from seeking further assessments once one form of assessment has been undertaken. Ironically legal proceedings are one of the few opportunities parents have to access support focussed on their ability to parent and their problems. Rather than ordering further assessments in the hope that one might be positive, the courts should be empowered to order the therapy identified by assessments to rectify parents’ perceived failings. Parents often have a range of intersectional problems that can only be dealt with through direct intervention and given the short timetable to reach a resolution parents are unlikely to receive
the level of assistance they require before a final order is made by the courts.

Once the outcome of a report is received and before parents are given the opportunity to rectify their shortcomings, the permanent link between parent and child is broken by a final care order and often a placement order. At the same time, traumatised parents are once more left alone, with no social work visits, assistance or support as recommended by expert reports. Despite the fact that forcible removal of a child is likely to be the most devastating experience parents will ever suffer, there are no strategies to ensure that local authorities withdraw their line of communication with parents gradually once a final order is made.

Professionals are then surprised when parents who have had their child removed in the past, have another child. Instead they are condemned as selfish and unable to address their parental failures. Identifying themselves as parents, many have another child to fill the void that exists after losing one child and in the desperate hope that social workers will allow them to keep their next child. However, failure to implement appropriate mechanisms which offer parents support and therapy to care for their children at home ensures that they will make the same mistakes when they have other children, resulting in an inter-generational cycle of care proceedings.

**Children and Family Court Advisory and Support Service: another tool to support local authorities**

The core functions of the Children and Family Court Advisory and Support Service (Cafcass) are to give children an independent voice in legal proceedings, and to advise and assist the court in achieving the best possible outcome for those children. They must ensure that children are protected against poor local authority and social work practice and decision-making in care proceedings.

However, written evidence from the Interdisciplinary Alliance for Children (March 2011) found a chronic failure of Cafcass to offer adequate representation to abused and neglected children subject to care proceedings. A national survey of Guardians by NAGALRO in 2010 discovered that there was a lack of opportunity for the guardian to critically appraise and challenge the local authority’s actions and arrangements for the child at an early stage: ‘the local authority case was being accepted uncritically, raising fear that the wrong decisions may have been made and the options for the child not fully explored’ (para 1.2).

Ultimately ‘Cafcass has been a failure. Its top heavy but ineffective management culture, combined with its hostility to the independence and status of the guardian, has had a disastrous effect on the independent representation of children . . . Cafcass is now a replica of a failing local authority but on a national scale’, according to Martha Cover QC, co-chair of the Association of Lawyers for Children in, ‘O Guardian, Where Art Thou’ (ALC Newsletter, Spring 2012, issue 49, p 3).

With only 61% of Cafcass employees as Family Court Advisors, they are rarely able to visit children and parents and spend sufficient time with them to discuss their needs and their concerns, which are often coterminous. Without developing a relationship between children and parents, Guardians are not in a position to advocate on behalf of children. In such circumstances, guardians should not be allowed to play any role in decision making about a child’s life.

**Family Justice Review**

A number of the reforms outlined in the FJR have been included in the Children and Families Bill, expected to be introduced in early 2013. Ultimately, the reforms intend to change care proceedings to facilitate higher numbers of adoptions of those children who have been forcibly removed from their parents. There is a perception that a system biased towards adoption will result in lack of transparency in ensuring adoption targets are reached. In 2008, a Labour Government adoption policy to provide local authorities with financial bonuses to encourage them to meet unrealistic adoption targets was exposed. The pursuit of capitalist goals at the expense of children’s welfare and parent’s rights is once again upheld, this time by the FJR. It seems that no lessons have been learnt.

In the government response to the FJR, many of the key recommendations have been accepted and the government is
publicly committed to implementing the changes imminently. The proposed changes will result in a streamlined system in which the length of proceedings are time restricted, the concerns of the local authority are given prominence, parents are discouraged from challenging local authority’s decisions and children are removed swiftly to be placed with middle-class adopters.

The government has proposed legislation that will impose a statutory 6 month time limit for the completion of care cases, the current average time for a care case from start to finish is 55 weeks. A rigid timescale will result in Cafcass lacking an in-depth understanding of the case, leaving them more likely to err on the side of caution and agree with local authority decision making. Better outcomes for children are not going to be achieved by imposing an arbitrary time limit. The reality is time is often lost due to lack of court time, failure of local authorities to agree and organise assessments and a lack of appointed guardians. Furthermore, the government is committed to training social workers in court preparation and presentation skills to ensure credible evidence is put before the courts and local authorities achieve their desired outcome. What the government has not pledged is to provide better training for social workers to enable them to undertake high quality work with children and families.

