POLICY PAPER 1

# Reforming the Children Act: the welfare of the child *and* the family

How a law built on Victorian ideas about the poor came to look at children apart from their families, and six changes that would help keep children safely at home.

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Based on chapter 5 of *Child Protection – A Public Health Approach: Reducing the Numbers in Care* (2021), updated with 2025–26 figures and law.

## In brief

- The Children Act 1989 makes the child's welfare **"the paramount consideration"**. The UN Convention on the Rights of the Child asks only that it be **"a primary consideration"**. That change of a single word has led courts to look at the child apart from their parents, brothers and sisters, and wider family.
- A court can remove a child who is "likely to suffer" significant harm at home. It is never asked whether care itself is likely to cause harm.
- Councils have a general duty to support children in need, but it is not owed to any particular child. The power to protect is far stronger than the duty to help.
- Parents are kept out of the meetings where decisions take shape, lose income the moment a child is removed, and face a court with no jury where the "sentence" can last a lifetime.
- We propose six changes, starting with a new welfare principle: **the welfare of the child and family shall be a paramount consideration.**

# 1 Why this matters now

On 31 March 2025, 81,770 children were looked after by councils in England, 72% more than in 1994.[1] Behind each of them is a family, and very often a mother who will go on to lose another child. Around one in four mothers who appear in care proceedings are expected to be back in court with another child within seven years.[2]

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| **81,770** | **1 in 4** | **1 in 5** |
| children looked after in England, 31 March 2025 | mothers in care proceedings expected to return to court within 7 years | newborns in care proceedings now face a same-day court hearing, up from 1 in 10 |
| DfE 2025 | Broadhurst et al. 2017 | Nuffield FJO 2025 |

The rate at which newborn babies become the subject of care proceedings in England is still rising, from 49.1 to 50.6 per 10,000 live births between 2019/20 and 2022/23, and one in five newborns now face a hearing on the same day the application is made.[3] Many are taken from their mothers on the maternity ward, when a woman can barely stand, let alone defend herself in court.

The law can change. In 2026 Parliament required councils, for the first time, to offer a family group decision-making meeting before going to court.[4] That is a welcome start. This paper argues that it does not go nearly far enough, because the problem lies at the heart of the Children Act itself.

## 2 A law built on the Poor Law

Legislation contains both powers and duties. A power means a local authority *can* do something. A duty means it *must*. The difference is stark and critical.

The Children and Young Persons Act 1963 placed a duty on every local authority "to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive children into or keep them in care", including, "in exceptional circumstances, in cash".[5] By the time of the Children Act 1989, public inquiries, recession and the targeting of resources had weakened that commitment. Section 17 of the 1989 Act gives councils a *general* duty to safeguard and promote the welfare of children in need. But the very nature of a general duty is that it is owed to children in need as a group, not to any particular child or family. The Act places firm duties on councils to investigate and to protect. It places no enforceable duty on them to help a particular family before things go wrong.

This is consistent with the Poor Laws that have governed this country in various guises for more than four hundred years. Parishes, and later local authorities, have had the power to support the poor, but no duty to provide for them. The Poor Law Amendment Act 1889 and the Custody of Children Act 1891 gave boards of guardians and charities powers to assume parental rights, and forced parents to prove they had not neglected their children: the pathway for our modern framework, in which it is for parents to prove that they are capable.

> For over a century the state has had every power it needs to remove children, and almost no duty to help their parents keep them.

## 3 "The paramount consideration"

The core principle of the Children Act is set out in section 1(1):

**CHILDREN ACT 1989, SECTION 1(1)**

When a court determines any question with respect to (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.

The United Kingdom ratified the UN Convention on the Rights of the Child in 1991. Article 3 says that in all actions concerning children, "the best interests of the child shall be **a** primary consideration". In the Children Act, the child's best interests became "**the** paramount consideration".

That change of emphasis, from the indefinite to the definite article, has led courts to seek only the child's best interests, measured at one moment in time. It has contributed to the calamitously high number of children in care and to a disregard for the wider family: the child's brothers and sisters, grandparents, and the parents whose risk of breakdown, depression or suicide after removal is simply not part of the question.

A child's welfare is not something that can be judged on the date of a court hearing. It stretches forward through the whole of their life. Their relationship with their family is part of it.

