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The Discharge of Care Orders: A Study of England and Wales

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Beth Stone and Gillian Macdonald organised, undertook and analysed the interviews

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Executive Summary

Introduction

Care orders place children under the legal care of a local authority and limit parents' powers to make decisions about their children. While there is much research about the process and outcomes of care proceedings, there is little known about the discharge of those care orders – particularly how, why and when care orders are ended and the differences between applications that are granted and those that are not. Understanding more about the discharge of care orders is vital – whether a care order remains in place has significant implications for children and their families, and for local authorities in terms of their responsibilities to promote children's welfare, review their care and provide services. Discharging a care order prematurely risks the child and family not receiving necessary support and the child's welfare not being safeguarded; not discharging the order risks the over-surveillance of families and uses resources unnecessarily. The present study aimed to increase knowledge and understanding of current practices relating to the discharge of care orders by identifying characteristics of orders which are discharged and those which are not, and exploring variations in the proportions of orders discharged and the factors that may contribute to these differences. Increased knowledge about discharge processes and outcomes will improve understanding of the use of care proceedings and care orders, potentially reducing demands on courts and local authorities, help to improve professional decision-making, reduce unwarranted variation and provide the basis for high quality support to children, parents and carers.

Background

As the number of children in care increases, the number of potential discharge applications also increases, with concomitant implications for children, families, local authorities and the courts. The decision to apply for the discharge of a care order is influenced by various factors and should be part of a managed care plan. Relevant to these considerations is the ongoing concern that children may 'drift' in care due to a lack of proper planning and pressure on resources. However, there is also a significant risk that, if care orders are discharged prematurely, children could be exposed to potentially harmful situations. A lack of access to legal advice and representation may have implications for parents, carers and the courts, resulting in premature or delayed applications and potentially making it more difficult to present and hear discharge applications.

Knowledge about discharge processes and outcomes, specifically the numbers of families affected, the impact on the courts, and local authority responses, are relevant both to the reform of legal aid and professional practices relating to discharge applications. It is also important to identify any regional variations in discharge process and outcomes. Such variations have already been identified in care orders and this raises important questions about proportionality and equitable treatment of children and families. A thorough examination of discharge practices and outcomes is required to understand how to best support children and families in these circumstances. This is the first study to explore discharge applications and outcomes on a national scale in England and Wales.

Methodology

The project triangulated data from three sources: an analysis of population-level data about children subject to care orders in England and Wales, held within the Secure Anonymised Information Linkage (SAIL) databank; a detailed exploration of data extracted from Cafcass/Cafcass

Cymru e-casefiles for a random sample of 220 discharge applications; and qualitative data from 32 interviews with a range of family justice professionals, including local authority and independent social workers, lawyers, Children’s Guardians, Independent Reviewing Officers (IROs), and a focus group held with members of the judiciary. Permission to conduct the research was granted by the President of the Family Division and access to the SAIL databank and Cafcass/Cafcass Cymru e-casefiles was permitted following the completion of the relevant research governance procedures. The research received ethical approval from the School for Policy Studies’ ethics committee.

Key findings

Demographics

- SAIL data shows that applications for discharge have substantially increased in the last decade, from 71 in England in 2010 to 1589 in 2019, and from 61 in 2012 to 138 in 2019 in Wales.
- The increases in discharge applications partly reflect increases in the number of care orders in both England and Wales. The proportionately higher increase in applications in England likely reflects the changing use of legal orders by family courts and an increase in risk averse social work practice.
- The majority of discharge applications (60 –70%, depending on the data source) were made by local authorities.
- Of the remaining applications, the vast majority were made by parents. Very few applications were made by children, for example in the e-casefile data just one application was made by a child.
- There were regional variations in discharge applications. While the North West and Yorkshire and the Humber had the highest number of discharge applications, proportionately more applications were made in London, South West, South East and the East of England (when compared with proportion of children on care orders).
- The e-casefile and English SAIL data suggest that slightly more boys were subject to discharge applications than girls, but the proportions in the Welsh SAIL data were equal.
- The average age of the children at the time of the discharge application was 7.8 years; both the e-casefile and SAIL data indicated that children subject to discharge applications were slightly younger in Wales than England.
- Of the 69% of discharge applications made by local authorities in the e-casefiles:
 - 61% were for children to live with a parent or both parents
 - 39% were intended to result in a SGO to the current carers, most of whom were related to the child.

Applications and outcomes

- Across English and Welsh SAIL and e-casefile data, local authority applications were much more likely to be successful than those made by parents.
- In the English SAIL data where the outcome was known, 88% of discharge applications made by the LA were successful compared with 25% made by parents and other applicants. In the Welsh SAIL data, 71% of local authority applications were successful compared with 26% of those made by a parent or other applicant.
- In the e-casefile data, 25% of parent applications were successful compared with 95% of LA applications.

- E-casefile analysis allowed for more in-depth analysis of the outcome of discharge applications in terms of the intended carer. Local authority applications were successful in 94% of cases where the intended discharge was to a parent and in 96% of cases where the intended discharge was to a carer under a Special Guardianship Order (SGO).

Timing of discharge applications

- On average, discharge applications were made at least two years after the initial care order. However, the range of care order length was large – for example in the e-casefile data, discharge applications were made between 2-147 months from the initial care order.
- Interviewees noted that accelerated or fast-track discharge processes were used but this was dependent on local procedures and innovations – rather than consistent use across different regions or countries.
- Data from e-casefiles highlighted evidence of considerable drift and delay for some children. This was confirmed in interviews, with professionals noting that discharges were rarely social workers' priority due to workload demands.

Factors influencing the discharge outcome

- Data on ethnicity were incomplete precluding analysis. There was no observed association between gender and outcome of discharge applications.
- Within the English SAIL data, children's age was associated with outcomes. Where the legal outcome of the discharge was known, applications for the youngest group of children (birth - 4) and the oldest group (15-17) were much more likely to be discharged compared to those applications about children aged 5-9 and 10-14. This association was not observed in the e-case file data (equivalent data was not available for Wales).
- From interviews and e-casefile data, it seems probable that younger children are more likely to be in stable placements that can safely be discharged. For older children, there was evidence in the e-casefiles of children 'voting with their feet' and returning to their preferred home, with the LA applying to discharge the 'ineffective' care order.
- The number of children on applications was also associated with outcomes. The more children on the application, the less likely the application was to succeed (English SAIL data), with applications for single children being more likely to be successful.
- Within the e-casefile sample, more in-depth analysis of factors associated with outcomes was possible:
 - The recommendation made by the guardian was the most influential factor in predicting the discharge outcome. Of the 203 e-casefile cases where the guardian's recommendation was known, the outcome was congruent with that recommendation in 201 cases.
 - The child's preference about where to live was positively associated with the discharge outcome.
 - A higher number of concerns about parenting capacity and lifestyle at discharge was associated with the application being refused.
 - Parent applications were less likely to be discharged if there had been multiple forms of abuse at the time of the care order.
 - What met the threshold for a care order to be discharged, the care order to be continued and the application of the 'no order' principle was inconsistently interpreted and applied by professionals across agencies. This was also evident in interviews with professionals.

Process and participation

E-casefile analysis demonstrated that:

- The majority of cases (approximately 60%) were concluded within one or two hearings. It may be that these cases were part of fast-track or accelerated discharge processes, although it was not possible to confirm this from the e-casefiles.
- The remaining cases (approximately 40%) were concluded in three or more hearings, with some taking up to seven hearings. Cases that concluded over several hearings tended to be contested or those where concerns about, or changes to, the child's situation arose during the course of the application.
- Local authority applications tended to be concluded more quickly than parental applications because they were more likely to be uncontested and successful. Interviewees further suggested that the success of local authority applications reflects a high level of preparation and scrutiny prior to application.
- Children were infrequently involved in the discharge process. In interviews, guardians reported some reluctance in speaking to children in case they unsettled the current arrangement or upset the child. Overall, there was evidence of considerable variation in how and if children were engaged with.
- A minority of parents and carers had legal representation - and these tended to be in LA applications. Few parents had access to legal advice prior to or during the discharge process. Interviewees suggested that the lack of legal advice meant parents could struggle to navigate the court process and were not aware of their rights.
- Interviewees felt that the discharge process could be re-traumatising for the families and children involved.
- Some parental discharge applications were made to force re-examination of the local authority's care plan or practices. While this is technically a misuse of the legal process, it did sometimes result in beneficial changes and was seen as the only option for parents whose previous complaints had not been adequately responded to.

Support after discharge

- Interviewees reported that there is limited, ad hoc, support for parents and carers following both successful and unsuccessful applications.
- Interviewees also highlighted how some SGO carers benefitted from a local authority policy of continuing financial support for kinship carers who became SGOs, but others were only informed about entitlements to state benefits.
- For most parents, discharge of the care order ended their involvement with the local authority children's social care. There was continued involvement for 10% of the children in the e-casefile sample where the court made a supervision order; 35% were made subject to a SGO and 19% to a CAO.

Motivations, outcomes and process: A typology of discharge applications

A typology of discharge cases was developed based on analysis of e-casefiles and interview data. The typology consisted of six different types of discharge application – based on motivation for discharge, process, and outcome:

- Placement at care order assessed as stable (34%)

- Reunification to birth parents (21%)
- Unsupported by the local authority (19%)
- Stable placement found post care order (12%)
- Forced re-examination or discharge used as appeal (9%)
- Ineffective care order (5%)

This typology shows clearly the different types of discharge applications dealt with by the court system, and indicates that the discharge process could be adapted to address these different types of application to increase efficiency and reduce potential re-traumatisation for parents and children.

Improving Discharge Proceedings – Recommendations

Practice and policy recommendations are based upon the typology of discharge applications developed from this research. Given the drift and delay observed in cases that were suitable for discharge, recommendations centre around how to expediate the process. However, it is acknowledged that this must be carefully balanced with the risk of discharging orders inappropriately. The recommendations are not all cost-neutral and improving support would require additional resourcing; however, it is also envisaged that cost-savings would be made through streamlined and more efficient processes. Reducing bureaucracy for all proceedings, whatever form they take, means that resources can be directed to support for children and families, rather than completing assessments or writing reports that may not add value to the overall proceedings.

1. Introducing a pre-proceedings process

A pre-proceedings process, modelled on that for care proceedings, should be introduced for all discharge applications, to ensure that parents and carers have independent legal advice about the case for discharge, its legal effects, the plan for post-discharge support and an opportunity to discuss (and, as far as possible, resolve) concerns about proposed care and contact arrangements.

The pre-proceedings process would be particularly useful in addressing specific types of discharge application, namely straightforward, uncontested applications (eg placements that are assessed as stable), applications made by parents to force re-examination or that are unlikely to be successful, and cases requiring further court scrutiny, for example where the care order is considered to be ineffective.

2. Uncontested applications to become administrative process with celebratory event

The discharge process in agreed or uncontested applications should engage parents and carers more in the application process and provide recognition for the efforts parents or carers have made to regain or acquire full responsibility for the child. The decision to discharge would continue to be made by a judge but administratively, through a review of the papers rather than through hearings. The only court attendance would be for a (non mandatory) celebratory event, with the parents or carers, the local authority social worker and judge, corresponding to that attended by adoptive parents after an adoption is finalised. This would enable the efforts of parents or carers to be formally acknowledged and provide a foundation for stronger relationships between the parents or carers and the local authority in the future.

3. Development of national guidance on thresholds to reduce inconsistency

Cross-discipline policy on thresholds for discharge may help reduce national and regional variations in outcomes. Such guidance would help to clarify what constitutes ‘good enough care’ at the time of discharge and to ensure that all parties have the same understanding of what is needed for a

discharge to be granted. The guidance would need to be developed collaboratively, with input from local authorities, independent reviewing officers, the judiciary, Cafcass and Cafcass Cymru, and ideally parents, carers and children.

4. Local authorities to promote active case management

Clear and consistent oversight of the active assessment of child welfare must be promoted within LA teams so that relevant cases for discharge are identified and addressed in a timely fashion. Social workers, supported by their managers and IROs, need to ensure that care plans are dynamic and actively reviewed, with support identified within the care plan provided when appropriate.

5. Local authorities to develop expertise and knowledge exchange

At a local level, LAs should seek to ensure that social workers have access to expertise in making discharge applications to address issues of delay and drift. At a national level, LAs, along with the Principal Social Workers network, Association of Directors of Children's Services (in England) or Association of Directors of Social Services (in Wales) need to proactively share best practice in identifying and progressing cases for discharge.

6. Local authorities to provide support to parents, carers and children

Local authorities have a role in actively providing support to parents, carers and children throughout the discharge process, regardless of the anticipated outcome of the application. Clear and accessible explanations of the discharge process, including the potential impact on post-discharge support (including financial support) and leaving care eligibility would be beneficial.

7. Encourage open dialogue between families and professionals

Given the influence of the guardian's position on the outcome of the discharge application, it is important that guardians remain open to hearing the views of parents and/or carers and social workers. The potential side-lining of social workers by guardians could be avoided by encouraging dialogue (eg via a pre-proceedings process) between social workers and guardians to consider what is the best outcome for the child *before* the court hearing, and to do this *with* rather than against the parent/s, so that proceedings are resolved more efficiently, and are less adversarial or distressing for families.

8. Guardians to engage children

Children have the right to be involved in matters affecting them (UNCRC 1989). The starting point should be that children will be included in any discharge process, unless there is good reason for them to not be. This decision will necessarily be a careful balance between their right to be involved and what is in their best interests. The decision not to talk to a child should be made jointly between the social worker, IRO and the guardian, and that information clearly presented to the court.

9. Advice about discharge to be made available for parents, carers and children

Support prior to, during and post-discharge application (whether or not the discharge is granted) should be provided to parents and carers as a matter of priority. Clear and accessible explanations of the discharge process, including the potential impact on post-discharge support (including financial support) and leaving care eligibility could be provided in written formats, such as leaflets, or short videos/animations online or via a mobile app. Suitable mechanisms need also to be developed for children to be more informed about discharge and the discharge process, including resources that parents and carers, social workers and guardians can use to discuss the effects, advantages and

disadvantages of ending their care order and signposting to legal advice for older children who may wish to make their own application.

10. Financial and practical support to be provided to SGO carers

Potential disincentives to discharge, such as the detrimental impact discharge has on foster carers becoming special guardians, should be removed. National schemes and/or agreed standards for ongoing support for SGO carers should be developed so that the support available does not vary according to the resources of individual local authorities. Ideally this would be consistent across England and Wales.

Further research

Further research is needed with parents, carers and children to explore their experiences of the discharge process. The study's findings could also be used as a baseline to compare trajectories and outcomes for children with care orders where no discharge application was made; and to explore the extent of social work involvement with children and families after the discharge is made.

Conclusions

This is the first study to provide a baseline and in-depth understanding of discharge process and outcomes in England and Wales. It has demonstrated key issues and inconsistency in applications for discharge and the use of the discharge process. The typology of discharge applications presents clear evidence for the need for changes in procedure and practice. The recommendations for practice could be relatively easy to implement and would lead to improvements for children, their parents and carers, and the professionals involved in discharge applications. The study has showcased the research capabilities of the Cafcass and Cafcass Cymru data held within the SAIL databank and has provided a solid foundation for future research with children, parents and carers on their experiences of discharge.

Glossary of terms and abbreviations

Cafcass	Children and Family Court Advisory and Support Service
Cafcass Cymru	Children and Family Court Advisory and Support Service Wales
Foster carer	State certified care giver including kinship and unrelated foster carers
LA (parent)	An application submitted by the local authority where a birth parent/s or individual/s with parental responsibility) is the intended carer
LA (SGO)	An application submitted by the local authority where a kinship or foster carer is the intended carer under a Special Guardianship Order
Significant harm test	As per the Children Act 1989: (2) A court may only make a care order or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to— (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control. (The Children Act 1989 s.31)
'Unreasonable care'	Relating to the Children Act (1989) s.31 (b) (i), ie care that it would not be reasonable to expect a parent to give

APPG	All Party Parliamentary Group
CO	Care Order
CMS	Case management system
CAO	Child Arrangements Order
CLA	Child Looked After
DfE	Department for Education
DFJ	Designated Family Judge
DVA	Domestic Violence and abuse
ECMS	Electronic case management system
FJC	Family Justice Council
ICO	Interim Care Order
IRO	Independent Reviewing Officer
ISW	Independent Social Worker
LA	Local Authority
LAC	Looked After Child
LGSCO	Local Government and Social Care Ombudsman
MoJ	Ministry of Justice
NFJO	Nuffield Family Justice Observatory
PLO	Public Law Outline
PLWG	Public Law Working Group
RO	Residence Order (replaced with CAO for living in 2014)
SAIL	Secure Anonymised Information Linkage databank
SGO	Special Guardianship Order
SO	Supervision Order

Chapter 1 Introduction

1.1 Introduction

In England and Wales, care orders place children under the legal care of a local authority and limit parents' powers to make decisions about their children. Placing a child in care represents significant state intervention in family life and there is a large body of research examining the process, recurrence, and outcomes of care proceedings involving children. However, little is known about how, when and why care orders are ended, or whether children become subject to subsequent care proceedings. In particular, there is a lack of knowledge and understanding about the practice of discharging care orders, including the circumstances which lead to successful applications, how long orders last before they are discharged and whether children are successfully reunified with their parents. Whether a care order remains in place has significant implications for children and their families, and for local authorities in terms of their responsibilities to promote children's welfare, review their care and provide services. Discharging a care order prematurely risks the child and family or carers not receiving the necessary support; not discharging the order risks the over-surveillance of families, and uses resources unnecessarily.

While there is considerable variation in the use of care orders across England and Wales (Harwin et al, 2018; Hodges and Bristow, 2019), there is no comparable information about the discharge of these orders. The overall number of children subject to discharge applications in England and Wales increased significantly, (Ministry of Justice, 2021). This increase is proportionately much greater than the increase in the number of children in care on care orders: during this period the number of children on care orders increased by 63% but the number of discharge applications increased by 220%. Care orders may be discharged on the application of children, parents or local authorities, and carers can seek discharge by applying for a special guardianship order (SGO) or a child arrangements order (CAO) for the child's living arrangements. Again, there is no published information about who seeks discharge, or the comparative success rates for different applicants.

Little is known about how discharge practice fits with the policy objectives of securing permanency in care for children and reunifying families where care orders have been made (Department for Education, 2015); and the impact of different care order practices, particularly the use of placement with parents, which vary across regions. Placement with parents under a care order may (or may not) provide a stronger foundation for improving and maintaining parental care of children at risk of abuse or neglect. However, this approach is more intrusive, and costly, than alternatives which either do not involve court proceedings or use supervision orders to promote improvements in parental care; placement with parents has also been criticised for providing 'false assurances' to those involved (Public Law Working Group, 2021:61). A thorough examination of discharge practices across England and Wales is needed to understand and analyse different local responses to children in care, assess the consistency of thresholds for discharge and to ensure proportionate state intervention and effective use of resources.

Having an overview of discharge applications, including the number, type and outcome, can also inform ongoing debates about the reform of legal aid and practices relating to discharge applications. Particularly, it is critical to know how and if parents are represented in discharge proceedings or have access to legal advice. A lack of access to legal advice and representation may have implications for parents, carers and the courts, resulting in premature or delayed applications and potentially making it more difficult to present, hear and determine discharge applications. This

also has implications for local authorities in terms of applying for or responding to parental requests for discharge or encouraging applications for SGOs by carers.

Increased knowledge about discharge will also improve understanding of the use of care proceedings and care orders, potentially reducing demands on courts and local authorities, improve professional decision-making, reduce unwarranted variation (which hinders the consistent and just treatment of children and families), and provide the basis for high quality advice to parents and children. A better understanding of discharge proceedings can provide the basis for developing better, more inclusive processes for all involved.

1.2 Aims and objectives

This study aimed to increase knowledge and understanding of current practices relating to discharging care orders by identifying characteristics of orders which are discharged and those where applications are unsuccessful, exploring variations in the proportions of orders discharged and the factors that may contribute to these differences. The study provides evidence about the practice and process of discharging care orders including the length of care orders and children's legal histories prior to and following the discharge application. The research questions were:

- What proportion of care orders are discharged, and how does this vary, between applicants, between local authorities, and over time?
- What is the length of care orders prior to successful discharge and how does the timing of discharge applications in relation to the original order relate to their outcome?
- What are the characteristics of discharge applications that are successful and those that are not, and of cases where orders are discharged but result in reapplications for care orders?
- What are local authority social workers and lawyers, Independent Reviewing Officers (IRO) and family justice professionals' experiences and views of discharge, applications, and how does this vary according to the type of application (local authority or parental)?