The government has proposed further statutory reform to require courts to consider whether expert evidence is necessary. The perception that the family courts are sanctioning unnecessary assessments is ill-founded. However, rather than funding independent experts the courts will have to rely on local authority experts. There must be great concern about any conclusions from experts selected by and funded by local authorities.

A worse strategy for reducing the delay is the proposed removal of the requirement that local authority adoption panels must consider the suitability of a child for adoption when the case is before the court. This will remove an additional safety net, which makes it all the more important for courts not to be deprived of relevant evidence from necessary assessments.

The government also proposed to limit the need for judges to scrutinise every detail of care plans, instead scrutiny will be left to local authorities. Court scrutiny of care plans is essential to ensure the local authority assessment and planning is in the long-term best interests of the child. Often the child’s interests are at odds with the financial interests of local authorities. The ongoing scrutiny and the ability to challenge local authorities’ when they fail to comply with a care plan is critical to a child’s active participation in their future and to prevent children from becoming neglected.

These are ill-thought proposals when what is clearly needed is a commitment to provide greater resources to tackle the causes of the identified problems. The government has articulated a commitment to strengthen parenting but has at the same time supported recommendations which provide no support for failing parents but instead punish parents by promoting a presumption of adoption at the first stage of care proceedings.

Despite the current scrutiny surrounding care proceedings, relatively little has been put forward about the rights of natural parents, who have often been raised in care themselves. Once the FJR recommendations are implemented parents are likely to find themselves offered less support and excluded from the court process at a quicker pace. Parents will be told that their needs come second to their children’s needs when parents’ needs should be viewed as coterminous with their children’s’ needs. For instance, children have a right to remain with their birth parents wherever possible and parents should not be denied a fundamental human right to family life.

The FJR recommendations undermine the basic principle that where children and their siblings can be kept together in their home environment often with support and therapeutic packages, they are more likely to thrive. The FJR is driven by an interest in social engineering and surveillance rather than good social work practice.

Proposed solutions

During a parliamentary question (Hansard, HC Debate, col 660 (14 November 2007), Q. 6 [163661]) John Hemming MP highlighted that different social care approaches result in different outcomes – if
a social care system supports rather than punishes parents, children can and will return to home. In England in 2006 there was an overwhelming bias towards adoption, as a result 4,160 children under the age of 5 were taken into care and more than 60% of them, 2,490, were adopted. However, in Scotland in 2006, there was a presumption that a child’s right was to remain with his/her birth parents wherever possible, thus parents were provided with intensive support and assistance, as a result 574 children left care and 373, roughly 64%, went home to their parents.

Attitudes and beliefs that parents should be punished for their failings must be challenged because as statistics highlight, the likelihood is that children removed from their parents will develop problems that their counterparts who are brought up by their birth parents are less likely to suffer. Rather than punishing parents and removing their children, supportive and therapeutic packages should be provided for parents’ pre- and post- care proceedings. This will result in more birth families remaining together and will also prevent an inter-generational cycle of care proceedings, which would be more cost effective in the long term.

In fact, most families subject to care proceedings are already well known to local authorities with their children having been ‘on the edge of care’ for some time. Many of these children have health, development and social care needs, which have not been addressed by local authorities. Troubled parents first need to be identified by the Children In Need framework; once identified as in need of support, parents and children should be provided with long term support by social workers trained to engage with parents and s 17 of the 1989 Act support should be provided for parents pre- and post- care proceedings.

The Children in Need framework already exists to identify and assist families who are struggling. However, despite the fact that there were 382,000 children in need by the end of March 2011, only 42,700 children were subject to child protection plans, with regular reviews required by statute. The Children in Need framework could be better utilised to identify and assist struggling parents pre-care proceedings by providing them with their own social worker who is trained to work with parents suffering with complex problems whilst providing them with any support or therapy they may require.

To ensure parents are provided with the support they require, it is imperative that social workers are trained to engage with troubled parents rather than demonise and punish them. The Munro review in 2011 identified that social workers do not possess the basic skills to work with and support parents, for instance deep listening skills, which are effective in encouraging broad-ranging healing and transformative help for parents.