### THE AFTERMATH

Organisations such as Family Drug and Alcohol Courts and Pause do valuable work helping mothers recover after removal and avoid losing another child. But they are dealing with the aftermath. In a large national study, around one in four birth mothers in care proceedings were expected to return to court within seven years, often because their problems had been repeated rather than resolved.[2] A law that considered the family as well as the child would have to offer help before removal, not after.

## 4 What do we mean by harm?

Under section 31 of the Children Act 1989, a court can make a care order if a child "is suffering, or is likely to suffer, significant harm" attributable to the care given not being what it would be reasonable to expect a parent to give. "Harm" means ill-treatment or the impairment of health or development, including, since the Adoption and Children Act 2002, impairment suffered from seeing or hearing the ill-treatment of another.[6]

In considering the options, the court weighs the welfare of the child. It does not weigh the welfare of the child *in care*, because the court deals only with the case before it. Whether care is likely to cause significant harm, or greater harm than the child faces now, is not part of the test.

That matters, because children in care face real risks of their own: repeated moves, broken attachments, abuse within care, and the lack of any family behind them when they enter the adult world. On 31 March 2025, more than one in five children in care in England, 18,120 children, were living more than 20 miles from home.[1] Adults who spent time in care as children have a higher risk of death than those who did not.[7]

There are thousands of ways in which parents cause their children harm. The father whose shouting doesn't affect the eldest two but damages the third child, who cannot cope with aggression. The ambitious parents whose academic pressure contributes to anxiety, depression or an eating disorder. The busy career parents with no time for warm, proactive parenting in the week. Most of these families never come under the lens of social services, and most of their children survive their parents' failings because the wider context of their lives, in family, community and school, gives them a safety net. The child in care loses all of it.

### A different test

The threshold could be rewritten so that a court must first be satisfied that the harm cannot be reduced by removing the person causing it, or by ordering the services the family needs. For example:

PROPOSED REDRAFT OF SECTION 31(2)

A court may only make a care order or supervision order if it is satisfied that:
(a) the child concerned is suffering, or is likely to suffer, significant harm; and
(b) the harm, or likelihood of harm, cannot be diminished by:
(i) the exclusion of any secondary carer from the home where domestic violence, symbiotic drug or alcohol use or other co-dependence exists; and
(ii) the provision, by order, of services to the child and/or the family, including drug or alcohol rehabilitation, counselling, the financing of help in the home, psychiatric care, housing and financial support in kind.

Reformulating section 31 in this way would force the court to consider the wider family and social context. It would provide the support needed in the home, and it would reduce the numbers in care at a huge cost not only to the public purse but to future lives and generations. It would break the cycle.

## 5 Before the court

### The strategy discussion

When a council is worried that a child is suffering, or likely to suffer, significant harm, it holds a strategy discussion: at minimum the social worker and their manager, the police and a health professional. At this crucial stage, when a view is being formed and the next step decided, parents are not invited. Neither parent, advocate nor wider family can put their side.

It is akin to school playground bullying, where a group of people, some of whom you thought were friendly, gather in a corner and clearly talk about you, refuse to let you join in, and then tell you that you can come to their next meeting.

A more collaborative approach would start with a letter, sent two weeks before the strategy discussion, setting out the concerns clearly and inviting parents to respond to each one, with the support of an independent advocate. Advocates should be trained, independent of all statutory agencies, and available to every parent. The meeting could be chaired by an independent facilitator rather than by children's services.

And every professional at the table should be there to find a solution, not just to express an opinion. A teacher who reports a child's disruptive behaviour should be asked whether the child has been referred to an educational psychologist. A housing officer who reports that the family is about to be evicted for rent arrears should be asked whether anyone has looked at their benefits and debts. There is simply no point in backing vulnerable parents into a corner and turning on the headlights.

### The case conference

By the time of a child protection conference, parents are often confused, angry and isolated. Research by Birmingham City Council described conferences, for parents, as "a hostile, intimidating environment where

potentially life shattering decisions are taken by officials they don't know".[8] Assessments may have been written by trainee or poorly trained social workers, yet other professionals will generally support a colleague's decision. The parent knows, and may sit fuming, but can say little for fear of making things worse.