1.3 Study strengths and limitations

The Nuffield Foundation and the Nuffield Family Justice Observatory have funded several studies on the use of care proceedings and orders made in care proceedings, but this is the first major study to examine discharge of care orders since the seminal work by Farmer and Parker (1991), conducted before the introduction of the Children Act 1989 and prior to the more recent emphasis on providing for permanency when care orders are made.

Further, this is the first study to use representative, anonymised administrative data about the discharge of care orders held within the SAIL (Secure Anonymised Information Linkage) Databank, alongside a detailed analysis of e-casefile data about the children subject to discharge applications and qualitative interviews with a broad range of family justice professionals. The study thus provides a novel evidence base on discharge of care orders comparable with that around the making of care and supervision orders.

There will be cases where reunification with a care order at home is more appropriate than a supervision order. This research does not provide evidence about when these different orders should be used, only about the discharge of care orders. It provides a profile of discharge applications and orders and processes; it does not tell us anything about care orders where no discharge application was made or what happened to the children and families after the care order was discharged.

It was beyond the remit of this study to involve children, parents and carers directly affected by discharge applications and their voices are absent from the study; however, the findings from this research provide a solid foundation for further research with children and adults about their experiences of discharge.

The impact of the COVID-19 pandemic cannot be ignored, particularly the increased demands of the time of potential interview participants, which affected their ability to be involved in the research. The pandemic had a significant effect on all of the professionals involved in supporting the study – for example in facilitating access to the SAIL Databank and the e-casefiles held by Cafcass and Cafcass Cymru – and we are particularly grateful for their support in ensuring the successful completion of the research.

1.4 The Welsh-specific legislation

There is a single family court system in England and Wales and the provisions of the Children Act 1989 relating to care orders and discharge apply equally. Cafcass Cymru provides the children’s guardian service in Wales, with very similar responsibilities in care and discharge proceedings as Cafcass in England. However, social care is a devolved matter: the Children and Families (Wales) Measure 2010 and the Social Services and Well-being (Wales) Act 2014 set out local authority responsibilities to provide care and support for children and families. Where the eligibility criteria are met, the local authority must meet a child’s assessed care and support needs by providing services or financial support as set out in their care plan. Children in need can be looked after without a court order under s.76 of the 2014 Act as they can in England under s.20 of the Children Act 1989.

1.5 A comment on terminology

The terminology and jargon used to describe children’s involvement in the care system can be problematic (TACT, 2019) and we have been mindful throughout this report to avoid language that potentially labels or stigmatises care-experienced children and their parents or carers. However, we have not edited the language used by professionals within their interviews with us and, for brevity’s sake, have included some commonly used acronyms to summarise data drawn from the e-casefiles and SAIL databank, which are noted in the Glossary of Terms and Abbreviations.

1.6 Structure of the report

- **Chapter 2** provides an overview of the law and previous research relevant to the discharge of care orders.
- **Chapter 3** outlines the methodology for the project including the population-level analysis of discharge applications, the detailed exploration of e-casefile data, and the interviews with a range of family justice professionals.
- **Chapter 4** presents a summary of the characteristics and care histories of children subject to discharge applications, who the applicants are and the reasons why applications are made.
- **Chapter 5** discusses the process of applying for a discharge of care order, including the roles of professionals, legal representation, the duration of proceedings and reasons for possible ‘drift’ and delay.
- **Chapter 6** focuses on the factors influencing the discharge of care orders, including differences between applicants, specific demographic characteristics and care histories, risks and concerns, and variation between courts and regions.
- **Chapter 7** presents the key conclusions and outlines a range of recommendations for policy and practice.

Chapter 2 Background

2.1 Key summary

- There has been an increase in care orders in the last decade and a significantly larger increase in the discharge of care orders. These increases have been driven by intersecting issues relating to a reduction in the use of adoption from care, greater reliance on placement with kin, a reduction in the use of voluntary accommodation (s20/s76), and the impact of austerity, poverty and 'risk averse' practice in both courts and local authorities
- Existing research shows that local authority support and intervention after a care order is discharged is variable, depending on the 'leaving care' status of the child and whether the child is subject to an order such as a special guardianship order
- Local authorities, parents and the child themselves can seek to discharge a care order, yet there is very little known about the discharge of care orders in terms of who applies or what influences success rates
- It is evident that there is variation in discharge between Wales and England, and within regions in England, which needs further exploration

The number of children subject to care orders is affected by two key decisions: the decision to make a child subject to a care order and the decision to discharge the care order. The discharge can be made directly or through the process of making a special guardianship order (SGO), which automatically discharges the original care order and imposes a new order. Clearly, neither of these decisions are made in isolation but are part of much wider and longer deliberations and processes, which occur within specific social, legal and policy contexts.

The number of children subject to care orders is increasing across England and particularly in Wales (Harwin et al, 2018; Hodges and Bristow, 2019; Griffiths et al, 2020). This reflects three key shifts:

- the decline in the use of s.20 of the Children Act 1989 and s.76 of the Social Services and Well-being (Wales) Act 2014 - both provisions that allow local authorities to accommodate children without bringing proceedings, unless parents object (Stather, 2014; Masson et al, 2019);
- increased concerns about protecting children and the risks to children (and social workers) in the wake of the serious case reviews, such as Baby P (Jones, 2014; The Child Safeguarding Practice Review Panel, 2022); and
- the reduction in the use of adoption from care (Preston, 2021; DfE, 2021).

Furthermore, cuts to local authority budgets in England have contributed to an increase in care orders. These cuts have led to a reduction in non-statutory, preventative services, including children's centres, which has reduced the capacity of local authorities to proactively manage risk without court orders. Similarly, austerity has increased stresses on families and reduced the capacity of some parents to provide adequate care (Bywaters et al, 2016; NAO, 2019). Consequently, social work and family justice practitioners are experiencing difficulties in managing the demands placed on them, with critical implications for the children and families affected (Harwin et al, 2018). Understanding how to improve policy and practice relating to the discharge of care orders may help alleviate some of these pressures, as well as improving outcomes for children, their families and carers.

2.2 What is discharge and who can apply? Law, policy and practice

The decision to discharge a care order is made applying the s.1 welfare test of the Children Act 1989 (ie, all decisions should be made in the best interest of the child). A court order is required to discharge a care order: the court must consider the application, read or hear evidence and reports and determine whether to discharge the order. The law and practice of discharge was shaped by the death of Maria Colwell and the subsequent Inquiry (Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell, 1974; Parton, 2018). In the wake of this tragedy, the role of *guardian ad litem* was created, but initially used only for unopposed discharge of care order applications. Later, the Children Act 1989 made further changes to discharge proceedings, extending the use of guardians and solicitors for children to a wide range of public law cases. Parents were given the right to apply for discharge, and courts had the power to make a range of orders in discharge proceedings, including child arrangements orders (before 2014, contact orders and residence orders) and, from 2005, special guardianship orders (SGOs).

The application to discharge a care order can be made by the local authority, a parent or the child themselves, and carers can seek discharge by applying for an SGO (but carers cannot apply for a discharge *per se* unless the court gives permission). However, no application for discharge can be made within six months of a decision on a previous discharge application unless permitted by the court (s.91(15)). In discharge proceedings a local authority does not have to show that the conditions for a care order are continuing, rather the court has to be satisfied that discharge of the order is in the child's best interests, applying the welfare test and the s.1(3) checklist. Within the local authority, the child's social worker is often responsible for instigating the discharge application, although in some areas there is a separate assessment team with a specific remit to consider discharge applications (Hunt, 2021). Currently, Independent Reviewing Officers (IROs)¹ have specific responsibilities in relation to reviewing the care plan and the child's legal status and advising children about their rights to apply for discharge.

Decisions to discharge a care order are unproblematic where children are well settled and their parents willingly accept their change of status. Indeed, maintaining a care order when a child has long been cared for by their parents appears disproportionate. Discharge and return to parents can also be in the best interests of children whose current care arrangements are unsatisfactory and where the care order is doing more harm than good. Step-down arrangements following discharge vary, with children potentially becoming subject to a supervision order, placed on a 'child in need' plan, or even experiencing complete withdrawal of local authority involvement and support (Harwin and Golding, 2022). However, unplanned reunification has a high risk of breakdown, further damaging children's welfare and undermining parenting capacity (Farmer 2018). Additionally, where a child is settled with a foster or kinship carer, a parent's application for discharge can potentially be de-stabilising and distressing for the child and carers.

Decisions to discharge a care order and make a SGO are also unproblematic where parents accept the placement, carers are willing to have parental responsibility and children are well cared for. Local authorities have responsibilities to assess the services and financial support needed by special guardians but have considerable discretion in what they provide; carers must then decide whether the support plan is appropriate. As such, there is considerable variation in the support offered to SGO carers (McGrath and Wrafter, 2021). Relationships within extended families may involve complex and shifting allegiances, meaning that relationships between parents, carers and children improve or worsen over time; once carers obtain an SGO there is no guarantee that they will receive local authority support with such difficulties (FRG 2021). Parents' rights to turn to the courts are

¹ Care, Placement, Planning and Review Regulations 2010 SI 959; The Care Planning, Placement and Case Review (Wales) Regulations 2015 SI No. 1818

limited but they can participate in the regular local authority reviews of their child's care, make complaints about arrangements they do not accept, apply for contact orders and, ultimately, apply to discharge the care order. Parents have a right to publicly funded legal representation for care proceedings, irrespective of their means or the nature of the case. However, this non-means, non-merits-tested legal aid is not available for discharge proceedings, although legal aid may still be available to those without funds, who have a good case and need representation. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) further restricted access to means-tested legal aid for private law applications, including applications for SGOs in respect of children in care. In 2019, following the review of LASPO, the government committed to making provision for legal aid for kin seeking SGOs in care proceedings but has made no similar promises for SGOs which discharge care orders, or disputes between parents and special guardians. The All Party Parliamentary Group on Kinship Care (APPG, 2022) has recommended that carers should have early access to non-means-tested legal advice and the extension of legal aid for them.

2.3 The importance of discharge to children, their families and the local authority

A focus on the discharge of care orders is essential to ensure that children do not 'drift' in care due to a lack of proper planning (Biehal, 2007), with the concomitant impact on children, their families and carers, and local authority resources. Children on care orders with home placement may be particularly 'invisible', raising questions about the impact of being at home yet still subject to care regulations for relatively long periods of time (Broadhurst and Pendleton, 2007; Harwin and Golding, 2022). Conversely, comprehensive assessments are essential to ensure that care orders are not discharged prematurely, in the belief that rapid discharge is desirable, before problems have been sufficiently resolved (Biehal, 2007). It is important for children to know that their home situation is permanent and not subject to change and review (as it may well be under a care order).

There is evidence that some parents believe that having a care order with home placement provides positive benefits for their family, particularly because of the legal requirement for the local authority to provide practical help, support and services (Broadhurst and Pendleton, 2007; Harwin and Golding, 2022). However, a care order also places restrictions on the family, which are not always understood; statutory visits and monitoring may be experienced negatively; sharing parental responsibility can undermine parental confidence and autonomy; and children may be left 'in limbo' (Broadhurst and Pendleton, 2007). Parents may particularly appreciate the support of a care order when they expect it to be short-term, with a plan for an early discharge, as this can enhance their motivation to make and sustain required changes. However, parents may also be concerned about the withdrawal of support after the order has been discharged, particularly if contact arrangements are problematic (Harwin and Golding, 2022).

2.4 Recent changes to care proceedings and the implications for discharge

Care proceedings were changed significantly in 2013 when the Public Law Outline (PLO) reforms halved the length of time to completion of care proceedings to 26 weeks. A statutory time limit of twenty-six weeks was enacted in the Children and Families Act 2014 and successfully implemented (Beckett and Dickens, 2018; Masson et al, 2019) - although this has not been maintained, with cases in 2022 lasting on average 46 weeks. Shortening the duration of proceedings means that decisions about the order required are made earlier, and with less time to test out arrangements during the proceedings. Furthermore, the emphasis on proportionate decisions and avoiding the use of adoption has encouraged greater consideration of placements within the extended family and securing permanency for children through special guardianship and placement with parents. Masson and colleagues' study of six local authorities found that shorter care proceedings and more

emphasis on proportionality together led to differences in orders made, with a reduction in the number of care orders with placement orders made but an increase in ‘lower tariff’ orders (namely, supervision orders, child arrangement orders, and special guardianship orders) (Masson et al, 2019). Likewise, research has shown that shortening of care proceedings meant that some courts were willing to make SGOs where children had spent little or no time with their new carers (Harwin et al, 2019; Masson et al, 2019). An alternative was to make a care order and encourage the local authority to place the child with kin interested in becoming special guardians. Guidance from the Family Justice Council advised against untested arrangements (FJC, 2019). Subsequently, the Public Law Working Group’s Best Practice Guide recommended that proceedings should be extended to allow such placements to be tested (PLWG, 2021).

A similar issue arises where the plan is for the child to remain with, or return to the care of, a parent; placement with the parent under a care order gives the local authority parental responsibility and power to oversee the child’s care at home. Despite the substantial increase in the numbers of children subject to care orders in England, the proportion at home on care orders has remained almost constant since 2011 at nine per cent. The position in Wales is different: a higher proportion of children were placed with a parent in 2011 (13.8%), rising to 18.8 percent by 2021².

2.5 Local authority support after discharge

After a care order has been discharged children cease to be ‘in care’; local authority involvement with the family ends unless another order is made which requires LA input (eg a Supervision Order) or there is a child in need plan or a child protection plan (or in Wales, a care and support plan or the child is on the child protection register). Parents can request services but what is provided is a matter for the local authority and shaped by its resources and other demands on them.

Age is a pertinent factor in decisions about discharge for older young people: state care ends automatically when a young person reaches the age of 18 years; in 2019, 37% of care leavers ‘aged out’ of care in England (DfE, 2022)³. Older children whose care orders ended after their sixteenth birthday are entitled to ‘leaving care services’ which include having a personal advisor and financial support until they reach 18 years. They are then additionally entitled to help with accommodation and assistance with living costs until age 25 (Children Act 1989, ss.23A-23CA). This support is intended to counter the disadvantages encountered by care-experienced young people but there is widespread evidence that they remain some of the most disadvantaged in society. No similar provision is made for children whose care orders are discharged before the age of 16 years. In Wales there are similar provisions relating to the support of young people who leave care aged 16 or 17 years in the Social Services and Well-being (Wales) Act 2014 but support after the age of 21 years is limited to those engaged in education. The amount of support offered according to the age of the child may influence the timing of discharge applications.

The impact of replacing a care order with a special guardianship order can be substantial, including a loss of financial support, or access to social work support and to services to support children’s contact with their parents. While children are fostered their carers receive allowances for fostering; however, these end with the care order and (although they may be replaced by means-tested payments depending on local practice), special guardians are substantially less well financially supported than foster carers (including kin foster carers). Furthermore, local authorities have only limited duties to special guardians. They must provide special guardianship support services, but

² Looked after Children Statistics, Table A5 and Statistics Wales Looked after Children Statistics, <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-placementtype>

³ Comparable data not available for Wales

special guardians only have a right to an assessment of their needs, not to any specific services (Children Act 1989, s.14F). Some provision is made for supporting young people aged 16 years and over who are under an SGO, as 'qualifying care leavers', which is comparable to that available to older care leavers, and this continues to age 25 provided the SGO remained in force until age 18 years. In Wales support is available to young people over 16 years who left care with a SGO under the 2014 Act (category 5). Overall, there is substantial evidence of the difficulties special guardians experience in trying to obtain services for their children and themselves (LGSCO, 2018; APPG, 2022), and the Independent Review of Children's Social Care has made significant recommendations for more support, including financial support for kin carers.

2.6 What is known about discharge of care orders?

2.6.1 Published data

Data on discharge proceedings, covering both England and Wales, are collected by the court service (see *Family Court Statistics Quarterly*, (MoJ, quarterly)). The Department for Education publishes data on children in the care system in the *Looked After Children Statistics* (DfE, annual) and also publishes data on children in need. The Welsh Government makes similar data available about children in care in Wales (Statistics Wales, annual). However, these publications provide an incomplete picture of the discharge of care orders as information about the children concerned, the applicants and the reasons for discharge are not available.

Along with the increase in the care population, there has also been a more substantial increase in the number of children subject to a discharge of care order application and those who had their care orders discharged (bar a decline in 2020 during the Covid-19 pandemic). Each year about 60% of applications resulted in discharge of the order, although the applications and orders for each year may not relate to the same children. Further data on applicants, outcomes or duration are not available for these cases. Overall, a higher proportion of care orders appear to be discharged now than was the case before the introduction of shorter proceedings discussed above (over 12% compared with less than 6% before the reform) (Family Court Statistics Quarterly, 2021).

There is limited information about the outcomes of discharge applications (beyond whether they are discharged or not). Department for Education and Ministry of Justice data (from the Public Law Applications to Orders (PLATO) study, 2019) provide some information about the proportion of discharges that end in another order – such as a special guardianship order. However, this dataset excludes a substantial proportion of applications which could not be reliably matched to orders. As with the use of placement with parents, England and Wales differ significantly in their use of SGOs. Data show that there is a much lower use of SGOs in Wales than in England. Other orders (such as CAOs for contact and SOs) are also used at the end of discharge proceedings, however, there is little detailed information about these.

The PLATO data also provide an overview of the proportion of discharges that are not granted – ie those that are withdrawn or refused. The data indicate that an average of 14% of discharge applications in England, and 24% in Wales, were withdrawn or refused annually between 2010-2017. Again, there is no information about the reasons why these applications were not successful.

It is likely there are regional variations in the proportions of children subject to discharge applications, reflecting what is known about variations in the number children subject to care orders across England and Wales. The variations in care orders are a result of legal and operational practices (Harwin, et al, 2018; McGhee et al, 2018) and different levels of deprivation and poverty (Bilson and Bywaters, 2020). However, at present, there is no detailed information to confirm this supposition. There are some research studies that provide a little more evidence about the nature of

discharges, and what happens to children and families during and after discharge applications – these are discussed in the following section.

2.6.2 Research on discharge of care orders

There have been no major studies of discharge of care proceedings since the introduction of the Children Act 1989. Farmer and Parker's seminal study (1991) examined placement of 321 children with their parents 'home on trial' in the mid-1980s, using local authority records and a small number of interviews with parents and social workers. The study focused on social work practice but included some information on the discharge of orders and highlighted that local authorities made most of the discharge applications after long periods of home placement. There were only five successful applications by parents, all uncontested by the local authority. However, there was evidence that parental threats to apply for discharge were instrumental in securing some children's placement at home, indicating that the discharge process was used to force re-evaluation of case management.

There were similar findings from a study undertaken for the Review of Child Care Law (DHSS 1985) using court registers from 10 courts and interviews with magistrates' legal advisers and key social work staff in 10 local authorities. Overall, three quarters of the 186 applications for discharge were successful, but this varied according to the applicant, with 88% of local authority applications succeeding, compared with only 33% of those made by parents. Disputes occurred where parents wanted to speed up rehabilitation, where parents had never accepted the need for the care order, and where local authorities did not support discharge after a long period of care but parents asserted their situation had changed. No details were provided about the duration of the proceedings, but concerns were expressed about delay.

More recent research (Broadhurst and Pendleton, 2007) examined the care careers of 19 children (from 13 families), who were placed at home in one local authority. Two distinct groups were identified: children whose home placement was planned at the time of the care order and those who only returned home a year or more after the order. No applications for discharge were planned at the time of the study; delays in discharge left parents frustrated and led to conflict with social workers. Cases drifted - there appeared to be no correlation between duration of home placement, placement stability and the discharge of orders. Parents were encouraged to take the lead in applying for discharge when children were placed at home despite lacking the necessary skills and knowledge nor having the financial resources to do so (see also Harwin and Golding, 2022). Parents were confused about when orders could be discharged and by whom; parents were also, understandably, anxious about re-visiting difficult times and emotions and some wanted social services to take responsibility for instigating the discharge application.

The possible reticence of social workers to apply for discharge may be a result of a number of factors. For example, social workers may not prioritise discharge applications, particularly within the context of limited resources and increasing workload pressures, instead focusing on more immediately presenting safeguarding concerns. While IROs have a remit to prompt social workers to stimulate the discharge of orders, they may also be hampered by a recent history of staff turnover and restricted resources (Broadhurst and Pendleton, 2007).