Research conducted by Gair (2010) found that social workers are deficient in their understanding of, learning about and their willingness to give unconditional, compassionate empathy to parents (S Gair, ‘Social work students’ thoughts are their (in)ability to empathise with a birth mother’s story: pondering the need for a deeper focus on empathy’ (2010) 34(4) Adoption and Fostering 39–49). In 2010 Wall LJ (as he then was) condemned Greenwich social workers for being ‘arrogant and enthusiastic removers of children from their parents into an unsatisfactory care system, and as trampling on the rights of parents and children in the process’ (EH v A London Borough Council [2010] EWCA Civ 344, [2010] 2 FLR 661, at para [108]).

Social workers are often paralysed, unable to make decisions in the best interests of children due to fear of criticism. They would rather defend the reputation of the local authority and themselves by removing children from parents where there is even the slightest risk of neglect. After all, criticism social workers face for removing a child pales in comparison to the possible consequences of public vitriol if they leave a child with his/her parents and that child is later neglected.

Parents from lower socio-economic backgrounds often seek financial assistance outside the scope of care proceedings but they are often ignored by local authorities. However, ‘where the welfare of children is at stake, Art 8 may require the provision of welfare support which enables family life to continue’ (as Lord Woolf CJ commented in Anufrijeva v London Borough of Southwark; R (N) v Secretary of State for the Home Department; R (M) v Secretary of State for the
Despite parent’s and children’s Art 8 rights, parents are rarely informed of their entitlement to s 17 of the 1989 Act support and local authorities, subject to budget restraints, do not advertise the resources available to children in need.

Requests for s 17 support are frequently refused leading to further proceedings and wasted time and costs. Local authorities would rather spend their budget on care proceedings and foster care because of an ingrained attitude towards punishing parents for their failures rather than supporting them. Instead s 17 support should readily be provided to parents, who require support and assistance to care for their children at home.

When care proceedings are initiated it is essential that parents are involved in decisions about their children, particularly when care proceedings could result in forced adoption unless there is sufficient and sustained early intervention. In 2009 the Council of Europe urged Member States to consider the role of birth parents in care proceedings, however only Sweden and Denmark emphasise the role of parents and provide them with routine assistance (Europe’s children in care: What role for the European Union?, Forum 21).

To ensure parent’s rights are upheld in care proceedings in England and Wales, ambitious changes need to be made to the 1989 Act. Rather than simply assessing parents by virtue of s 38(6) of the 1989 Act, the Act needs to empower courts to order therapeutic treatment and support identified by such assessments to rectify parents’ perceived shortcomings. Furthermore, therapeutic forms of assessments need to be ordered in accordance with s 38(6) by way of community based assessments and parent-children foster homes. Parents need to be given an opportunity to learn how to parent in a safe environment and a further opportunity to demonstrate what they have learnt.

Non-residential family centre assessments, known as community based assessments are often a preferred form of assessment ordered under s 38(6). However, they need to be strengthened by providing parents with additional support and combined with helping parents find local resources to meet their shortcomings. Parents need to be provided with their own social worker who is trained to identify and target the areas in need of improvement.

Parent-children foster placements need to be increased and utilised by social services for mature parents rather than for single parent and teenage parent families only. Qualitative research conducted by Adams and Bevan (2001) found that parent-children foster placements often provide a learning one-to-one, informal environment with foster-carers who are trained to support parents (P Adams and S Bevan, ‘Mother and baby foster placements: experiences and issues’ (2001) 35(2) Adoption and Fostering 32–40). For the first time in many parents’ lives they are able to build a relationship maintained by trust, support and care. In the long term they are better value for money in comparison to the cost of residential assessments which parents often fail due to the stress and anxiety of a formal and assessed environment.

Semi-independent units are also a supportive tool for parents who may not have a family unit and require daily or even weekly visits from care staff to enable them to care for their children at home. They are often permanent in nature and provide parents with regular monitoring, support and encouragement from carers. Although semi-independent units may appear expensive they are cheap in comparison to the cost of care proceedings and foster care for children who are often very much wanted by their parents.

Semi-independent units offer a safe way for parents to care for their children. Local Authorities should not underestimate the importance of keeping the family unit together by offering long-term strategies. There are many alternatives to the proposed solutions outlined in the FJR that could support rather than punish parents, thus ensuring that parent’s rights and their children’s best interests are upheld.