### The wider family

Family group conferences give the family, not the professionals, the chance to make a plan for the child, with an independent coordinator. They work: in a randomised trial in England, 36.2% of children whose families were referred for a conference were in care a year later, against 44.8% of those who were not.[9] Since 15 July 2026, councils have had to offer a family group decision-making meeting before applying for a care order.[4] It is a welcome change. But the offer comes in the letter that warns of court proceedings, when trust has often already broken down, and the council can decide not to make it. The wider family should be involved at the first sign of concern, through a coordinator who is independent of the case.

## 6 Poverty during proceedings

It is often poverty, not risk of significant harm, that brings parents under the spotlight of social services, and often because they went to them for help. Those who are better off know better than to ask.

When a child is removed, the family's income falls immediately. Benefits for that child stop. Housing support may be cut. A lone parent may have to start looking for work in the middle of meetings, assessments, contact sessions and court hearings. One mother described to *Community Care* how, during proceedings, she and her teenage son lived on £51 a week:

> "I could not pay rent, nor council tax and ended up owing thousands of pounds of debt to the same local authority who had taken my baby and was fighting to have him adopted. Some days I could not afford the train fare to get to court. None of this was taken into account by the local authority when assessing me and, in fact, my need to use a food bank was then presented as evidence of a 'chaotic lifestyle'."
>
> A mother writing in *Community Care*, 2016

Councils can make payments under section 17 to help with rent during proceedings, but this is not widely known or advertised. If the law is serious about keeping families together, a family's income should be protected while the court decides.

## 7 The Family Court

Care proceedings are civil proceedings. There is no jury. A judge decides the facts on the balance of probabilities: whether something is more likely than not.[10] By comparison, a man caught red-handed robbing a bank at gunpoint is entitled to plead not guilty, and a jury must be sure of his guilt beyond reasonable doubt before he is convicted. Parents can lose their children for life with no criminal case ever brought.

Until recently, parents were also silenced. Since 27 January 2025, accredited journalists and legal bloggers can report on family court cases where a transparency order is made, and the starting presumption is that one will

be.[11] That is real progress. But parents themselves still cannot tell their story publicly, there is no equivalent of the Criminal Cases Review Commission to look at possible miscarriages of justice, and once a child is adopted there is no way back.

Other countries do this differently. In France, child protection concerns are channelled through a specialist children's judge, the *juge des enfants*, in a non-adversarial system. We could learn from them, or require that serious allegations of abuse are tested in a criminal court before a child is permanently removed.

## 8 Six proposals

**1** **A new welfare principle**

Amend section 1(1) of the Children Act 1989 so that "the welfare of the child and family shall be a paramount consideration", in line with Article 3 of the UN Convention on the Rights of the Child.

**2** **A care order only when help cannot reduce the harm**

Redraft section 31(2) so that a court must first be satisfied that the harm cannot be diminished by removing an abusive or co-dependent adult from the home, or by ordering the services the family needs.

**3** **Weigh the harm of care**

Require the court to consider the likely effect of care itself, including moves, distance from home and loss of family relationships, alongside the risk at home.

**4** **Parents at the table, with an advocate**

Give parents written notice of concerns two weeks before a strategy discussion, the right to attend with a trained independent advocate, and an independent chair.

**5** **The wider family first, early**

Build on the 2026 duty by offering a family group conference, run by an independent coordinator, at the first child protection conference rather than only before court.

**6** **Protect family income during proceedings**

Keep a family's benefits and housing support in place while proceedings are under way, and make section 17 help with rent and costs a published entitlement.

None of this means leaving children in danger. It means making sure that, before the state takes a child, it has done everything a well-off family would do for itself: removed the abuser, paid for help in the home, treated the addiction or the illness, and kept a roof over their heads.

> It is time to place families first: to rethink the structure of the law, and to care about our children *and* their families.

## Questions for discussion

**Q1** How might our core children and families legislation be improved to reflect a public health model of family wellbeing?

**Q2** If the law does not set out exactly what causes "significant harm" and what would count as evidence of it, how can it have a shared meaning?

**Q3** Is it right that parents can lose their children in civil courts that require no jury?

**Q4** How might parents be involved in law in early inquiries and strategy discussions, and how could the system be made less adversarial?

## Sources


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