Evidence consistently demonstrates that the parents involved in care proceedings experience greater levels of socio-economic, health and well-being vulnerabilities (Griffiths et al, 2020), including substance misuse problems, mental ill health and experiencing domestic violence and abuse (Hodges and Bristow, 2019) than parents in the general population. How these characteristics and experiences vary between those involved in discharge applications, either when the application

is made by the parents or the local authority, is not known nor is there evidence of how change in the risks posed to the children subject to care orders affects discharge applications and the decisions made in them.

2.7 Summary

There is clearly a balance to be achieved between discharging care orders promptly to prevent 'drift' within care and not discharging them prematurely, risking further disruption and recurrent care proceedings. The brief overview of recent research presented here highlights significant gaps in knowledge about the process of applying for the discharge of care orders, demographic characteristics and care histories of the child subject to discharge applications, and the factors that influence such decisions. This study provides evidence to fill these gaps through a multi-methods approach including population-level data, a detailed e-casefile analysis, and interviews with a range of professionals. The following chapter provides details of the methodological approach taken, the ethical considerations and analytical processes, before the findings of the research are presented in Chapters 4, 5 and 6.

Chapter 3 Methodology

The research included three components, which together enable the research questions outlined in Chapter One to be considered in depth. The project triangulated:

- data for the population of children subject to care orders in England and Wales
- data extracted from Cafcass and Cafcass Cymru e-casefiles for a random sample of 220 discharge applications; and
- qualitative data from interviews with professionals, including local authority and independent social workers, lawyers, children’s guardians, Independent Reviewing Officers (IROs) and a focus group with the judiciary.

3.1 Population data

Data were accessed and analysed for the population of children made subject to care orders from 2008-2018 (2011 for Wales⁴). The years are calculated as 1st April – 31st March as per Department for Education children in need and children in care data. Data were extracted from fully anonymised child-level databases relating to family court proceedings, including care proceedings. This data is routinely collected by Cafcass England and Cafcass Cymru, and made available to researchers under the Digital Economy Act, curated by the Family Justice Data Partnership and held within the SAIL (Secure Anonymised Information Linkage) databank. The data accessed are three structurally different, fully relational databases with de-personalised records of applications, the subjects and applicants of these, hearings and legal outcomes. Each database consists of a series of connected tables supplemented by ‘look-ups’⁵ or by linkage to demographic data, and includes details of the applications (types of orders sought); parties to the application (subjects, applicants, respondents and others); basic information about the parties and their relationships; legal outcomes; and key dates in the proceedings, including those relating to the application, the various hearings and legal outcomes. During the period of interest for the study, Cafcass England had migrated to a new case management system. To enable continuity, it was therefore necessary to link data across the two systems.

A simplified database was created in SPSS versions 26 and 28⁶ for England and in Stata version 17.0 for Wales, which linked these children to subsequent applications for discharge/SGO, orders for discharge, SGO or CAO/RO and any further s.31 applications⁷. A total of 9376 applications for discharge were identified: 8509 in England and 867 in Wales⁸. Analysis took place inside the SAIL databank with only results exported, in accordance with the SAIL protocol. Due to idiosyncrasies

⁴ The different dates are due to different data parameters within the datasets for England and Wales

⁵ A series of reference tables that provide details of each specific value in the database

⁶ The version of SPSS available in the SAIL Databank changed during the course of the project

⁷ Children with placement orders were excluded unless the placement order was discharged, because of their potential to distort the discharge of care order rate. The study did not include care orders that were discharged by adoption

⁹ Due to left and right censoring (ie excluding cases where the original care order could not be ascertained and those where the discharge process had not been completed within the study period) and missing data, *n* varies within the report

within the English and Welsh datasets, there are some differences in the amount and level of detail in the data presented here. Pragmatic decisions were made when data were missing or unclear to enable analyses to be conducted; these decisions were discussed and agreed between the analysts and wider project team and are noted where relevant. The analysis aimed to identify the proportion of care orders discharged over time and whether the outcomes of discharge applications varied geographically. The analysis also aimed to explore whether the success rate for discharge applications is affected by who the applicant is and/or the child's demographic characteristics or legal status. Further details about creating and analysing the database and reflections on working within the SAIL databank are provided in Appendix A.

3.2 E-casefile sample

Access to 220 full e-casefiles relating to the discharge of care orders was requested from Cafcass England (200 cases) and Cafcass Cymru (20 cases)⁹. The sample size allowed an in-depth analysis of different types of discharge applications and outcomes, to complement the breadth of data provided by the population study. No power calculations were undertaken because this element of the study aimed to be explorative not representative. A random sample was drawn by selecting every second case backwards from 31.03.2019. This was to avoid over-sampling from individual local authorities who may have made multiple discharge applications at the same time point and to ensure all cases in the sample had concluded. Secure access to the e-casefiles was established to enable the research team to extract anonymised data; the English e-casefiles were accessed through a secure SharePoint site, whilst the Cafcass Cymru e-casefiles were provided via Objective Connect after a process of redaction, carried out by staff within Cafcass Cymru. Access to all e-casefiles was revoked once data extraction was complete.

The files received from Cafcass included: the discharge application, court orders, social worker evidence, LAC review documents, position statements, assessments, expert reports, documents from previous proceedings (care and support plans), and orders made by court (directions, interim orders, final orders, judgement, record of representation, notices of hearings). The data received from Cafcass Cymru was less complete: there was significantly less detail on the original care order and the e-casefiles did not include social work statements¹⁰.

Of the 220 cases, data were not collected from 11 English cases and one Welsh case. Eight cases did not include enough information for analysis, and four were applications for 'leave to apply' for discharge, rather than discharge applications. One further case was excluded retrospectively when it became clear that information on the discharge outcome was missing. In two cases, the outcomes for the children involved differed, so these cases were replicated within the analysis. This report thus describes 209 discharge of care order cases, representing 327 children across England and Wales (190 e-casefiles representing 297 children in England; 19 e-casefiles representing 30 children in Wales). There was incomplete, missing, or conflicting information in a number of the e-casefiles, for example about the dates and number of court hearings, or the relationships between family

⁹ Cases were over-sampled from Wales to ensure a large enough sample for analysis

¹⁰ Cafcass Cymru e-casefiles are weeded at the point of case closure with specified documents being removed from the e-casefile

members¹¹. Incomplete or unclear data were recoded as missing and excluded from analysis; this is noted where relevant in the report.

Fully anonymised data were entered into and analysed within a SPSS database, version 27. Brief summaries ('pen pictures') were written for each case and are used within this report to illustrate particular issues. The descriptive analysis provided detail of the demographic characteristics and care histories of the children and parents concerned, and of the process of applying for discharge¹². Descriptive analysis was also undertaken to explore the differences between the outcome of discharge applications and the variation between applications made by parents and the local authority. Bivariate analysis was undertaken: Fisher's Exact to explore associations between categorical data and Mann-Whitney U¹³ to explore differences between non-normally distributed scale/ordinal data and categorical outcomes. Significance was set at $p < .05$ and exact p-values are reported. The bivariate analysis was completed to understand how certain factors were associated with discharge outcomes such as: length of care order; child demographics; where the child was placed at the time of application; and the presence or absence of specific risk factors.

A typology of discharge cases (see Chapter 6) was developed through analysis of the pen pictures and was confirmed through descriptive statistical analysis, confirming presence or absence of relevant variables within each type. The typology (which consisted of six types) was refined and discussed by the research team, comparing it with information in the qualitative data, to ensure internal and external validity.

3.3 Qualitative interviews

Interviews were conducted with 32 professionals¹⁴ about their experiences of being part of discharge applications. These interviews were undertaken to develop an in-depth understanding of the practice issues that may affect these proceedings. Careful consideration was given to interviewing parents, SGOs and children who had experience of discharge. The study had a limit to time and resources, and it was decided that the priority should be understanding the scale and detail of discharge applications given that there is very limited information about this. The information from this study will provide a foundation for subsequent research with children, parents and SGOs on their perspectives and experiences; the need for such research is a key recommendation and is discussed further in Chapter 7.

The interviews were conducted with participants currently working as children's guardians, social workers¹⁵, IROs or local authority lawyers¹⁶ across England and Wales (see Table 3.1 for an

¹¹ The differences in the amount of information provided could be accounted for by: case complexity with more straightforward cases being less detailed; differences in practice between courts and/or between English and Welsh practice; and inconsistencies in the documents included, for example emails missing attachments

¹² Simple demographics were collected about parents but not included in analysis due to incomplete data and the report's focus on child descriptives

¹³ Non parametric tests used due to data distribution. Fisher's exact used due to small cell counts.

¹⁴ One interview was conducted with two participants

¹⁵ Whilst significant efforts were made to recruit social workers, uptake was low due to workload pressures, exacerbated by the COVID-19 pandemic. Some of the other professionals recruited had social work experience, which they discussed in respect of discharge

¹⁶ The recruitment strategy targeted local authority lawyers. One private practice lawyer was recruited through snowball sampling

overview). Most had previous experience in other roles related to discharge, predominantly in children’s services. Potential participants were identified through social media, the research team’s professional contacts, and snowball sampling. Cafcass and Cafcass Cymru facilitated contact with children’s guardians. The imbalance in participants across England and Wales (for example, no local authority social workers in England, and more IROs in Wales) was not a methodological choice but reflects challenges the research team faced in recruiting participants.

In addition to the interviews, a focus group was held with nine members of the judiciary with experience in handling discharge applications. These members of the judiciary were recruited at a Judicial College training event; the focus group was then held on the same day. The interviews and the focus group used a topic guide, were audio recorded (with consent) and fully transcribed. Due to the restrictions associated with the COVID-19 pandemic, interviews were conducted online. The judicial focus group was held in person prior to the first lockdown in March 2020. The analysis was assisted by NVivo using a thematic approach and explored views and experiences of both local authority and court processes, the involvement of experts, and parents and children’s participation in applications.

Table 3.1: Interview / focus group participants by role and country¹⁷

Role	Location		Total
	England	Wales	
Independent Reviewing Officer	2	4	6
Independent Social Worker	1	2	3
Local authority Social Worker	0	3	3
Local authority Lawyer	5	3	8
Lawyer (private practice)	0	1	1
Children’s Guardian	6	5	11
Judiciary	8	1	9
Total	22	19	41

3.4 Ethical considerations and information governance procedures

Ethical approval for the research was granted by the School for Policy Studies’ Research Ethics Committee. The research was designed in accordance with the Socio-Legal Studies Association’s Ethical Guidance and adhered to the requirements of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. Access to data held within SAIL was approved by the SAIL Information Governance Review Panel (IGRP) at Swansea University¹⁸; the President of the Family Division granted permission to conduct the research, including the focus group with judges; and access to e-casefile data was permitted by Cafcass and Cafcass Cymru, following the completion of

¹⁷ Further details about the interview participants are provided in Appendix B

¹⁸ Conditions of access included a) training on information governance, data security and statistical disclosure control and b) access to SAIL Databank being paused while the research team extracted the e-casefile data

their Research Governance procedures. Relevant members of the research team completed the required SAIL registration and SURE (Safe User of Research data Environments) training, provided by ONS, the UK Data Service and the Administrative Data Research Network, via SAIL. All members of the research team were committed to ensuring that ethical standards were maintained throughout the research and were careful to minimise the impact of the research on all participants and those supporting the study.

Consent was gained from professionals prior to interviews; consent was also gained to record and archive the interviews. All data collected in the project (including the qualitative interview and focus group data and the e-casefile data) and analyses exported from the SAIL Databank were fully anonymised and held within the University's secure Research Data Storage Facility (RDSF). The RDSF was only accessible to members of the team from encrypted University of Bristol computers. The Nuffield Family Data Partnership curated data remained within the SAIL databank in accordance with the terms of its use (Appendix A).

Chapter 4 The characteristics of discharge applications

4.1 Key findings

- Applications for discharge have substantially increased in the last decade, from 71 in England in 2010 to 1589 in 2019, and from 61 in 2012 to 138 in 2019 in Wales
- Despite the greater use of care orders in Wales, the pattern of discharge applications in the two countries was similar; there was however some national and regional variation
- The SAIL and e-casefile data demonstrate that approximately two-thirds of discharge applications were made by local authorities
- The e-casefile and English SAIL data suggest that slightly more boys were subject to discharge applications than girls, but the proportions in the Welsh SAIL data were equal
- Across all three datasets, local authority applications were much more likely to be successful than those made by parents: for example, in the e-casefile data, 95% of local authority applications, but only 25% of parental applications, resulted in discharge of the order
- Sometimes, the discharge process was used primarily to force re-examination of local authority plans (to prevent child removal, or in relation to contact) rather than to discharge the care order *per se*
- Within the e-casefile sample, the use of further orders (SGOs, CAOs and SOs) at discharge was substantial, occurring in two thirds of cases; it was not possible to accurately determine the use of further orders within the SAIL data
- Concerns were raised in interviews about drift and delay before discharge applications were made

The children in the e-casefile sample

- The majority of applications were for a single child (not siblings) and were first time applications. Of these, 183 (56%) were male and 144 (44%) were female
- The children were aged between birth and 16 years at the time of the care order, with a mean age of 5.2 years in England and 4.9 years in Wales
- The average age of the children at the time of the discharge application was 7.8 years
- The median length of care orders before the discharge application was 23 months, but ranged between two and 147 months

Drawing on data from the interviews, e-casefile analysis and the SAIL databank, this chapter provides an overview of the key characteristics of discharge applications. It considers who applies for discharge, and when, where, and why they apply. This chapter then examines who are the subjects of discharge applications, presenting demographic data and details of their care histories. Finally, this chapter gives an overview of discharge outcomes. Chapter 5 then considers the factors that appear to affect the outcome of discharge applications.

4.2 Overview of discharge applications

4.2.1 The number of discharge applications

Reflecting increases in the number of children being made subject to care orders, there has been an increase in the number of discharge applications across England and Wales (Table 4.1), with 1589

applications being made in England in 2019, and 138 in Wales. From 2010 to 2019 in England, there were a further 1199 SGO applications that would have resulted in discharge by default, and an additional 782 applications, which may have resulted in discharge but where discharge was not the primary application (such as a Child Arrangements Order application). In Wales, between 2012 and 2019, there were also 271 SGO applications. While some data from 2009 were available in England, there were only 54 recorded discharge applications; the small number means that there is a risk of disclosure so these cases have been excluded from further analysis.

Proportionately, the number of discharge applications has increased (particularly in England between 2010-2011 and then more gradually between 2011-2019) at a much greater rate than the increase in care orders, with the latter increasing by between 1-2% per year. In Wales, the increase in discharges is much more modest, doubling over the period of 2012-2019.

The much greater proportionate increase in discharge applications (compared to the increase in care orders) likely reflects a range of different issues in the social work and family court systems. Firstly, shifts within the use of legal orders in the last 10-15 years will have affected discharge figures. There has been an increased use of care orders for children placed with kinship carers/with parents where previously a child would have been adopted or placed on an SGO or supervision order. The changing use of orders reflect PLO reforms, risk averse social work practice, the wider use of SGOs since their introduction in 2006, and a move away from placing children with kinships carers without a period on a care order. As a result, children in stable placements are more likely to be on a care order than previously and therefore these are converting into increased discharge applications.

Pressures and trends in social work practice are also likely to influence the number of discharge applications. Local authorities may make increased discharge applications to reduce drift and delay within the care system or as a result of external pressures such as impending Ofsted inspections. Equally, parents may be making more applications in response to delay within the LAs and to challenge elements of the LA's plan for the child (see Section 6.2 for further discussion on motivations for discharge).

It is not possible to be definitive based on the study's data but it is likely that all these factors have cumulatively led to the increase in discharge applications observed in the data.

Table 4.1: Number of discharge of care order applications made in England and Wales, SAIL data

	Year ending 31 st March										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
England	71	490	488	540	689	864	1079	1247	1452	1589	8509
Wales	N/A	N/A	61	57	79	121	119	147	145	138	867
Total	71	490	549	597	768	985	1198	1394	1597	1727	9376

4.2.2 Who applies for discharge?

The data held within all datasets demonstrated that discharge applications were mainly made by local authorities (Table 4.2).

Table 4.2: Number and percentage of discharge applications by applicant type, all datasets

Dataset	Local Authority (%)	Parent, index child or other applicant (%)	Total
English SAIL data	5715 (68)	2796 (32)	8509
Welsh SAIL data	522 (60)	345 (40)	867
English e-casefile data	132 (70)	58 (30)	190
Welsh e-casefile data	13 (68)	6 (32)	19

Within the e-casefiles, 69% (n=145) of the applications were submitted by the local authority (n=132 England, n=13 Wales). Of these, 61% were made for children to live with a parent¹⁹, and 39% were intended to result in an SGO to current foster carers, most of whom were related to the child. Approximately a third of the applications were made by parents, with mothers being the primary named applicant in 79% of parent led cases in England and 60% of parent led cases in Wales.

For ease of analysis and presentation, the discharge applications in the report are categorised as follows:

- LA (parent): Local authority application to discharge a care order to birth parent(s)
- LA (SGO): Local authority application to discharge a care order where the intended outcome is an SGO to kinship or foster carers. In these cases, the carers often made a concurrent or subsequent SGO application
- Parent: Parental applications where mother and/or father are listed as the main applicant

Within the e-casefile sample, three other applications were made, which do not fit into the above categories: one by a 16 year old girl who was unhappy in her residential placement and wanted to return to live with her mother; and two by relatives (Table 4.3)²⁰. It is not permitted in law for anyone other than the parent, child or LA to apply for a discharge without first obtaining permission from the court. These two applications were made without such permission and had not been screened out by internal checks in the court, making them highly unusual. In one instance the court directed the LA to formally apply for discharge though the kinship carer was still listed as the applicant. In the other case it was unclear how the kinship carer had been able to apply. This application had been made in response to the LA giving notice of intention to remove the child. The proportion of applications granted is reported in section 4.4.

¹⁹ Please see section 4.3.3 and Chapter 5 for detail of the child's placement history and placement at the time of the discharge application

²⁰ Due to low numbers this category is suppressed in future tables and analysis

Table 4.3: Applicant type in England and Wales, e-casefile data

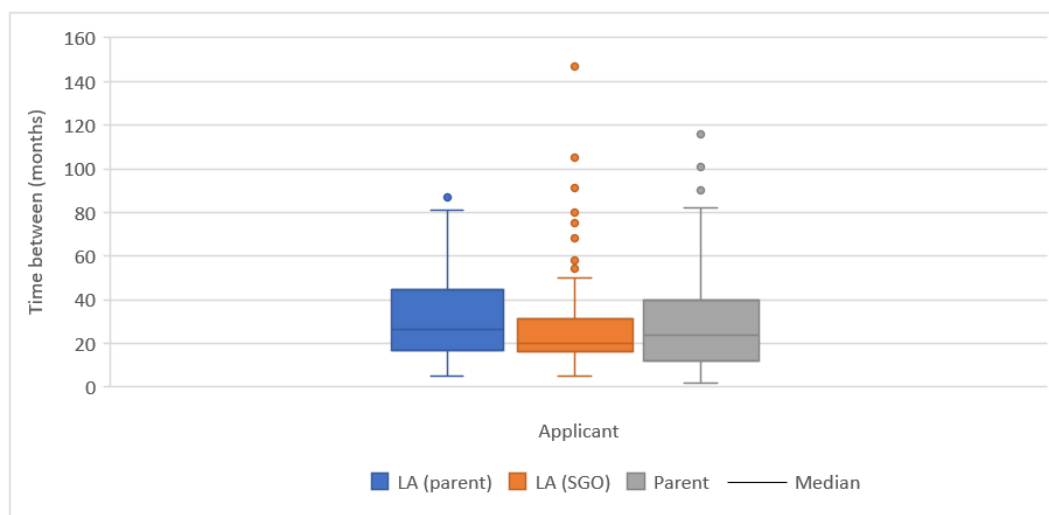
Applicant	England		Wales		Total England and Wales	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Local Authority	132	70	13	69	145	69
Parent	56	29	5	26	61	29
Other	2	1	1	5	3	<2*
Total	190	100	19	100	209	100

*Less than used to accommodate for rounding

4.2.3 When are discharge applications made?

English SAIL data showed the average length of the care order before the first discharge application was made was 28 months²¹; it was not possible to ascertain duration from the Welsh data. The e-casefile analysis showed that the average length of the care order before the discharge application was made was 32 months²² but ranged from 2.4 – 147 months (Figure 4.1). The case brought back to discharge within the shortest time frame was made by a mother who felt the LA were not progressing with the children’s rehabilitation plan. On average, discharge applications for an SGO were made in a slightly shorter timeframe than LA (parent) and parental applications.

Figure 4.1: Mean length between care order and discharge application by applicant, e-casefile data



The shorter time frame for SGO to discharge may be due to time limits in care proceedings. For example, interview participants reflected on how changes to court timescales (via the PLO reforms) had resulted in more cases concluding in care orders as opposed to SGOs or supervision orders. This

²¹ mean = 28.5 months, std deviation = 19.0

²² mean = 31.7 months, std deviation = 24.5, median = 23

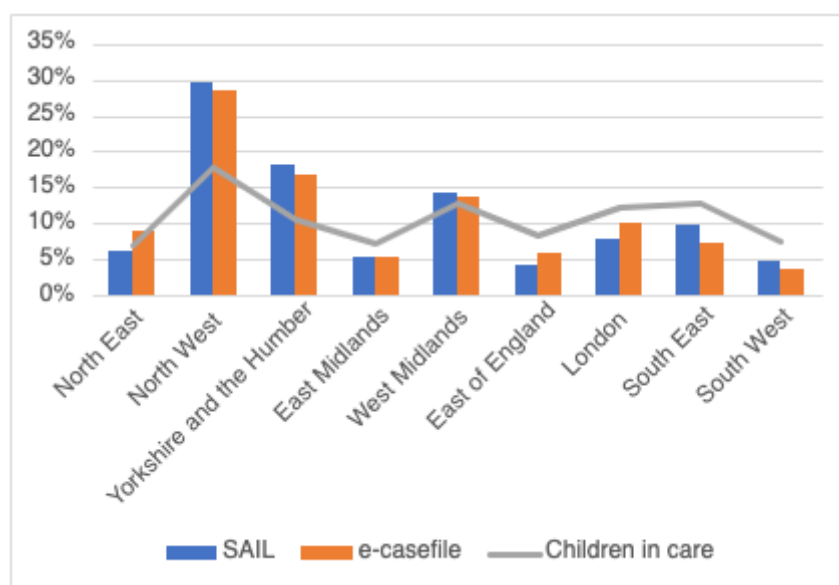
was because 26 weeks was not long enough to test out the stability or appropriateness of a placement, and so a care order - rather than an SGO or SO - was made.

Whilst there was an expectation that these cases would be brought back for discharge within a short time period, in practice they often drifted. While in some instances, delay was due to external factors such as a new allegation being made or a family bereavement affecting when visits and assessments could occur, there were also examples of resource issues, such as not delivering agreed direct work, leading to drift (discussed further in Chapter 6).

4.2.4 Regional variation in discharge applications

The local authorities where discharge applications were made were categorised according to geographic region. As shown in Figure 4.2, in England, the highest proportion of SAIL and e-casefile applications (28% n=2911 and n=54 respectively) came from the North West – however this reflects the higher proportion of children in care in the North West (18% of total children in care population). The smallest sample was from the South West at 5% in the SAIL data (n= 540) and 4% in the e-casefiles (n=7). However, proportionately more discharge applications were made in the East of England, London, South East and South West, when compared with the North West and Yorkshire and the Humber. Regional variations such as these may reflect deliberate moves by individual local authorities to reduce the number of children on care orders. The variation may also reflect the known links between local deprivation and children in care; this is discussed further in Chapter 6.

Figure 4.2: Proportion of discharge applications by geographical region in England SAIL (2010-19) and e-casefile data compared with proportion of children in care



Within Wales, the highest proportion of discharge applications were issued in Cardiff and South East Wales (53%), with 29% from Swansea and West Wales, and 18% from North Wales. The Welsh e-casefile data were representative of the population-level SAIL data, with 15 cases being sampled from Cardiff and South East Wales, two cases from North Wales and two from Swansea and West Wales. Again, this is likely to reflect wider trends in the proportion of children in care in Wales. In

Wales, 42% of the applications were LA (parent), 26% were LA (SGO) and 26% were parental applications²³.

The proportion of parental applications in the e-casefile sample as a whole was 29% (n=61) although there was some regional variation. For instance, London^{24,25} had a much higher percentage of parental applications (74%, n=14), and 57% (n=8) of the applications in the South East were made by parents.

There was also anecdotal evidence of regional variation in the qualitative data, with two participants saying that they had never seen any parental applications and most interviewees outside London indicating that it was a rare occurrence. Judges also reflected on the variation in the use of care orders between areas, particularly the use of care orders rather than supervision orders to support children living with a parent after care proceedings. This affected both the numbers of care orders and discharge applications.

4.2.5 Why are discharge applications made?

The e-casefile analysis demonstrated that applications for discharge were used differently by local authorities and parents. Most local authority applications were intended to discharge care orders for children who were judged to be in stable placements either by restoring complete parental responsibility to a parent (61%, n= 89) or to secure a special guardianship order for the child's carer (39%, n= 56). A small proportion (6%, n= 8) of local authority applications sought to end an 'ineffective' care order, for example to accept a *fait accompli* where a young person had returned to a parent and refused to return to care or where there was no suitable placement acceptable to a young person. There has been long-standing concern about how best to respond to cases where older children 'vote with their feet' (Hyde-Dryden et al, 2015) and whether such cases should be put forward to discharge, given that the reasons for the care order being made often still remain. As an interviewee noted:

We will definitely get a request from the social work team for a legal planning meeting... this child's at home, we can't make this care order work, we just need to discharge it... our advice would be, how do you really expect to be able to discharge this care order? The court is going to have to be satisfied that it's better to do so because of section 1 [of the Children Act], these are the reasons why there were continuing risks. You're just going to have to do what you can to support this child. So that would be our legal advice and we wouldn't support the application ... If the social work team are adamant that they want to apply we would escalate that to senior managers, to the director to say look, this is not going to work, just don't do it. Live with it. (LA Lawyer, E3.1)

These discharge applications differ markedly from applications where children are in well-established placements despite also resulting in agreed reunification, with the discharge application being dismissed or withdrawn.

Positively, the judges involved in the focus group suggested that where local authorities recognised the order was no longer needed, they took the initiative to apply for discharge, so parents had no need to apply; similarly local authorities tended to seek discharge where carers wanted an SGO.

²³ One application made by kinship carer

²⁴ Inner and outer London LAs combined

²⁵ London is also known to have more 'placement with parents' than other areas

However, there were cases where it was felt the local authority had not done this promptly, leading to drift and potentially frustrating delay for parents and children. Interviewees also commented that the local authority would instigate discharge applications to 'clear the books', reducing the number of care orders they held, for example in preparation for Ofsted or Care Inspectorate Wales (CIW) inspections when, as one of the judges said, they would see a *'flurry of discharge of applications'*. Other professionals also discussed how changing managerial priorities or processes can result in a surge of discharge applications:

We would typically see about six a year at the moment, but in [named local authority] at the minute we're expecting that to rise because we've got a new management team who are very focused on getting children out of the looked after system. So they are talking about sending us 41 in the next six months (LA Lawyer, E3.2)

Another reason for reducing the number of children in care could also reflect attempts by local authorities to reduce costs in the short and long term (see Harwin and Golding 2022). However, this was not an identified theme in the qualitative interviews conducted in the present study.

Within the e-casefile sample, most parental applications (90%, n=55²⁶) were made when the parent(s) were in disagreement with the local authority. These cases were primarily motivated by a wish for reunification or removal of the care order and were not supported by the LA. Within parental applications, 26% (n=16) were intended to challenge aspects of the local authority's plan, particularly arrangements for contact or to force the local authority to implement aspects of their care plan. Parents also used discharge applications when the local authority notified them that it had decided to end the child's placement with the parent (Case Study A), to challenge care orders or decisions about placement.

Case Study A: Preventing child removal

AR01/02: Care orders in respect of two children were made because of neglect, domestic violence and abuse, and parents' long-standing issues with substance misuse and criminal activity. The children were placed at home with parents when the care orders were first made but the local authority, concerned about the parents' care, gave notice that it intended to remove them. The mother responded by applying for discharge of the care order. In the discharge proceedings the guardian agreed with the LA's plan for removal of the children to kinship care. The parents did not engage with an assessment by an independent social worker and drug testing showed excessive use by both parents. The discharge application was dismissed, and the children moved to kinship care.

Judges who took part in the focus group also discussed how parents would use discharge applications as a way of enabling a complaint against the local authority to be brought before the court:

My experience of applications for discharge of care orders has more been a parent applying to discharge a care order because they don't know what else to apply for and it gets it before the court as a mechanism really to make the local authority do what they should have been doing or add it onto contact, when they've tried to reopen the case (Judge, F.P9)

²⁶ Local authority position unclear or missing in two cases

Whilst these cases did not result in discharge, they could have positive outcomes for children and parents such as increasing contact, addressing placement issues, or improving support. However, some interviewees felt these applications effectively repeated the care proceedings and could be re-traumatising for the children and parents involved (see Chapter 6).

The reason or motivation for the application had implications for, but was not necessarily predictive of, the discharge process and outcome. This is discussed throughout the report; further consideration of different typologies of discharge cases, including process and outcome, is presented in Chapter 6.

4.3 Child demographics and care history

4.3.1 Who are the subjects of discharge applications?

The e-casefile analysis, based on 209 discharge applications made for 327 children, showed that 183 (56%) were male and 144 (44%) were female. The English SAIL data (based on 12929 children) had a slightly different pattern, with 52% (n=6715) being male and 48% (6214) female, whereas within the Welsh SAIL data (867 applications) 50% of the children were female (n= 435) and 50% (n=432) were male, although there were small fluctuations between years²⁷. Although data on ethnicity were largely missing from the Welsh e-casefiles, the English e-casefile sample largely reflects the composition of the wider children looked after population (DfE, 2022)²⁸. The relationship between gender, ethnicity and the outcome of the discharge application is discussed in section 5.3.1.

Within both the English and Welsh SAIL data, the majority of applications were made for a single child (64%, n=5458 and n=554 respectively). In the English data 24% of cases (n=2033) listed two children, with a further 12% (n=1018) listing three or more children. There was a very slight difference in the Welsh SAIL data with 23% (n=204) of the applications listing two children, and a further 13% (n=109) three or more²⁹. The e-casefile analysis demonstrated a similar pattern, with most applications being made for a single child (England 63%, n=115, Wales 68%, n=13). The most children listed on one application was six. The majority of children in the English e-casefile sample were White British (Table 4.4)³⁰.

²⁷ Within the SAIL analysis, where there were multiple children listed on an application, demographics were recorded for the youngest child named on the application. In a small number of cases the gender was listed as 'unknown', within the Welsh data these were recoded as 'female' to allow for extraction from SAIL

²⁸ The ethnicity data for children looked after in England includes all looked after children, not just those on care orders

²⁹ Includes data from April 2011 – March 2019

³⁰ Full ethnicity data for England available in Appendix C

Table 4.4: Demographic characteristics of the children in the e-casefile data

	England (percent)	Wales (percent)	Total (percent)
Children listed per application (n=209)			
1	115 (63)	13 (68)	128 (63)
2	44 (23)	2 (10)	46 (23)
3	15 (9)	3 (16)	18 (9)
4-6	10 (5)	1 (6)	11 (5)
Ethnicity of child (n=290)			
White British	220 (76)	*	220 (76)
Mixed ethnicity ³¹	33 (11)	*	33 (11)
Black	14 (5)	*	14 (5)
Asian	12 (4)	*	12 (4)
Any other ethnicity ³²	11 (4)	*	11 (4)
Gender of child (n=327)			
Female	128 (43)	15 (50)	143 (44)
Male	168 (57)	15 (50)	183 (56)
Age group of child at discharge (n=326)**			
<1 years	1 (<1)	0 (0)	1 (<1)
1-4 years	85 (29)	11 (37)	96 (29)
5-9 years	104 (35)	7 (23)	111 (34)
10-14 years	79 (27)	9 (27)	87 (27)
15-17 years	28 (9)	4 (13)	32 (10)

* Ethnicity data were missing for 7 children in the English e-casefile data and almost all children in the Welsh sample³³

** Age data was missing for one case

The children within the e-casefile sample were aged between birth and 16 at the time of the care order with a median of 5 and a mean of 5.2 years in England and a median of 4 and mean of 4.9 years in Wales. At the time of the discharge application the mean age of the children in both nations was 7.8, with a median of 7 years. The SAIL data also demonstrated that children in Wales were slightly younger than those in England, with the children subject to a discharge application most commonly being aged under five in Wales, but between five and nine years in England (Table 4.5).

³¹ Included mixed white and black Caribbean, mixed white and Asian, mixed other

³² Including white Irish, white European, Roma

³³ Cafcass Cymru introducing a data capture process around diversity information at time of writing

Table 4.5: Demographic characteristics of the children in the SAIL data

	England (percent)	Wales (percent)	Total (percent)
Children listed per application			
1	5458 (64)	554 (64)	6012 (64)
2	2033 (24)	204 (24)	2237 (24)
3	693 (8)	81 (9)	774 (8)
4+	325 (4)	28 (2)	353 (4)
Total	8536	867	9403 (100)
Gender of child *			
Female	6214 (48)	435 (50)	6649 (48)
Male	6715 (52)	432 (50)	7147 (52)
Total	12929	867	13796 (100)
Age group of child at discharge			
<4 years	3190 (25)	350 (40)	3540 (26)
5-9 years	4260 (33)	278 (32)	4538 (33)
10-14 years	3946 (31)	190 (22)	4136 (30)
15-17 years	1533 (12)	49 (6)	1582 (11)
Total	12929	867	13796 (100)

* The English figures exclude where gender is unknown due to data anomalies. The Welsh data relates to the index child only; unknown gender was recoded as female to adhere to SAIL disclosure rules

4.3.2 Care history

The children in the e-casefile sample were largely the subject of care proceedings due to neglect and emotional abuse (including experiencing domestic violence and abuse). Neglect featured in 62% (n=128) and emotional abuse in 63% (n=130) of cases³⁴. Physical and sexual abuse were less common, featuring in 30% (n=61) and 12% (n=24) of cases respectively. Many cases featured multiple types of abuse at the time of the care order (72%, n=146)³⁵. Confirming national trends in child abuse data, emotional abuse and neglect were the most common categories to feature together (39% of all cases, n=80). The correlation between multiple types of abuse and the outcome of the discharge application is discussed in Chapter 5.

In the majority of cases (96% England and Wales, n=200³⁶) the reason for the care order was categorised as ‘unreasonable care’, that is care other than what it would be reasonable for a parent or carer to provide. A few cases (3%, n=6) were made because the child was considered ‘beyond control’, with a further 1% (n=2) made for both ‘unreasonable care’ and ‘beyond control’. Children in these ‘beyond control’ cases were older (13-15 years) at the time of the care order (Case Study B). On the whole, care orders were frequently preceded by an interim care order (66% of English cases, 53% of cases in Wales³⁷), indicating that a substantial proportion of children had remained with parents or lived informally with relatives during the proceedings.

³⁴ Abuse category data missing in 2 cases

³⁵ Data missing or unclear in 5 cases

³⁶ Reason for care order missing in 1 case (Wales)

³⁷ Number could be higher as data missing for 15% of English cases and 32% of Welsh cases

Case Study B: Care Order for reason of 'beyond control'

FO01: Care order made for reason of 'beyond control' due to a 15 year old boy's violence at home and school. The child was placed in residential care with weekend leave home. The residential placement broke down after four months and his mother brought him home. The local authority applied for discharge eight months later because the care order was ineffective. The social worker and guardian supported discharge though there was a lack of supporting evidence that the mother could manage the child's behaviour. The care order was discharged at the first hearing. As the care order was discharged before the child was 16, he was not an 'eligible child' for leaving care services. The guardian did not raise the issue of support or access to leaving care services.

4.3.3 Child placement at discharge

In all (n=89) but two LA (parent) applications within the e-casefiles, children were placed at home at the time of the discharge application³⁸. In one case a child was transitioned to their mother's care from foster care, shortly after proceedings started. The case resulted in discharge to a supervision order. In the other case an older child changed his mind about wanting to return to his mother's care mid-proceedings, choosing to remain in semi-independent accommodation. Similarly, in LA (SGO) applications (n= 56), children were placed with their intended carer at the point of discharge application in all but two cases. In these cases, there were issues around jurisdiction as the prospective carers did not live in the same local authority as the children and the children were moved to their kinship carer during proceedings or were going to move shortly after the SGO was granted.

In parental applications (n=61), children were only placed with their intended carer (mother, father, or mother and father) in 23% (n=14) of cases. The majority of children in parent applications were placed in unrelated foster care (54%, n=33), with the remainder in residential placements (13%, n= 8), kinship care (8%, n=5), or with the other, non-applicant, parent (2%, n=1). In seven parent applications, children were moved from foster or residential care to the care of a parent during proceedings. In another two cases the children were removed from parent(s) and placed in kinship or foster care before the final hearing.

The correlation between aspects of the child's placement, including placement length and the child's care history, and the discharge outcome are discussed in Chapter 5.

4.3.4 Child support needs

Ascertaining what support needs children had was often not possible from the e-casefiles: information was missing or very limited. Where available, information was collected on children's support needs at the time the care order was made and at the point of the discharge application. Information was collected about behavioural concerns, speech and language difficulties, special educational needs, health conditions (including mental health problems), physical disabilities, and risk-taking behaviours. The three most common concerns recorded were special educational needs, mental health concerns, and behavioural concerns. Overall, 43% (n=141) of children were recorded as having no support needs at the point of the care order, which decreased slightly, to 41% (n=133), by the time of the discharge application³⁹.

³⁸ One of which was withdrawn

³⁹ Different children included in these groups as some children's needs were resolved and others identified

Overall, a higher number of concerns about the child’s support needs were recorded in parental applications. For example, mental health concerns relating to the involved child(ren) were present at discharge in 55% (n=58) of parental applications compared with 18% (n=25) of LA (parent) applications. In parent applications only 21% percent (n=24) of included children had no identified support needs at discharge, whereas 49% (n=66) of children in LA (parent) cases and 54% (n=42) of LA (SGO) cases) had no identified support needs.

On the face of it, it appears there was often little change in children’s support needs between care order and discharge. The reasons for this are complex and not completely explained by the study’s findings. It appears that in many cases children’s support needs were long term and the result of experiencing abuse or neglect, and/or due to physical and mental health conditions, which could not be reasonably expected to resolve within the timeframes researched.

There was no correlation between individual child needs and discharge outcome; the association between the parent or carer’s ability to meet the child’s needs and the outcome of the discharge application is discussed in Chapter 5.

4.4 The outcomes of discharge applications

4.4.1 What are the outcomes of discharge applications?

In the English SAIL data 67% (n=5332) of applications resulted in discharge. Of the unsuccessful cases (33%, n=2624), a small proportion were refused or had the application declined at the application stage (n=142); a further 1102 applications were withdrawn or dismissed during proceedings. The Welsh SAIL data suggested that fewer discharges were made, with 54% (n=435) of the discharge applications being granted. Of 209 applications with available outcome data in the e-casefiles, the majority (74%, n=155) were discharged (Table 4.6). Again, this data demonstrated that England had a higher rate of discharge than Wales, but the difference was not significant. All of the unsuccessful Welsh cases were withdrawn rather than dismissed.

Table 4.6: The outcomes of discharge applications for England and Wales, e-casefile data

Outcome	England		Wales		England and Wales	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Discharged	144	75	11	58	155	74
Dismissed	24	13	0	0	24	12
Withdrawn	22	12	8	42	30	14
Total	190	100	19	100	209	100

In two cases the outcome was different for children within the same application. In both cases the application for one child was withdrawn before the final hearing (see Case Study C for an example).

Case Study C: Different outcome for children within one application

EC01-03: The local authority applied for discharge for SGOs for three children, two girls and a boy. The care order was made due to domestic violence and abuse and their mother's poor mental health. The boy was placed separately from the girls with different kinship carers.

The kinship carers for the girls had legal representation. There were no additional support needs identified for the girls and their care orders were discharged to SGO at the second hearing.

The boy's carers raised concerns about his ongoing support needs and financial support, and said they felt pressured into becoming special guardians. The children's guardian was critical that the carers were not properly informed about options nor received independent legal advice. The application in relation to the boy was withdrawn at the third hearing.

4.4.2 Outcome and applicant

Within both the SAIL data and the e-casefile analysis, the identity of the applicant was strongly associated with discharge outcome for both England and Wales⁴⁰. The English SAIL data showed that, where the legal outcome was known, 88% of discharge applications made by local authorities were successful, compared with 25% of those made by parents or other applicants (including the index child) (Table 4.7). In Wales, 71% of the local authority applications were successful, compared with 26% of those made by parents or other applicants.

Table 4.7: Outcomes of applications for discharge by applicant, England, SAIL data

Applicant	Application refused (%)	Application withdrawn (%)	Discharged granted (%)	Discharge not granted (%)	Total (where legal outcome known)
Local authority	16 (<1)	307 (6)	4694 (88)	327 (6)	5344
Parent/s or other identified person	126 (5)	790 (31)	634 (25)	963 (38)	2513
Total	142 (2)	1097 (14)	5328 (68)	1290 (16)	7857*

* 99 cases were excluded as the legal outcome was either not known or could not be attributed to a specific applicant

The e-casefile analysis demonstrated that applications made by the LA were significantly more likely to be discharged (94% intended parent discharge, 96% intended SGO discharge) than those made by parents (25% total discharged, with no parental applications being discharged in the Welsh sample) (Table 4.8). There are multiple reasons for the difference between the outcomes of parental and LA applications, which are discussed further in Chapter 6.

⁴⁰ Due to small numbers child and carer applicants were excluded from the analysis. As noted above the child application was successful. One carer application resulted in discharge to an SGO and the other was withdrawn

Table 4.8: The outcomes of discharge applications by applicant, e-casefile data

Applicant	Discharged		Not discharged		Total
	Frequency	Percent	Frequency	Percent	Frequency
LA (parent)	84	94	5	6	89
LA (SGO)	54	96	2	4	56
Parent	15	25	46	75	61
Total	153		53		206

In just over half (53%) of LA (parent) applications, the child was at home under a placement with parents' arrangement, with the child having been there since the care order was made (47 cases concerning 74 children). Notably, a small number of parental applications were discharged but not to the intended carer at application, for example when the care order was discharged to a different parent or an SGO carer (Case Study D).

Case Study D: Discharged to different carer

AU01: A mother applied to discharge a care order for a two year old girl, who had been placed with kinship carers. Care proceedings had been brought due to the parents' aggression, the father's drug use, and neglect. The mother and child were initially placed together in a residential unit but the mother failed to complete work on parenting and abusive relationships. The child was removed to foster care and later placed with kinship carers. Subsequently, the mother had a second daughter, who remained with her; the mother engaged well with professionals and completed the required work. However, the local authority did not support discharge of the first daughter to the mother, instead wanting her to remain with the kinship carers; the case was adjourned so they could apply for an SGO. The children's guardian was recorded as 'gathering evidence' until the fifth hearing when the kinship carers decided to apply for an SGO. At this point the children's guardian supported the SGO, which was made with an order for the mother's contact.

4.4.3 Multiple applications

The majority of e-casefiles sampled (91%, n=168 England, 100%, n=19 Wales) concerned first time applications. There were 15 multiple application cases in the English dataset. Twelve of these cases had one previous application which was either withdrawn (seven) or dismissed (four)⁴¹. The second application was granted in eight of these cases. Three cases had two previous applications for discharge; only one of these applications was subsequently granted. In another case, all three applications were dismissed and a s.91(14) order was issued, preventing further applications within a set period.

The judges participating in the focus group reported not presiding over 'many repeat applications' (F.P3) but said that the cases that did have multiple applications were either particularly complex or were being driven by parents who had limited regard for the impact on the child:

Well one of my concerns, and I've done very few of them, but the one concern I had in the case that I did which involved an unsuccessful appeal against a final care order, was that the

⁴¹ The reason for one case was unknown

mother in question waited six months and then made her application so we had to go through a whole convoluted legal process again which was unsuccessful. She then appealed and so in terms of the welfare of the child, it seemed to me that to permit her to do that was inimical to the child's welfare and I ultimately made a section 91(14) preventing her from making any further applications..... [my] concerns were that she could invoke the court procedure for her own ends continually without thinking about the child's welfare (Judge, M.P4)

There are limited conclusions that the study can draw about multiple applications due to the small number of cases identified. It does appear that applications are less likely to be successful when there have been previous attempts to discharge, particularly within a short time frame, and repeated attempts may be detrimental to the child's welfare. However, a more extensive dataset would be needed to substantiate this conclusion.

4.4.4 Further orders

It was difficult to determine within the SAIL data the extent to which other orders were applied for or granted. However, the analysis of the e-casefiles showed that in 65% (n=100) of cases where a care order was discharged an additional order was also made. These were primarily special guardianship orders (35% of discharged orders, n=55), supervision orders (10% of discharged orders, n=16), or child arrangements orders (19% of discharged orders, n=29)⁴². The majority (93%, n=27) of CAOs were made for LA (parent) applications, reflecting the intention to clarify either the child's living arrangements or contact.

Supervision orders were made in 60% (n=9) of successful parent applications in contrast to only eight percent (n=7) of successful LA (parent) applications⁴³. Interview participants noted that the use of supervision orders following discharge was rare, and that they were more likely to be requested by risk averse guardians or judges in LA (parent) applications:

We don't see the making of a supervision order instead of discharge of care orders because an order isn't necessary and so if we're satisfied that we can discharge the care order [without making another order], ultimately that is usually what the court does, [or] it might not discharge the care order at all (LA Lawyer, E3.1)

Only seven percent (n=4) of SGO discharges had accompanying supervision orders, with interviewees explaining this was a declining practice. Interviewees suggested the local authority was more likely to agree with the need for a supervision order in parent applications, particularly in cases where there were outstanding concerns, or the placement was relatively new:

We are looking at there being a supervision order for [two younger children who they are working with], that's more to be support for them given the length of time they've been away from their dad [intended carer], and the children themselves felt that it might be quite good to have somebody who was still involved (Guardian, E4.1)

In eight cases, multiple orders were made when the care order was discharged, such as an SGO being made alongside a CAO concerning contact.

⁴² While the final court order was not always available, the final outcomes were often ascertainable from other documents within the e-casefile

⁴³ Applicant type of parent or local authority was statistically associated with whether a further order was made ($\chi^2(4) = 134.428, p < .001$)

4.4.5 No discharge outcomes

Overall, within the e-casefile data, 36% (n=54) of cases were unsuccessful and no discharge of the care order was made. Parent applications were much more likely to be unsuccessful (75%, n=40 in England and 100%, n= 5 in Wales). Six percent (n=5) of LA (parent) and 4% (n=2) of LA (SGO) cases were unsuccessful

The e-casefile analysis demonstrated that just over half (53%) of the unsuccessful cases were withdrawn rather than dismissed. Notably, all of the Welsh unsuccessful cases were withdrawn – 47% (n=22) of English cases were withdrawn. This country level difference may be explained by court culture and/or the limitations of the small Welsh sample.

Overall, applications tended to be withdrawn between the 2nd to 4th hearings, lasting an average of 5.1 months from point of application. In England, it took longer for LA (parent) applications to be withdrawn (7.6 months) than parent applications (4.7 months). The two unsuccessful LA (SGO) cases were withdrawn after an average of 4 months. This is discussed further in Chapter 5, alongside the factors that were associated with unsuccessful discharge applications.

Cases that were dismissed sometimes still resulted in placement changes or legal changes regarding contact under s.34 of the Children Act 1989. Table 4.9 displays the ‘no discharge’ outcomes for the English and Welsh e-casefile data at case level by application type. These outcomes only occurred with parental applications and may be related to application motivation, such as parents using the discharge process to force the re-examination of contact issues or child placement (as discussed in section 4.2.4, above) and withdrawing once their complaints have been addressed. As one interviewee noted:

It tends to be parent withdrawals when they've made it [the discharge application] because they're not happy with maybe contact arrangements and things like that. And once the contact arrangements are resolved, they withdraw the application then. (Social Worker, W4.2)

Table 4.9: Further changes after unsuccessful discharge by applicant in England and Wales, e-casefile data

Applicant	No discharge outcomes					
	No legal change	Placement change	Contact change (s.34)	LA to pursue adoption	Withdrawn (no other change)	Total
LA (parent)	0	0	0	0	5	5
LA (SGO)	0	0	0	0	2	2
Parent	13	7	1	3	22	46
Other	0	0	0	0	1	1
Total	13	7	1	3	30	54

4.5 Summary

The number of discharge applications has increased over the last decade, following the increase in care orders made, although there is some regional variation. Children were an average of 7.8 years at the time of the discharge application, having spent an average of 32 months subject to a care order prior to the application. Overall, the majority of discharge applications were successful, and the care orders discharged. Local authority applications were significantly more likely to be successful than parent applications. Likewise, there were proportionately more parent applications that were unsuccessful. There are key differences between the outcomes of and motivations for discharge applications, depending on who applies: local authorities appeared routinely to test placements for a substantial time before committing to an application for discharge; consequently the applications are highly likely to be granted. Conversely, parental applications are much less likely to be granted, partly because the applications are often used to challenge aspects of the local authority's plan or to prevent child removal. Most children had experienced abuse and neglect prior to the making of a care order with a very small number of children being placed into care due to being 'beyond control'. Information in e-casefiles about children's support needs was varied with missing and incomplete data preventing fuller analysis. However, overall children's support needs did not appear to be associated with discharge outcomes. Chapter 5 now considers the factors that were associated with the outcome of discharge applications. Chapter 6 then presents a new typology of discharge applications, and further considers the complexity of the discharge process, professional tensions and the reasons that some local authority applications were unsuccessful.

Chapter 5 Factors that influence the outcome of discharge applications

5.1 Key findings

- The majority of local authority applications were successful but those which were not were more likely to:
 - be opposed by the children’s guardian
 - be opposed by the child (particularly older children)
 - have been affected by a change of circumstances during the application
- Parental applications were much less likely to succeed; those that were granted tended to:
 - have the support of the children’s guardian
 - have the agreement of the local authority by the final hearing
- The recommendation made by the guardian was the most influential factor in predicting the discharge outcome
- The success of local authority applications reflects a high level of preparation and scrutiny prior to application
- In the SAIL English data there was an association between age and discharge outcome – children aged 0-4 and 15-17 were more likely to have a successful discharge application than those age between 5-14
- There was no association between the gender of the child and the discharge outcome; data on ethnicity were incomplete
- The child’s preference was positively associated with the discharge outcome
- Parent applications were less likely to be discharged if there had been multiple forms of abuse at the time of the care order
- A higher number of concerns about parenting capacity and lifestyle at discharge was associated with the application being refused

This chapter draws on findings from all three data sources (SAIL data analysis, e-casefiles and interviews) to identify factors that are associated with the outcomes of discharge applications. The majority of local authority applications for discharge were granted, and so the chapter focuses primarily on reasons why local authority applications were refused, and the factors that appeared to influence the outcomes of parental applications, which had more varied outcomes.

5.2 The impact of applicant on outcome

5.2.1 Why were local authority applications successful?

As discussed in Chapter 4, applicant type was strongly associated with discharge outcome and local authority applications were far more likely to be discharged than parental applications, potentially reflecting the local authority’s knowledge and experience of the discharge process. For example, some of the interviewees referred to prioritising children in long-term settled placements for discharge:

It was a secondment just for me to focus on the discharge of the care orders, so it was going through the cases basically of our placement with parents that had been settled for quite a significant period of time and it was me kind of choosing which ones to focus on first (Social Worker, W2.5)

Local authority applications could also be subject to a high level of scrutiny prior to submission; interview participants explained how their local authority had a procedure of senior management auditing and signing off applications prior to submission. In some cases, local authorities communicated with guardians to pre-empt and address concerns before the application was put before the court:

At one time we had a protocol where we send the draft application to the guardian before we issued it, then if they came back with particular concerns, we'd go away and sort them before we issued it. Because otherwise you're in a revolving door where you issued, the guardian raised concerns, you withdrew, and then you issued again (LA Lawyer, E3.2)

Processes such as the accelerated procedure and communication between the social workers and guardians prior to the application exemplify how preparatory work by a local authority can increase the likelihood of discharge; this is discussed further in Chapter 6. Although parents were not interviewed as part of this study, it is highly likely that most parents do not have the same level of knowledge or understanding of the process, nor are able to have such conversations with guardians or senior staff prior to submitting their application, which may contribute to the increased likelihood that their application will not be granted.

There were only two cases within the e-casefile sample where the LA (SGO) application did not result in the intended SGO. In both cases the carers ultimately preferred to be kin foster carers rather than have parental responsibility under an SGO and the applications were withdrawn. A further five LA (parent) applications were unsuccessful. These applications were all intended to discharge to birth parent/s but were eventually withdrawn. Key characteristics of these outlier cases are summarised in Table 5.1. One further case was abandoned due to exceptional circumstances and is not included in the analyses here.

Table 5.1: Characteristics of unsuccessful local authority (parent) applications, e-casefile datat

Age at application	Intended carer	CG opposed discharge	Child opposed discharge*	Child opposed placement*	New concerns (post app)	Length of proceedings (months)	No. of hearings
4	Mother	✓	N/A	N/A	✓	19	>7 ⁴⁴
6	Mother & father	✓	N/A	✓	X	7	4
16	Mother	✓	✓	✓	✓	3	3
1	Father	✓	N/A	N/A	✓	2	1
5	Father	✓	N/A	X	X	5	3

* N/A = child deemed too young to be consulted or view not recorded in e-casefile.

The main features in unsuccessful LA cases related to guardian opposition, either throughout proceedings or in response to a change in circumstances, and additional concerns arising about the parents' ability to provide care or a change in their personal circumstances post-application. These outlier cases demonstrate the power of the guardian's recommendations in the court setting, which was predictive of the outcome for all cases that did not result in discharge.

⁴⁴ In some cases with multiple hearings, missing orders in the e-casefiles made it difficult to ascertain exact number of hearings

Older children's views on discharge or proposed placement were also influential on discharge outcome (Case Study E).

Case Study E: Influence of child preference on outcome

CRO1: A local authority application for discharge in respect of a 16 year old who was originally placed under a care order with his four siblings. The circumstances leading to the care order included physical abuse, neglect and experiencing domestic violence and abuse. The parents separated and two younger siblings returned home to their mother under SOs. The named child struggled in foster care and was moved to residential care. He had 10 different placements in four years, including in a secure unit after he became a danger to himself and others. During this placement, his mother applied for discharge of the care order, but this was refused. After the secure placement he was moved to semi-independent accommodation. The LA applied for discharge because the young person wanted to return home and could now care for himself. The LA withdrew its application: the mother was facing eviction and the young person changed his mind, deciding to stay in his placement.

5.2.2 Parental applications

Parental applications had a much lower rate of successful discharge than those made by local authorities, with only 25% (n=15) of applications being granted within the e-casefile sample. Table 5.2 provides the details of the successful parental applications as these appeared to be more unusual. Interviewees suggested that, where cases that had a strong likelihood of discharge, the local authority were more likely to apply on the parent's behalf:

I think I'd be surprised if there is much evidence of success at all on parents applying for discharge where the local authority are opposing it because local authorities, if they accept there isn't any need for the care order, would be undoubtedly proactive themselves in issuing the application (Judge, M.P2)

Some interviewees also described discouraging parents from applying if they felt their application was unlikely to be successful or suggested that parents delayed applying until issues had been resolved. A small number of interviewees stated they did not receive parental applications in their area:

It's something that local authority leads, and I would probably hasten to say that the majority of our parents wouldn't know that they would have that capacity, that they have that kind of power. You know they automatically see the care order and know we're in charge, we call the shots. The care order is discharged when you [the LA] say it's ready to be (Social Worker, W2.5)

The majority (90%, n=55) of unsuccessful parental applications seen in the e-casefiles were not supported by the LA. Interviewees explained how parental applications often did not evidence sustained change in relation to parenting issues which had prompted the care order. However, there was also an understanding that parents did not receive enough support, legal or otherwise, to help them through the application process (see Chapter 6).

In all but one case of unsuccessful parent application, the LA opposed the discharge. In the one outlier case, the LA initially supported the parent's application to discharge but by the time of the final hearing had moved to a more neutral position. Details of the local authority's reasoning were

lacking in this case and the guardian was critical of their lack of involvement with the family and their reluctance to provide evidence for court proceedings.

In all of the unsuccessful parent applications, the guardian did not support the application. However, the guardian did support discharge in the small number of successful parent applications, again highlighting the importance of the guardian’s recommendation (Table 5.2⁴⁵). It is also notable that the child wanted the discharge in eight of the 14 successful cases, suggesting that the view of the child was also influential in the court setting (see section 5.3.7). In over half of successful parental applications, the child(ren) were placed in unrelated foster care or residential care at the start of the discharge application, the parental application resulted in successful reunification either during, or shortly after, proceedings.

Table 5.2: Characteristics of parental applications that were discharged, e-casefile data

Child placement at point of application	LA supports at start	LA supports at Final Hearing	Guardian recommends discharge	Age(s) of child/ren	Child wants discharge
Foster care	X	✓	✓	4	N/A
Foster care	X	✓	✓	1	N/A
Foster care	X	✓	✓	14, 16	✓
Foster care	Unknown	✓	✓	13, 14	✓
Foster care	X	Neutral	✓	14	✓
Foster care	X	X	✓	10	✓
Foster care	✓	✓	✓	10	✓
Residential	Unknown	✓	✓	13	✓
Mother	✓	✓	✓	15	✓
Father	✓	✓	✓	1	N/A
Mother	X	✓	✓	13, 15, 15	✓
Mother	X	✓	✓	1	N/A
Mother	X	✓	✓	7,9	N/A
Mother	X	✓	✓	6, 9	N/A

It is possible that, where the local authority supported parental applications for discharge from the start, that the LA had been delayed in applying for discharge itself. Some interviewees suggested

⁴⁵ One parent application that resulted in discharge was excluded as it was discharged to an SGO carer, rather than the mother who had applied

that when the LA agreed to discharge but was delayed due to resourcing issues, parents could become frustrated and submit their own applications:

Frustration with the local authority, with things not moving fast enough for them because at the reviews the local authority have said, 'we're gonna discharge the care order' and a year later they're still saying the same thing. So parents take it upon themselves to do it (Guardian, W4.4)

Six parental applications were successful even though the LA had initially contested the discharge. Some interviewees suggested that the initial reluctance on the part of the LA could result from concerns around risk aversion or a reluctance to amend the plan for the child:

They [the local authority] were extremely blinkered and couldn't see anything other than the care order remaining in place and the child not going home. Whereas I could see something very different and I was very much aligned with Mum and her application and it was difficult, you know, the proceedings went on for a long time because we just couldn't agree, and neither one of us was going to kind of say 'OK, well, I accept what you're saying'. It was a real kind of standoff (Guardian, E4.4)

The local authority's plan for him was to go to permanent fostering, and that was the care plan. They weren't going to change that because they've done all these Together and Apart assessments and, you know, when she [the mother] had the mental health breakdown, they felt it was just too, too vulnerable, so the local authority alone would not have changed that decision. It was mum who came in and said 'I'm taking it back to court'. Which is a very brave, strong thing to do (IRO, E1.1)

Whilst the majority of parental applications that had originally aimed to challenge aspects of the LA's plan (based on details in the application) were withdrawn or dismissed, five resulted in the care order being discharged (Table 5.2). In two cases the parent applied because the LA had delayed the planned rehabilitation of the child(ren) to their care. Two further applications were made to prevent the child's removal and were successful in doing this and removing the care order as well. The fifth case is described in Case Study F.

Case Study F: Application to challenge the local authority's plan, resulting in discharge

GB01: Two children were subject to care orders due to experiencing domestic violence and abuse perpetrated by their mother's partner. The children were placed in temporary foster care while the local authority sought a long term foster care placement. The mother applied for discharge over a year later as a long term foster placement had not been found; she had separated from partner and engaged in domestic violence and abuse awareness support. During discharge proceedings the mother extended the restraining order against her ex-partner to cover her children. The social worker and guardian were satisfied that the mother was fully aware of the negative impact that experiencing domestic violence and abuse has on children. The ISW endorsed reunification. The case was discharged to a six month supervision order for both children.

5.2.3 Legal representation by applicant type

Detail on whether parents and carers had legal representation when they were involved in the application, either as an applicant or respondent, was collected from the e-casefiles. Data were sometimes missing, and it was often difficult to tell whether parents/carers had legal aid or were

self-funded. Table 5.3 displays available data on legal representation in LA (parent) and parent applications. Parents who were not made party to proceedings are excluded. Inconsistent representation refers to situations when parties gained or lost legal aid during proceedings.

Table 5.3: Legal representation by applicant, e-casefile data

Applicant type	Legal representation	Mothers (%)	Fathers (%)	Total (%)*
LA (parent)	Yes	13 (17)	9 (14)	22 (16)
	No	56 (76)	55 (83)	111 (79)
	Inconsistent	5 (7)	2 (3)	7 (5)
	Total	74	66	140
Parent	Yes	47 (81)	18 (40)	65 (63)
	No	8 (14)	26 (58)	34 (33)
	Inconsistent	3 (5)	1 (2)	4 (4)
	Total	58	45	103

*Legal representation data missing for 19 mothers, 16 fathers, and 7 carers

In LA (parent) applications mothers had consistent legal representation in only 17% (n=13), and fathers in only 14% (n=9), of relevant cases – although due to missing data these figures may have been higher. Parental representation in these types of application was not associated with discharge outcome, however it remains problematic that parents did not have representation in these proceedings (see Chapter 7 for further discussion). Interviewees reported different views of the legal representation of parents in LA (parent) applications. Some suggested that legal representation was unnecessary for parents in LA applications, whilst others thought that the local authority would sometimes apply on behalf of the parents, to avoid the difficulty of unrepresented parents making the application:

We would be the applicant again, generally because when you represent parents there's often a difficulty that you can't get legal aid funding if it's agreed and done by the local authority (LA Lawyer, W3.4)

Parent applications saw much higher rates of representation with mothers represented in 81% (n=47) of relevant cases and fathers in 40% (n=18). In terms of outcome, in the successful parental applications, proportionately more care orders were discharged when an applicant parent had legal representation (27%, n=13) than when they did not (8%, n=1)⁴⁶. However, this difference was not statistically significant; it may reflect decisions by the Legal Aid Agency not to fund weak cases but more data would be needed to confirm this supposition.

Critically, only 18 (32%) potential SGOs were given party status during discharge proceedings. Of those who became parties, just over half (55%, n=10) were consistently represented throughout proceedings. Parents listed as respondents in SGO applications were rarely represented (17%, n=9 of mothers, 14%, n=5 of fathers). Interviewees described different procedures in relation to legal advice and representation for SGOs, with some considering that potential SGOs should not be made parties:

They're not necessarily made a party, but they're given permission by the court to attend the hearing I think generally, there's conflicting case law.... But we would say there's case law that specifically says they shouldn't be made parties. I don't think we would potentially ever

⁴⁶ Representation data missing in one successful parental application

really support it because it puts them then in a position of having to really plead their case, whereas they're generally riding on the local authority's plan, because it's our plan. So we would sort of try to protect them a little bit from being an actual respondent or a party (LA Lawyer, E3.4)

The e-casefile data and interviews clearly indicate multiple issues with parents and carers' access to legal aid, legal advice, and legal representation, which are discussed in Chapter 6.

5.2.4 Hearings by applicant type

The number of hearings taken to conclude the proceedings varied in relation to the applicant and the outcome of the final hearing, with the e-casefile analysis demonstrating that local authority applications were concluded more rapidly than parental applications (Table 5.4). In part, this was the result of courts using accelerated procedures or protocols for local authority discharge applications in some areas (see Chapter 6).

Table 5.4: Number of hearings in relation to applicant and outcome, e-casefile data

Applicant	LA (parent)		LA (SGO)		Parent*	
	Not discharged	Discharged	Not discharged	Discharged	Not discharged	Discharged
Number of hearings	1	33	0	17	4	0
	2	33	0	20	13	3
	3 to 4	16	2	17	12	7
	5 to 6	0	0	0	9	1
	over 6	2	0	0	6	3
Total	5	84	2	54	44	14

* Number of hearings missing for 3 parental applications

As Table 5.4 shows, most LA applications either to parent or an SGO were discharged at the first or second hearing. In most of the local authority cases that lasted for three or more hearings there was disagreement between the guardian and the local authority, although the disagreement did not always relate to outcome (see section 5.5.1, below).

Parent applications took longer than LA applications: none of the parent applications were discharged at the first hearing, and half of the successful parent discharges occurred at the third or fourth hearing. A third of all parent applications lasted five hearings or more – likely relating to the need for reassessments and a greater use of experts in these cases (see section 5.5.3). Notably, judges in the focus group highlighted how local authority applications were likely to be resolved quicker than parent applications:

If it's an application by the local authority for a discharge, we have a specific protocol. They're done within ten weeks, there's a guardian appointed, it's a pretty speedy process and on the whole, they go through at that next hearing unless there's sometimes a bit of an argument about the level of contact or something like that, but they are completely different cases really from the cases where a parent is applying (Judge, F.P3)

5.3 The impact of child demographics and care history on discharge outcome

This section describes the association between discharge outcome and children’s demographics and care history. There was no observed relationship between the child’s gender and the discharge outcome within the e-casefile sample, so this is not discussed here.

5.3.1 Children’s demographics

Care orders were significantly more likely to be discharged when there was only one child listed on the application in the e-casefile data (81%, n=106)⁴⁷. In the English SAIL data this difference was also significant⁴⁸, with single subject applications more likely to be successful (72%, n=3662) than applications involving more than one child (60% n=1670). Proportionately the more children on the application, the less likely it was to be successful (ie applications with two children were more successful than those with three and so on)⁴⁹.

In the English SAIL data, children’s age was associated with outcomes (Table 5.5). Where the legal outcome was known, children aged birth – 4 years and children aged 15-17 years were more likely to have discharge applications granted, compared to children aged between 5-9 and 10-14⁵⁰. No association was observed between age and outcome in the e-casefile data – however children who were younger at the point of care were more likely to have the care order discharged than those who were older⁵¹. In the care and adoption system as a whole, younger children tend to have more consistent, stable outcomes than older children who have potentially experienced instability, abuse and neglect over a longer period of time. The study’s findings provide further evidence of this: younger children may be more likely to be discharged into a stable placement away from home (eg an SGO with a family member or friend) or return to the care of their parent(s) after a period of intervention. That the oldest children in the English SAIL data were also more likely to have discharges granted is of note. From the e-casefile data analysis, it would seem likely that these applications are more likely to be successful because the care order itself is ineffective – and the child is ‘voting with their feet’. Further discussion about the discharge of ineffective care orders can be found in Chapter 6.

Table 5.5: Children’s age and outcome application, English SAIL data

Age group	Legal outcome known (n)	Discharge granted (n)	% successful
Birth-4 years	2618	1833	72
5-9 years	2452	1565	64
10-14 years	1938	1251	65
15-17 years	859	633	74
Total	7867	5332	68

The issue of ethnicity and care is complex (Ahmed et al, 2022). The data are only reflective of the English e-casefile data, because 25 out of 30 Welsh cases had missing ethnicity data⁵² and data on ethnicity was not collected within SAIL, due to concerns about the quality of the data held within the

⁴⁷ U=3157.500, p= .002

⁴⁸ $\chi^2(3)=147.960$, p<.001

⁴⁹ This was not ascertainable from the Welsh SAIL data

⁵⁰ $\chi^2(3)=61.145$, p <.001

⁵¹ U=77766.500, p <.001

⁵² In Welsh cases, it appeared that the child’s ethnicity was only recorded if it was not White British – which is problematic on a number of levels, not least the implicit ‘othering’ of certain ethnic backgrounds

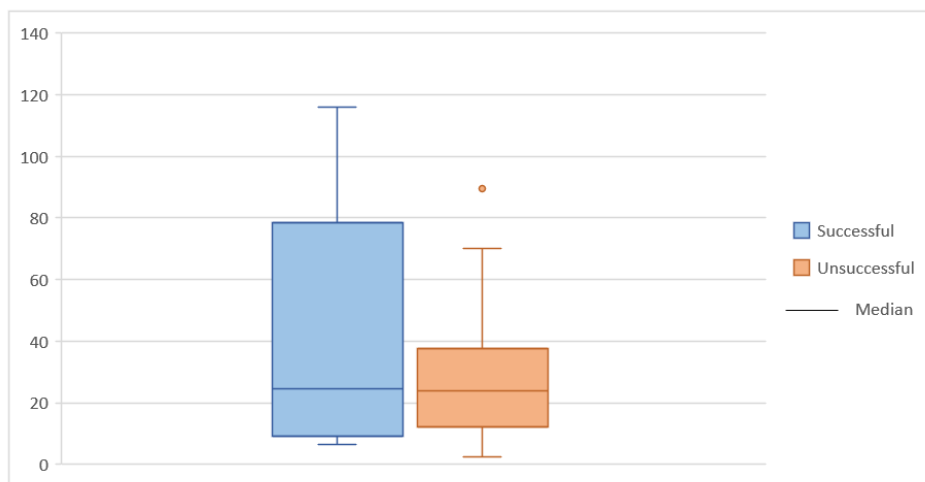
databank (Bedston et al, 2019; Johnson et al, 2020). Within the English e-casefiles, the majority of children were White British; due to low numbers in other categories, it was difficult to draw conclusions on any relationship between ethnicity and outcome. However, trends seemed to differ slightly in cases concerning Black children (n=20)⁵³, potentially reflecting a combination of applicant type and regional variation. These cases were slightly less likely to be discharged (eight were successful discharges), more likely to be parent applications (60%, n=12), and to be made in London (40% compared with 10% of cases overall) but the numbers are too small to draw any firm conclusions. Further investigation into trends relating to ethnicity in discharge applications is warranted.

5.3.2 Length of time in care

The e-casefile sample showed that discharge applications were made an average of 23 months⁵⁴ after the care order was made. Where available, information was collected on how long the family had been known to children’s social care prior to the care order but this did not appear to be associated with the discharge outcome – information about this was variable so this finding may reflect data issues rather than what was happening.

The length of the care order prior to discharge application did not differ significantly between LA applications that were or were not granted although, as noted, only a very small proportion of LA applications were unsuccessful. In contrast, as shown in Figure 5.1, the average length of time between care order and application was higher in successful parental applications (mean of 39, median of 25 months compared with mean of 27, median of 24 months for unsuccessful applications). It may be that some parental applications were seen as premature, with insufficient evidence of sustained parental change (see section 5.4.2, below, and Chapter 6 for further discussion).

Figure 5.1: Time between care order and parental discharge application, e-casefile data



5.3.3 Placement and placement history

It was not possible to determine who the child was living with at the time of the application within the SAIL data. However, the e-casefile data showed that whether the child was placed with their intended carer at the time of the application was significantly associated with discharge outcome,

⁵³ Including Black African, Black Caribbean, mixed Black and White. See Table 4.2 for details

⁵⁴ Median = 23 months, mean = 32 months

although this association was dependent on applicant type. LA applications were nearly always successful where the child was placed with the intended carer / at home. Parental applications were less successful overall, but those that were successful were significantly more likely to have had the child placed at home⁵⁵. Cases which were not discharged when the child was placed at home tended to be parent applications made in response to a notification of child removal.

A small number of parental applications resulted in discharge (8%, n=5) where the child had never been placed at home during the care order. These cases related to parental disputes with local authority care plans, included children who were in support of discharge, and who were reunified with their parent(s) prior to or shortly after the final hearing.

5.3.4 Placement with parents

Placement with parents from the start of the care order occurred in 49 English and six Welsh cases within the e-casefile sample. Placement with parents from the beginning of the care order appeared to be linked to a) more successful discharge applications and b) shorter time between care order and discharge (14.6 months compared to an average of 26 months for children placed in out-of-home care prior to being placed with parents on a care order). However, placement with parents is not automatically a positive in terms of the discharge process. For example, there were several examples of the local authority applying to remove the child from a placement with parents due to concerns, which the parents then responded to by launching an application for discharge. Other parental applications relating to placement with parents' situations concerned reunification and occurred after the children had been removed. An example of a breakdown of placement with parent prior to discharge application can be seen in Case Study G.

Case Study G: Breakdown of placement with parent

DJ01/02/03: Three children were placed under care orders and placed with parents due to their mother's drug use and experiencing domestic violence and abuse. Four months later additional concerns arose regarding neglect, substance misuse, and the mother not informing the local authority that she had remained in an abusive relationship. The children were removed to separate kinship carer placements. The mother's drug use continued to increase following a family bereavement, but she made an application to discharge the care order and return the children to her care. The social worker noted there were no recent issues with mother's care, however, all children were settled and thriving in their kinship placements, so discharge was opposed. The guardian noted the mother had been physically chastising children and exposed them to drug use and sexual activity. The guardian recommended the mother re-engaged with services for bereavement, domestic abuse, and drug use, and evidence sustained change before discharge could be considered. One child voiced their wish to stay in kinship care, the other two were observed as happy in kinship care. At the end of the process, the mother had accepted she needed to do more work before the children could be returned and withdrew her application.

5.3.5 Placement length

Within the e-casefile sample, there was no observed relationship between the length of placement with the intended carer and discharge outcome in either local authority or parental applications. This potentially reflects high rates of successful discharge for LA applications and parents' use of the

⁵⁵ $(\chi^2(3) = 10.349, p = .009)$

discharge application for reasons other than discharge. However, interviews highlighted how there could be expectations about the length of placement before local authorities would apply for discharge. For example, interviewees suggested that applications should be submitted for discharge only after a placement with parents had been tested for six to 12 months. Nonetheless, due to resourcing pressures and staff turnover (see Chapter 6), some cases were delayed for significantly longer before an application was submitted:

Usually, six months to a year we would then be looking to take it to the panel and to bring it in for an application for discharge. In practice it does drift, and again it's a systems thing because the workers who are holding those cases are also holding new ones. And priorities are set and have to be responded to. So it doesn't always happen... you know there are some kids that have been at home on care orders for two or more years, but simply they just haven't got around to dealing with it (LA Lawyer, E3.2)

5.3.6 Children with multiple placements

Thirteen children had multiple past placements (two or more) but the exact number could not be specified due to incomplete e-casefile data. A further 26 children had missing or unclear placement data. Although gaps in the data preclude conclusive analysis, there did appear to be some correlation between the number of previous placements and the outcome of the discharge application when this was considered by applicant. For example, successful parental applications had a higher number of previous placements (mean=3.3) than unsuccessful ones (mean=2.2), although the reasons for this were not clear. It could be that some of the unsuccessful parental applications were premature or were being used to force re-examination of other aspects of the care plan. Conversely, it may be that older children were more likely to have a higher number of placements but were also more likely to have their care order discharged as being 'ineffective', as they chose to 'vote with their feet' (see Case Study H).

Successfully discharged LA (parent) applications had a lower number of previous placements (mean=2.1) than unsuccessful applications (mean=3.3). This is likely to reflect the increased use of home placements and that children who experienced more stability in placements had more positive outcomes overall.

Case Study H: Placement pathways

WF01: A father's application for discharge for a 15 year old girl who had some learning and social difficulties. The child was made the subject of a care order due to concerns relating to sexual abuse, neglect, experiencing domestic violence and abuse and her parents' chaotic life. She had four foster placements; each broke down because she repeatedly ran away, and due to concerns about sexual exploitation and self-harm. Her father, who was worried about her behaviour and emotional wellbeing, applied to discharge the order. Both the local authority and the children's guardian opposed discharge. Five months after the application her foster placement broke down and she refused alternative carers. The local authority agreed to place her with her parents (father); she returned home. The father then withdrew his discharge application.

5.3.7 Child's preference

Analysis of e-casefiles suggested that the child's preference on discharge was significantly positively associated with outcome⁵⁶. One hundred and sixteen children were asked by professionals involved in their case whether they wanted the care order to be discharged (109 in the English sample, seven in the Welsh sample). Notably 196 children were not asked about their preference, sometimes due to age and sometimes for other reasons (this is discussed in depth in Chapter 6). Information about child's preference was missing in 15 cases. The majority of children (81%, n=94) who were asked their opinion wanted the order to be discharged (Table 5.6⁵⁷).

Table 5.6: The association between child preference and outcome, e-casefile data

Child preference		Outcome		Total
		Not discharged	Discharged	
CO to remain	Frequency	16	1	17
	%	94%	6%	100%
CO to be discharged	Frequency	18	76	94
	%	19%	81%	100%
Neutral	Frequency	1	4	5
	%	20%	80%	100%
Total		35	81	116

Unsurprisingly, older children were more likely to be asked about their views: three quarters of children who gave a preference on discharge were aged between 10 and 17. Interviewees suggested that child age and preference were driving factors in both the making of applications and outcome:

Within the local authority there was a debate about whether mother's care was good enough or not. But in the end, I mean the children were getting older and clearly they were expressing that they didn't want the care order there. And Mum also didn't want it. So the local authority made the application because what was the point of it really? (Guardian, E4.1)

5.4 The impact of concerns at discharge on the outcome of the application

Concerns about the child and the reason for the original care order are not held within the SAIL data. However, within the e-casefile sample, concerns about parents and parenting in all discharge applications were associated with the discharge outcome. Up to 30 different concerns relating to parenting capacity were extracted from the e-casefiles pertaining to parental or kinship/foster care.

5.4.1 Impact of concerns at the time of care order and service engagement

As discussed in Chapter 4, within the e-casefiles, the majority of care orders were made due to unreasonable care (96%, n=200), with neglect and/or emotional abuse being the most common factors instigating care proceedings. Many cases recorded multiple types of abuse at the time of the

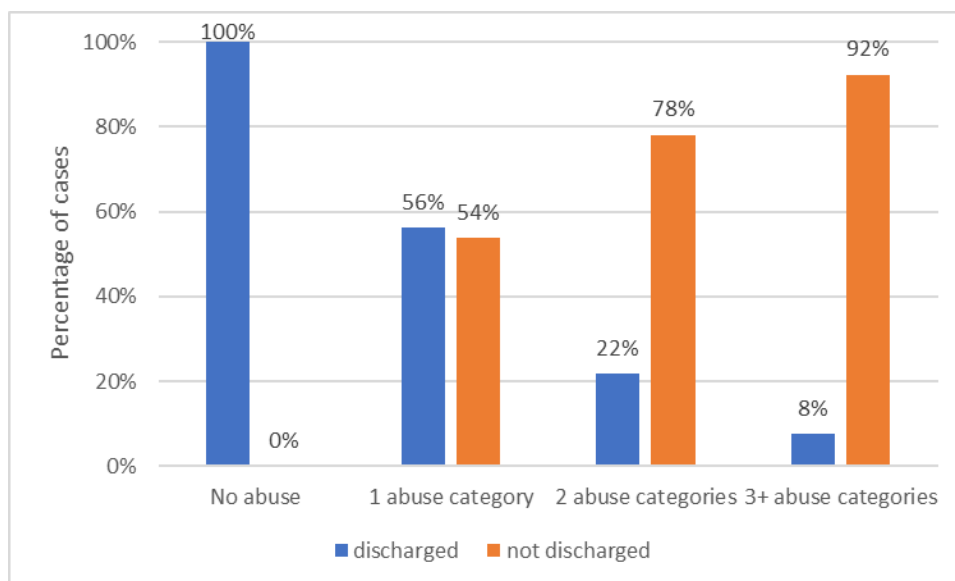
⁵⁶ ($\chi^2(2) = 36.050, p < .001$)

⁵⁷ As this is at child level there is overlap in categories and cumulative totals

care order. Within LA (parent) applications, there was no association between the number of abuse categories recorded and discharge outcome.

In contrast, for parental applications, the number of different types of abuse⁵⁸ recorded at the time of the care order was associated with discharge outcome (Figure 5.2)⁵⁹. Cases with multiple categories of abuse were much less likely to be discharged than those where there had been no abuse. The link here is evident – situations where there had been more concerns about parental care were less likely to be resolved or seem to be ‘good enough’ at the point of discharge applications by parents.

Figure 5.2: Abuse at care order and discharge outcome in parental applications, e-casefile data



The e-casefiles included reference to a number of services offered by the LA to the parents involved. These services were generally recommended to address concerns raised at care proceedings and commonly included mental health support, drug or alcohol services, parenting programmes, domestic abuse programmes, and CAMHS. Other services included child sexual exploitation awareness training, housing or rehousing support, and respite care. Parental engagement with services was difficult to ascertain from e-casefiles as information about the actual services offered and whether parents had then engaged was often missing. However, available data suggested parents and carers were proportionately more likely to engage with parenting programmes (73%, n=62) and domestic abuse support (70%, n=37) than with adult mental health services (63%, n=52) and drug or alcohol treatment or counselling (44%, n=24). Two examples of parental engagement with services and how this impacted discharge proceedings are presented in Case Studies I and J. In seven cases, additional support (such as financial or rehousing support and respite care) had been requested by parents or carers but was refused. This is discussed further in Chapter 6.

⁵⁸ Risk / experience of emotional abuse (including experiencing domestic violence), physical abuse, sexual abuse, and/or neglect

⁵⁹ (U= 195.500, p = .010), abuse data missing for two cases which are excluded from analysis

Case Study I: Example of parental engagement with services on discharge proceedings

BK01: A local authority application for the discharge of care order for a four-year-old child. The child had older siblings who were in foster and kinship care and were not included in the application. Historic concerns related to the mother's mental health, substance use, neglect, and the child experiencing domestic abuse. At birth the child was placed with the mother in a foster placement. Positive progress was observed and they were moved to supported and then semi-independent accommodation. The mother was offered a range of services including therapy, parenting programmes and intensive support. The social worker statement for the discharge application noted that the mother was consistently engaged with all services and was able to maintain significant lifestyle changes. No concerns were raised by the IRO or guardian and the care order was discharged.

Case Study J: Example of parental non-engagement with services on discharge proceedings

CI01: A local authority discharge application in relation to a boy placed with his mother and step-father. The family were from, and lived within, the Gypsy, Roma and Traveller community. The original care order was made due to non-accidental injury caused by the father but there were ongoing concerns about the mother's ability to meet the child's health needs and manage his behaviour. Since the care order there were multiple concerns about how the family worked with professionals and possible physical abuse of half-siblings. The family did not engage with domestic abuse support and disengaged with CAMHS. The local authority believed that issues with meeting health needs could be met by a six-month supervision order. The guardian initially argued that the application was premature and that the local authority was trying to get the case 'off their books' but ultimately concluded there were no concerns over the care given by the mother. The care order was eventually discharged to a 6-month supervision order with a supporting Child Arrangements Order to prevent contact between the child and his father.

Overall, analysis of the data did not reveal a relationship between service engagement and discharge outcome. This can be explained by both reporting limitations in the e-casefiles, and that LA applications were usually only put forward for discharge when concerns raised at the care order had been addressed.

5.4.2 The impact of current concerns about parents/carers on discharge applications

As noted earlier, concerns about parental care are not held within the SAIL data, but it was possible to extract data about historic and current concerns about parental or kinship care from the e-casefiles. Thirty eight concern categories were identified by the researchers and information extracted on what the concern was, whether it was current, and who raised it (see Appendix D). The amount of data available on concerns about parent/kinship care was mixed. Some e-casefiles held detailed information about the concerns, parental/carer views and how the local authority had worked with the child and family. In other files, there was very little information. As such, there is a limit to the conclusions that can be drawn. The most common concerns raised about parental care at the point of or during discharge applications were breaking contact arrangements, unsuitable home environments, alcohol or drug use, and mental health problems. The latter three issues are commonly identified in care proceedings and are also reasons why social workers may intervene in family life. The breaking of contact arrangements is of interest, as it applies more specifically to discharge proceedings.

Overall, in successful discharge applications made by the LA to the parent, there were a low number of concerns raised about parental care. This is logical because it is reasonable to assume the LA

would attempt to address concerns about parental care before attempting to discharge a care order in favour of the parent. In interviews, it was highlighted that the LA would often wait for families to demonstrate sustained change before making the discharge application:

So in reality, the situation where the local authority is applying would be, for example, where the parent has managed to address the concerns that led to the care order, and the child has been placed at home on placement with parents' legislation. And I mean we, you would generally say then maybe six months after that. But again it depends, in the example I quoted a moment ago was six months, but mum had a wobble so we're leaving it a bit longer, you know. Best to settle down again (LA Lawyer, E3.2)

In the five unsuccessful LA (parent) applications, multiple concerns were identified regarding the mother and/or father. Concerns raised included physical and emotional abuse, introduction to inappropriate adults (ie those who may pose a risk to children) and ongoing domestic violence and abuse. Some of these concerns were only identified after the application had been made – leading to the application being withdrawn.

Notably, in a small number of cases there were multiple concerns about parental care in successful LA (parent) applications, but these appeared to be outweighed by, for example, positive relationships between the parent and child/ren, or the recognition that the care order could not resolve long-standing problems (Case Study K).

Case Study K: Successful LA application with multiple concerns

W001-4: A local authority application for the discharge of care order for four children. There were long-standing concerns about neglect, domestic violence and abuse and health care for three children with additional needs. After periods on child protection plans and accommodation, the local authority brought care proceedings and placement with parent care orders were made. The local authority later applied for discharge, despite continuing concerns about the home conditions, the children's presentation and their education. The guardian agreed about the concerns but noted the mother's emotional warmth, good attachment and that the children did not want the local authority's involvement. The guardian concluded that continuing the care orders would not resolve the long-standing difficulties and supported the application. The care orders were discharged; the children remained on care and support plans.

The trend relating to parenting concerns identified in LA (parent) applications was also seen in parent applications. Those that were unsuccessful had higher levels of concerns identified than those that were successful. In unsuccessful parent applications, the main concerns reported were lack of co-operation with services, inability to meet child(ren)'s emotional needs, and mental health concerns.

Notably, there were a handful of concerns raised about SGO carers in LA (SGO) applications. When present, these concerns were not about the SGOs parenting *per se* but whether the carer had the resources and capacity to meet the child's needs over time (eg housing, meeting emotional needs, supporting school attendance). The support offered to special guardians post-discharge is discussed in Chapter 6.

5.5 The impact of the professional recommendations

Within the e-casefile sample, it was not always clear whether the same professionals had been involved in the case throughout. However, it was possible to determine that the majority of discharges (69%, n= 126⁶⁰) were allocated to the same guardian who had been appointed in the care proceedings. Continuity did not appear to be related either to the applicant or the outcome of the application, although the guardian’s view was particularly influential; this may have been linked to their knowledge of and involvement in the initial care order.

5.5.1 The impact of the guardian’s recommendation

In both LA (parent) and LA (SGO) applications, the guardian agreed with the local authority’s position in approximately three quarters of cases (n=106) and partially agreed (agreed with elements of the plan, but not all) in a further fifth of cases (n=28). In parent applications, the guardian agreed with the LA position in 60% of cases (n=34) and partially agreed in a further 26% of cases (n=15)⁶¹. The guardian’s general recommendation on discharge was significantly associated with the discharge outcome⁶². As shown in Tables 5.1 and 5.2 above, the guardian’s recommendation was influential in the rarer unsuccessful LA (parent) applications and successful parent applications. Overall, the guardian’s recommendations on discharge and further orders were heeded by court in all but two cases (Table 5.7). In one local authority application, the guardian acknowledged there were no longer safeguarding concerns but felt the child would benefit from continued support. However, the child and mother had disengaged from support and the child was about to ‘age out’ of the care system. Ultimately, the discharge was approved. In the other case, an LA(SGO) application, there were issues relating to financial support for the prospective carers, and contact arrangements between the children and birth father could not be agreed. Despite the guardian’s support, the local authority ultimately withdrew the application.

Table 5.7: Guardian recommendation, congruence with outcome, e-casefile data

Guardian position on discharge	Outcome					Total*
	Discharged, no new order	Discharged + SGO	Discharged + SO	Discharged +CAO	Not discharged	
Discharge, no new order	47	0	0	4	1	52
Discharge to SGO	0	52	1	1	1	55
Discharge to SO	2	1	14	0	0	17
Discharge to CAO/change to contact	2	1	1	24	0	28
No discharge	0	0	0	0	51	51
Total	52	54	16	29	52	203

* The guardian recommendation was missing in six cases

⁶⁰ Missing or unclear in 26 cases

⁶¹ Data available for 86/89 LA (parent) applications, 54/56 LA (SGO) applications, 57/61 parent applications

⁶² ($\chi^2(1) = 192.639, p < .001$)

It is notable that the influence of the guardian on discharge outcome was strongly emphasised by interview participants with almost all professionals considering that the guardian held most sway in court:

I think the tendency here is to say that Cafcass are always listened to. That's our experience and I don't want to sound negative because clearly they've got a very important role... If the guardian asks for something the guardian is likely to get it (Lawyer, E3.4)

5.5.2 The impact of the social worker

Whether, or how often, the child's social worker had changed was difficult to ascertain from the e-casefiles, but it can be tentatively concluded the social worker frequently changed. Documents within the e-casefiles often noted that there had been multiple social workers since the care order was made and there were only 18 cases where it was explicitly clear that the same social worker had been involved throughout.

Whilst the social worker recommendation on discharge was generally congruent with the outcome (90%, n=188)⁶³, this was overshadowed in cases where the guardian disagreed with the social worker and the courts followed the guardian's recommendation. There was only one case where the guardian and the social worker disagreed and the court sided with the social worker (Case Study L).

Case Study L: Court sides with social worker on outcome

AK01: Original care order was made due to history of 16 year old girl absconding and risk of child sexual exploitation; she was made subject to a secure accommodation order shortly after. Around a year later the child returned to her mother's care. The local authority subsequently submitted an application for discharge. The guardian was critical of the application, suggesting the LA wanted to remove the case from their books before the child 'aged out' of care. The guardian thought the child would benefit from continued support and questioned mother's parenting ability. The mother and child were at first in support of discharge but were later recorded as being neutral, given the child's age. The care order was ultimately discharged. There was a lack of detail on any agreed support by the LA post-discharge and whether the child would be able to benefit from care leaver support. There was no detail on why the judge agreed with the LA in this case, though all parties accepted that the child was safe and the care order was ineffective.

Some interviewees were concerned that the social worker, who had most contact with the family, were not always listened to or treated as experts in court:

I think social workers are experts in their own right, when they've been involved with families for such a long time. But I think there are still incidents where Cafcass are seen as the expert and the social workers aren't, so they have a greater weight then in their view, as opposed to the social worker (Social Worker, W2.3)

The role of the guardian, and the potential tensions between their position and that of the social worker are discussed in Chapter 6.

⁶³ ($\chi^2(1) = 113.301, p < .001$)

5.5.3 The impact of experts

Overall, the e-casefile and interview data analysis suggested that experts were not commonly used in discharge cases, being present in only 21% (n=43) of the e-casefile sample⁶⁴. However, expert appointment varied in particular regions: experts were used in 50% (n=10) of sampled e-casefiles in London, and in 36% of cases in the South East (n=5), perhaps reflecting the higher number of parental applications in these regions. All other areas had much lower use of experts, typically being used in less than a fifth of cases. Independent Social Workers (ISWS) were the most commonly appointed expert (35% of all experts appointed, n=29), with psychiatric assessments (29%, n=24) and drug and alcohol tests (22%, n=18) also being provided. It was not always clear from the e-casefiles who requested experts, though parents were more likely to request ISWs. In general, experts were most commonly used in parent applications. There was no statistical association between expert opinion on discharge and outcome. The reason for the increased use of experts in parent applications was discussed by interviewees:

You don't see a lot of applications for experts on discharges. You may find if a parent basically is dissatisfied with the situation and makes an application to discharge and try and get their voice heard, it maybe the question for example of contact, or placement together or apart will come up, and maybe they're getting psychology in to advise on that, but in terms of actually whether the care order should be discharged or not. That's generally seen more as a question of fact and law, and you wouldn't really get expert opinion (Lawyer, E3.2)

Reasons for the involvement of experts may also relate to the preparation work completed by local authorities prior to submitting the application, resource issues, and parents' need for evidence to challenge the local authority's plans (see Chapter 6).

5.5.4 The impact of the judge/court allocation

The SAIL data for England showed that, between 2010 and 2019, 58 discharge applications were heard in the High Court or Court of Appeal, with 2376 cases heard in the County Court, 3586 in the Family Court⁶⁵, and 12243 cases heard across different courts (such as both the Family Court and County Court, or magistrates court and Family Court). No court level was recorded in 246 cases. This information was not available within the Welsh SAIL data.

Within the e-casefile sample, cases heard by magistrates had the highest percentage of discharge (90%, n=32) in comparison to district judges (82%, n=53) and circuit judges (61%, n=52) (Table 5.8). This is likely to reflect the level of complexity or challenge within the case, with more complex cases being heard by district and circuit judges not magistrates:

If the magistrates made the original decision, if the local authority apply to discharge and it's a sort of not rubber-stamped but you know, a much easier application then it would stay with the magistrates but if not, it would go to a circuit judge. If it's any sort of more potentially difficult discharge application, it would definitely go to a circuit judge (Judge, F.P9)

The judges involved in the focus group noted that cases involving human rights appeals (which are particularly relevant to parent applications to prevent child removal) tended to be allocated to higher courts. Parental applications were most likely to be heard by the circuit judges (55%, n=33, of

⁶⁴ This is in contrast to care proceedings, where previous research has shown the court appointed experts in 61% of cases (Masson et al, 2019) but may reflect the greater control or the use of experts after the PLO and a lack of Legal Aid

⁶⁵ Jurisdiction in these cases was transferred from the County Court to the Family Court in 2014

parental applications), whereas LA applications were more evenly spread between magistrates, district, and circuit judges. A few cases were also heard at the High Court or by a Recorder, and nine were reallocated to different courts during proceedings (Case Study M).

Table 5.8: Judge allocation at discharge

	Discharged	Not discharged	Total*
Magistrate (%)	38 (90)	4 (10)	42 (20)
District (%)	53 (82)	12 (18)	65 (32)
Circuit (%)	52 (61)	33 (39)	85 (42)
All other (%)	8 (67)	4 (33)	12 (6)
Total	151 (74)	53 (26)	204 (100)

* Five cases had missing data

Case Study M: Case reallocated during proceedings

CB01-03: A mother’s application for discharge. The original care order for three children was due to experiencing domestic violence and abuse and possible physical abuse. Children were removed to foster care but had multiple placements before being placed with unrelated foster carers who wished to pursue adoption. A month after this placement the mother applied for discharge and revocation of placement orders. The social worker and guardian highlighted multiple concerns about the mother’s capacity to care and supported adoption. Initially the case was allocated to a circuit judge who dismissed the application. The mother then appealed and applied to the High Court for judicial review. The High Court ruled that the LA had knowledge of the mother’s intention to apply for the revocation of care order and to stop the care plan of adoption, and therefore the children should not have been placed with their potential adopters. The court also found the LA did not keep the mother or her solicitor notified about developments regarding the children’s placement. However, the discharge application was ultimately dismissed and the court granted the LA permission to place the children for adoption.

E-casefile, interview, and focus group analysis all suggested that cases tended to be returned to the same level they were heard at during care proceedings, and to the same judge if they were still sitting. Judges supported continuity in cases; however, the e-casefile analysis indicated that only 36% of cases were heard by the same judge as at the care proceedings.

5.6 Summary

This chapter has highlighted key factors that appear to affect the outcome of the discharge application, and how some of these factors overlap and inter-relate. Local authority applications were much more likely to be successful than parent applications because they have more opportunity to scrutinise and seek guidance on applications prior to submission than do parents but are also more likely to seek discharge in relatively stable situations, whereas parental applications were frequently made where parents disagreed with the local authority plan. Local authority applications tended to be concluded more quickly, with fewer hearings than parental applications, and were more likely to be heard by magistrates, generally because they are less complex and uncontested. While missing data hampered more definitive analysis, it can be concluded – unsurprisingly – that more concerns raised about parenting capacity either at the care order or the discharge application were correlated with lower rates of discharge.

The guardian's perspective on discharge was highly influential and often prioritised over that of the social worker, even when (and perhaps in spite of the fact) social workers had worked with the family for a long time. Children's views were also significant, although not all children appeared to have been asked, despite legislation emphasising the need to ensure children's wishes and feelings are heard. Experts were not commonly appointed, although there was some regional variation; the roles of experts, social workers and guardians are discussed further in the following chapter, alongside further consideration of other tensions and issues identified here.

Chapter 6 Issues and complexities within the discharge process

6.1 Key findings

- A typology of discharge cases was developed, consisting of six different types of discharge application – based on motivation for discharge, process, and outcome
- The six types were:
 - Placement at care order assessed as stable
 - Reunification to birth parents
 - Unsupported by the local authority
 - Stable placement found post care order
 - Forced re-examination or discharge used as appeal
 - Ineffective care order
- Within the discharge process there was evidence of accelerated or fast-tracking the discharge process. However, there was also evidence of considerable drift and delay due to competing workload priorities of social workers
- What met the threshold for a care order to be discharged, continuation of care orders and the no order principle were inconsistently interpreted and applied
- Guardians have considerable power in court and significantly influenced the discharge outcome
- Children’s involvement in applications was variable and was determined by guardians
- Parents were reported to struggle to navigate the court process, particularly because they did not have access to proper legal advice and/or were not aware of their rights.
- Interviewees felt that the discharge process could be re-traumatising for the families and children involved
- There is limited, ad hoc, support for parents and carers following both successful and unsuccessful applications
- Parental applications that force re-examination of circumstance may be misusing the legal process but did sometimes result in beneficial changes and were the only option for parents

Drawing primarily on the interviews with professionals and the judicial focus group, this chapter discusses some of the complexities and issues with processes and procedures of discharging care orders. In particular, the chapter presents a new typology of discharge applications, which explores the different motivations, processes and outcomes of applications.

The chapter then considers how discharge applications are prepared for and prioritised, the participation of both parents and children and the impact of a lack of legal aid, legal advice and representation, and the support provided to parents or special guardians before, during and after proceedings.

6.2 A typology of discharge applications

The interviews, focus group and e-casefile analysis demonstrate that discharge applications can be differentiated in terms of the applicant – local authority or parent – and the purpose or aim of the application. As noted in Chapter 5, the judges reflected on these different types within the focus group:

But I think that's the fundamental problem with just calling them discharge of care orders because you have three completely separate types of proceedings. So you have your classic ... example which is discharge is usually, [just a way for the parent to get an injunction to prevent the child's removal...]. Then you have your applications to discharge either brought by a local authority or by a parent or a carer supported by the local authority.... They tend to be funded by the local authority so if the local authority agrees with the parent, all bells and whistles, proper representation. And then you have your third category which are the most vulnerable parent, usually the hopeless applications ... and there's no funding and no help for those people at all unless you've got something you can latch it on to (Judge, F.P6)

However, the data indicated that more than three types of application exist and a typology consisting of six discharge types, identified in e-casefiles and interviews and classified according to dominant motivation and outcome, was developed. This is set out below and referred to throughout this chapter⁶⁶:

- *Placement at care order assessed as stable (71 cases, 34%).* These discharge applications were made by the local authority⁶⁷ after assessing a placement with parents or kin, which had been made at the point of the care order, as stable. In some of these cases, the care order had been made as there was no time to test the placement during care proceedings, potentially related to the time limits set by the Public Law Outline. However, in other cases a period of monitoring was required to ensure parents or kinship carers engaged with services and that remaining concerns were addressed. Where courts had adopted an accelerated procedure, it was usually used in these cases. The majority of these cases were successful (n=69).
- *Reunification to birth parents (44 cases, 21%).* Typically, there was not a plan for discharge at the conclusion of care proceedings in these cases but, due to a change in family circumstances, the local authority agreed to placement with parents and later sought discharge. In a small number of cases, care proceedings concluded with the children placed in care but with a planned reunification and discharge. In a minority of cases (n=2), applications were made by birth parents. Some courts also used an accelerated procedure for these cases. The majority of these cases were successful (n=42).
- *Unsupported by the local authority: (39 cases, 19%)* These applications were made by parents and were contested by the local authority at application. The child was not always placed with the parent applicant. The majority of these applications (n=33) were unsuccessful. A very small number (n=6) were successful against the odds when the guardian sided with the parent applicant following investigation.
- *Stable placement found post care order (24 cases, 12%):* In these cases there was no long-term placement plan at the point of the care order. A stable placement was found, usually with kinship carers, at some point after care proceedings. In a small number of cases an unrelated foster carer later stated their intention to apply for an SGO. The majority of these cases were LA (SGO) applications (n=22), and most were successfully discharged (n=22).
- *Forced re-examination or discharge used as appeal (18 cases, 9%):* These were mostly parent applications⁶⁸ used tactically for means other than discharge. This could include appealing

⁶⁶ Where there was overlap between cases classifications were made according to the dominant motivation and outcome. Three cases were excluded from analysis, these were premature or unprepared local authority applications which were opposed by the guardian and usually withdrawn

⁶⁷ In one case the prospective SGO carer triggered the application because the local authority was delayed in submitting

⁶⁸ Two cases with 'other' applicant type; one child and one kinship carer

the care order or care plan, preventing child removal, or seeking changes to contact arrangements. The majority of these cases were not discharged (n=12) but could result in other changes such as increasing contact or preventing child removal. Six cases did result in discharge, usually when the guardian agreed that the local authority was at fault.

- *Ineffective care order (10 cases, 5%)*: These applications were brought by the local authority or parents when the care order was having little or no impact. This often occurred when children absconded from placements or when children and families refused to work with the local authority. The majority of these cases were discharged (n=8); where discharge was not granted, there were sometimes agreed placement changes.

These types suggest that different legal processes may be needed for different types of cases, rather than using a *'sledgehammer to crack a nut'* (Judge, F.P4). These could include fast-tracking or accelerated processes (discussed below in section 6.3.3), and better signposting of the avenues open to parents who are concerned about the care of their child in care (see section 6.5.2). The impact of the type of application on the outcome also re-emphasises the need for parents to have access to prompt and realistic legal advice and support, an issue highlighted repeatedly throughout the study.

6.3 Local authority processes and issues

This section explores some of the key processes and issues associated with local authority applications. The levels of scrutiny local authority applications are subject to prior to submission means that, in most cases, the court hearing is relatively straightforward and the process is more one of auditing and 'rubber-stamping' the application. Discharge was not granted in local authority cases mainly when there had been an oversight in completion of the work needed, or more commonly, when there was a change in circumstances or an incident after the application that led to further concerns about the child's safety and wellbeing.

6.3.1 Identifying cases for discharge

The majority of local authority applications were successfully discharged. Within local authority cases, the pertinent question is then *how* cases are identified as being ready for discharge, rather than whether the discharge application will be granted. Typically, cases are identified as being ready for discharge by case managing social workers and managers as part of the LAC review⁶⁹ process. Within this IROs also have to consider whether there should be a change in the child's legal status. Despite the expectation that the appropriateness of the child's legal status should be questioned as a routine part of the LAC review, interviewees suggested that this did not always happen. This lack of ongoing review appeared to most common for children who had been subject to a care order for many years:

Where kids have been in care for a really long time, nobody had asked the question. Nobody had said, 'should they still be on a care order', and then so when you come in and ask, and they're like, 'what do you mean? But he's on a long-term care order'. Yeah, but should he be? (IRO, W1.1)

Further, some interviewees felt that social workers could be slow to respond when the need for the care order was challenged as part of the LAC review. In particular, IROs commented on 'pushing' for discharge applications to be made in cases where there was agreement amongst professionals,

⁶⁹ Also known as the Child Looked After review

including social workers, that this was appropriate, but where preparation of an application was not forthcoming:

My role now is to remind, keep going in and doing midpoint monitoring, checking in with the local authority, 'OK, when are you going to call? When I last spoke to you, you were doing the application. Have you got a court date?' So between the reviews I do midpoint monitoring and I do file audits of all my children so just checking in, that's an important part of the care plan, have they moved forward on this? And if it hasn't, I ask them why, and I challenge it and escalate it to maybe to head of service (IRO, E1.1)

Some IROs referred to using their power to escalate drifting cases. Case escalation did not always result in action and there was a sense that escalation was a laborious process:

So you have to escalate to the team manager who then has a certain amount of time to respond. They often don't respond within that time, so then you're trying to get a response from them. If you're not satisfied by then, then you go to a senior manager and then not by then, head of service you know, so it's a whole process that can take a really long time (IRO, W1.2)

The extent to which IROs pushed for discharge, or challenged drift and delay, varied. Interviewees suggested that this depended on a number of factors, including individual personality, experience, managerial hierarchies, and the weight local authorities gave to the IRO's opinion:

You would imagine that the IRO would be a great influencer. In this case, I felt that she lacked that impartiality, I think she could have done more myself. I think one of the things that I would say is personalities comes into it... I suppose a lot of factors come into it. One would be also experience... they have their hierarchy of management, and I've known this IRO for some time and I wouldn't say she comes across as the most confident and outspoken of IROS that I've met (Guardian, W4.3)

This highlights the need for clear and consistently implemented oversight within LA teams of ongoing assessments of child welfare and the necessity of legal orders. The interviewees indicated that there was also a lack of consistency in different geographical areas, with different processes in place. This means there is a reliance on individual workers being proactive about discharge, rather than having supportive, consistent processes in place to make sure it happens for every child. This is particularly the case because, as observed in the e-casefile analysis and suggested by interviewees, despite being a standing item on LAC review agendas, the relevance of the care order to the child's current situation did not always command the attention it required.

6.3.2 Drift and delay

A view shared by many professionals interviewed was that getting a care order in place is hard, but getting them discharged is even harder. Professionals noted a general disincentive to discharge care orders because of the assumption that children in care are meant to be safe and settled. Much has been written about the tendency towards risk aversion in children's social work and it is likely that the delays in discharge are, at least partly, a symptom of this. To discharge a care order may disrupt the child's 'known' safety and care arrangements potentially creating risk of harm.

From what professionals said, the discharge of care orders was also seen as less important than the 'core' function of social work services to protect children from harm via the provision of orders:

So, it's like, if our job is keeping kids safe, they're in care they're on a care order, brilliant. And so, no, I don't think in practice we do think 'is this now relevant all the time and do we need to change the legal order'? I don't think we do, and I think part of that is because for social workers it's such an effort to get it (IRO, W1.1).

Due to the pressures on services, more immediately presenting child protection or safeguarding cases were prioritised over discharge applications, resulting in children being in the care system for longer than necessary:

The aspiration is probably to bring it back in six months to a year. In reality, because other cases take priority it will come back in two to three years. So you've got a child in the care system for maybe two to three years who alternatively would have been in the care system for three or four months. And that's not, that's not good. I mean, the child is safe.... but if you take the view that children in principle ought not to be in the care system unless they need to be, then you are keeping them in the care system for longer. Not intentionally, but simply because of the way that humans interact with the system (LA Lawyer, E3.2)

The lack of priority discharge is afforded leads to drift and delay and children remaining on care orders for long periods of time. Critically, the ongoing harm that a care order may place on a child, family and their support system was not often considered. Interviewees noted that children on a care order who were ready to be discharged were often considered to be at low risk of harm and therefore not prioritised.

There may also financial or logistic reasons for delayed discharge. In the e-casefiles, there were examples of kinship foster carers who could not afford to care for the child without the foster carer allowance, which would not ordinarily be available if the care order was discharged. Likewise, the legal obligations of the local authority to children who are care leavers may create unintended incentives (or disincentives) for care orders to remain in place, for example relating to whether the child was or would become an eligible or relevant child (Children (Leaving Care) Act 2000). Independent Reviewing Officers, guardians, lawyers and judges all discussed problematic delays between the identification of a case for discharge and this being implemented and reaching court:

When I spoke to the professionals involved and when I read the paperwork as part of the discharge application, you know, that had been properly considered within LAC reviews. And, you know, all of the professionals quite clearly for the past year and a half were saying they had no concerns about the care that was being afforded to this child. So that was another indicator to me that for at least a year, that child was subject to an order that was not required. It was just on the basis that the work hadn't been completed, that would need to be (Guardian, W4.3)

Some of the delays may simply be down to pressures on the social worker's time and resources. However, this barrier can be reinforced by the need to complete significant amounts of work in respect of the original care plan before submitting the application, which in some instances has only partially been completed (if at all). The professionals involved anticipated that incomplete work on the care plan from the original proceedings may be a sticking point for the judge, and so there needed to be clear justification for work having not been completed with the child and family. For example, one social worker said:

The cases went on the list because everybody involved had the gut feeling that there was no need for any statutory intervention any longer and it was in the family's interest to resume their right to a private family life. However, when we started looking at them, it became clear that the expectations at the time of the proceedings as listed in the final care plan hadn't always been addressed (Social Worker, W2.1)

In these types of scenarios, the work involved to get the application 'court ready' created further delay.

Notably, while social workers and IROs had concerns about applications being rejected by the judge where original work in the care plan had not been done, this was not necessarily a view held by the judiciary. One judge noted that there could be too much emphasis on addressing previous issues and perfecting family life:

Sometimes it's six years later and I'm thinking why did it take this length of time? And part of it is, IRO want everything to be perfect before they make the discharge application and things rarely are perfect in these families. So you know instead of just saying 'it's good enough, they don't need to be looked after, the kids don't wanna be looked after, they're fed up of the social workers coming round' or whatever, they're 'well school is still they're only there 93 percent [of the time]' or whatever (Judge, F.P3)

Ongoing delays and drift of children in care was not without scrutiny. Interviewees commented that external pressures such as the LA's financial position, the impending scrutiny of Ofsted or other national pressures on reducing children in care figures could lead to quick discharge of multiple cases at once:

Unless and until somebody decides to have a blitz, typically because Ofsted have complained we've got too many looked after children, or the fostering budget's blown and somebody is focusing on why are all these children looked after when they don't need to be.... [we need] greater consistency in tracking the cases rather than breathing a sigh of relief and moving on... then the cases would work their way through the system much quicker and you wouldn't then need to have spring cleans when you realize that these statistics look bad (LA Lawyer, E3.2)

This approach to discharge was reactive; however, there were also examples of professionals taking a more proactive approach to case management. Interviewees reported that in some local authorities a specified social worker would take the lead on discharge cases, or be responsible for disseminating knowledge about the process to less experienced colleagues. Whilst this appeared to be on an ad-hoc basis, the appointment of such 'discharge champions' was seen to alleviate drift and delay in discharge cases. Further examples of proactive case management via fast-tracking or accelerated procedures are discussed below.

6.3.3 Fast-tracking discharge

Fast-tracking or accelerated processes were used in some LAs and discussed by interviewees. In Wales, Cafcass Cymru were reported to be trialling a fast-track process. Key to fast-tracking cases was the process of frontloading applications. This involved ensuring all reports and assessments were completed, prior to the submission of the application, to evidence that concerns from care proceedings had been adequately addressed. These applications were also often audited by lawyers

or other professionals prior to submission. This frontloading likely explains the low level of experts appointed during local authority proceedings as expert testimony was collected pre-submission where necessary. Interviewees reported that frontloading applications and 'getting the ducks in a row' (LA Lawyer, E3.2), resulted in shorter proceedings and a higher likelihood of success. Other creative and innovative approaches to fast-track discharge included having specialised teams or developing additional resources to help prepare applications:

I had to generate a new sort of flow chart process in terms of looking at discharges and generating an assessment template, a statement template, and how to streamline it more so that you know, if another social worker in one of the other teams has a discharge, they just follow that process and it should make it a lot quicker (Social Worker, W2.5)

Within accelerated procedures, LAs had to prioritise cases which they thought were suitable for the process. A group of cases that were often prioritised were those situations where the child was in a successful placement with parents or a kinship foster carer. One view was that the care order in these situations had only been put in place because there had not been time to 'test out' the stability of the placement due to the 26 week deadline on finishing care proceedings (as a result of PLO reforms):

Too many care applications are being made, too many children are being placed at home on care orders, which then means you have more discharge applications I think this 26 week deadline causes a lot of problems, basically, which is unnecessary ... proceedings should carry on until things were resolved in the best interest of the child rather than an artificial time frame (IRO, W1.2)

Similarly, care orders had been made when children were placed with kinship carers as there was not enough time to test the placement before concluding care proceedings. This reflects directions to the court not to grant SGOs during care proceedings if the child(ren) has not been living with their prospective carers for a substantial amount of time:

When the 26 weeks started being enforced there would be more cases where proceedings concluded with care orders, with child placed with extended family because there wouldn't be time for the child to be settled long enough to get the SGO report... previously you'd extend the proceedings until the child had been there long enough to conclude with an SGO. Now there's more pressure to have a final care order and then bring it back. (Lawyer, E3.2)

The purposeful selection of these cases for discharge may contribute to the high level of successful LA applications. Some participants referred to processes for selecting and prioritising these more 'clear-cut' cases:

What we did in [LA], we ranked them so red, amber, green, we looked at all our cases in the team and considered which ones are the real possibilities of discharging. So we concentrated on them first (Social Work Team Manager, W2.3)

Whilst there is clearly a need to discharge these orders, their prioritisation may result in cases that are less straightforward, but nevertheless suitable for discharge, being side-lined. Furthermore, guardians noted that this fast track to discharge cases could sideline their role to one of 'rubber-stamping' which was not appropriate.

We kind of looked to kind of replicate that [accelerated procedure] in a pilot where I was doing a paper review of the documentation and then writing a very, very brief report to the court to say 'yes, Cafcass agree with this'. It left me feeling a little uncomfortable, if the truth be told. It wasn't suitable for every discharge application, but the ones that we looked at were clear cut, but I felt a little side-lined. I think about, you know, what are we bringing to the table here, which is kind of rubber-stamping something. But yes, I have experience with that. I don't think I'd repeat it (Guardian, E4.4)

This highlights the potential for tension between the professional roles of the social worker and guardian – this was a significant theme identified in interviews and in the e-casefile analysis, and is discussed below.

6.4 The role of professionals

Some tensions were apparent within both the e-casefiles and the interviews about the roles and views of the different professionals involved in discharge applications. This related primarily to the different thresholds of what constituted 'good enough' care for a discharge application to be granted and the influence professionals had in the court setting.

As noted previously, guardians had a pivotal role in discharge proceedings, appearing to have the most influence on outcome, with the courts heeding their recommendation in all but two cases. Often the guardian's views and recommendations made a positive difference for the children and families, post-discharge:

The discharge may not have gone through as quick as the local authority wanted it to because as a guardian I would say 'no, this family needs just additional support in this area or in this area, but it can be done either in a family assistance order or supervision order, it didn't have to be a care order'. But it took that time for the local authority to put in a care and support plan under the Social Services and Wellbeing Act (Guardian, W4.1)

However, interviewees also cited instances of guardians not completing thorough investigations in seemingly uncontentious applications. This could have significant implications for children's safeguarding:

The guardian appointed automatically turned up but without representation and I remember turning to the guardian and saying, 'what is your view?'. No written report. Seeking an oral report. She said 'well I've read the authority file and I agree', and just something worried me and I refused it, ordered her to appoint a solicitor, ordered her to do a proper report. When the report came back she said 'not in a million years should these children not be subject to a care order'... if you're not careful, you can't protect from a local authority trying to clear the books and a lazy guardian (Judge, M.P8)

The guardian's role and power in the court setting could also be problematic when it was felt they lacked trust in the LA's planning and were more risk averse than the social workers involved. That the guardians' opinions seemed to be taken more seriously than the social workers (based on the e-casefile analysis) suggests that the value and expertise of the social work role is not being recognised. In interviews, it was noted that the guardians' opposition to the LA plans could lead to unnecessary additional assessments, involvement or experts and further orders:

The children's guardian will make quite a thing of involving their expert assessments, treating it as like a further care case. So instead of it being a single issue, this is the plan, it's a reasonable plan, let's not spend too much time on it, this is what everyone wants. We find ourselves with a huge case, with loads more assessments and experts, and then it takes a lot of time (LA Lawyer, E3.1)

The inclusion of experts could further undermine the social worker's own assessment and recommendations:

I think they completely undermine the role of the social worker and confidence in social workers, which is then a catch 22 situation... And yes, they absolutely hold more power in the court system alongside guardians, I think guardians often push for expert witnesses to be used in proceedings, and I think that's because they've lost faith in social workers (IRO, W1.1)

This highlights potential tensions between professionals in terms of power and influence. It was often believed that courts saw the guardians and experts' views as more credible than the social workers, despite the social workers often spending more time with families and special guardians. The use of experts could also delay proceedings – and it was noted that historically experts were integrated into children and families teams, rather than separate agencies:

I think that we're having to use experts more and more because those resources are not available in house.... many, many years ago I should say, but I used to be a service manager in one in inner London authority and ... I had two psychologists in one team ... working with families. And I could call on those psychologists within days where, now ... you might be looking for three or four months and, sometimes it's quicker to actually get an expert in through the court process (LA Lawyer, E3.4)

Another area for tension and disagreement were professionals' differing application and understanding of thresholds for discharge (see Case Study N for example). In interviews, participants reflected that the individual character, experience and role of professionals affected their opinion of thresholds for discharge:

I think it is confidence, I think it's experience, personal judgements come into it, I believe, I've seen it... I think it's really important then that we try and educate all our other professionals that we work with about what the threshold is and why we still need to share parental responsibility. And they might be always lots of concerns that's family life and things change all the time. But does it warrant us to share parental responsibility? (Social Worker, W2.3)

Case Study N: Differing professional views on threshold for discharge

WR01: Local authority application for discharge. A five-year-old girl was placed with her maternal grandmother after being sexually assaulted by her mother's partner (not her birth father). The mother tried to cover up the abuse, claiming it was accidental, and deleting relevant texts and phone call records. Birth father was capable of meeting the girl's needs but was living in an overcrowded house with his parents. The care plan stipulated that the girl would remain with her maternal grandmother until her father was assessed as being in a stable position in suitable housing; the child moved to her father's care but the local authority refused to provide any additional support. The birth mother was allowed supervised weekly contact. The girl's needs were being met by her father, she was happy and settled in his care so the local authority applied for discharge. The application was contested by the guardian but the local authority supported discharge to a Child Arrangements Order, with continued life story work and increased contact with mother. The guardian's concerns related to the birth mother's attitude towards the sexual abuse and the birth father's failure to accept the risks posed by the birth mother, as he discussed a possible shared care arrangement and had allowed the birth mother to have unsupervised contact with the girl. The guardian was concerned that the social worker had either misled the family or had little understanding of what was happening. The LA agreed to the appointment of an Independent Social Worker; following their report, the local authority withdrew the discharge application and served an amended care plan.

Interviewees also noted the differences in thresholds and views of what constitutes 'good enough' care, with parents being held to a higher standard than if their children were not on a care order:

You've got children on care orders at home with minor concerns coming up, which wouldn't hit this threshold over here [for a care order]. But because they're already on a care order, and those concerns come up, the social workers like, 'oh, we can't discharge', and it's like the threshold doesn't seem to be an equal playing field because the care order's already in place, so that's something as IROs we are tackling quite a bit (IRO, W1.2)

Thresholds for 'good enough' care could also be affected by regional variation. For instance, interviewees in London felt that thresholds may be higher there than in other areas, due to the 'differing levels of poverty, for instance, of deprivation ... you have to work with your local population' (LA Lawyer, E3.3).

There were also concerns about the 'goalposts' being moved for parents, with old concerns being dismissed but new concerns being raised in their place, again that would not meet the threshold for a care order. These concerns could be exacerbated when the care plan had not been regularly updated since care proceedings, when the issues identified were no longer relevant. This could cause delays as guardians or the court asked for evidence that these issues had been addressed:

They haven't done what they said they were gonna do under the care order. So there has to be further assessment by me as to whether the children's needs still require therapeutic support But parents have actually done really well despite a lack of support from the local authority, and we did discharge the care order but it was delayed proceedings, there was unnecessary assessments, there was unnecessary work, there was unnecessary work with the children... Yeah, that was a bad example (Guardian, W4.2)

6.5 Child, parent and carer involvement

6.5.1 The extent of children's involvement

The majority of interview participants felt that children were sufficiently heard during the discharge process – when balanced with consideration of their wellbeing and not causing unnecessary distress (see below). It is acknowledged that the direct views of children were not included in this research and deserve specific consideration. The e-casefile analysis indicated that the view expressed by participants was not necessarily reflected in practice - 116 children (35%) were asked about the views on the discharge, and 196 (60%) were not.

It is critical to consider why children were not asked their views. In some cases, the child's age was the understandable reason. Children who were deemed too young to give their opinion were often observed in parent, kinship, or foster placements and a judgement was made on the basis of that observation.

However, in other scenarios children were not asked their view because there were concerns about the information being distressing or a belief that they would not be able to give an informed decision. The decision for a guardian not to speak to a child about the discharge was sometimes made in consultation with the social worker but often the guardian made a judgement call by themselves. There were also discrepancies in the reporting of children's views and preferences (see Case Study O for example). As such, consistency in engagement with children across cases was not observed. It was noted in interviews that the reason not to engage with a child was often to prevent destabilising the child's life:

It does mean, for the children, having the court being involved, having a guardian, again, having a solicitor again, which might be destabilizing... I was adamant that the child should not know that her father had made an application. And I was adamant that I was not going to see her because she was very, very damaged and there was absolutely no prospect of success at all.... You have to do it on a case-by-case basis and when I see children, younger children, I would be very careful about talking to the social worker about how I introduce myself to them... it's not my job to go in and to make the situation worse. My job is to try to help the court, and to reflect what the children feel, but not to destabilise them (Guardian, E4.1)

Case Study O: Inconsistency in reporting of child's views

AG01: A mother's application for discharge for a 9-year-old child with neurodevelopmental diagnoses placed in foster care. The child's half-siblings lived with their mother under supervision orders. The care order was made due to concerns regarding the mother's mental health, her difficulty in managing the child's behavioural difficulties, and risk of emotional harm and neglect. The mother engaged well with services and improvements in her ability to care for the child were noted by professionals. Discharge proceedings took a considerable amount of time. The child was not aware of the discharge application but was spoken to about their placement. The guardian stated that the child wished to return to the mother's care; however, the social worker report claimed that the child wanted to remain in foster care. The social worker was against discharge as they argued the child needed further therapeutic support. The mother requested an ISW assessment, which was mostly positive though recognised the need for further support if the order was discharged. Initially the guardian supported discharge but then became aware of concerns regarding the child's reintegration with the half-siblings. The guardian concluded they could not support discharge at that time. The mother withdrew the application after being notified of the impact the length of the proceedings was having on the child.

The involvement of children in discharge applications could also be complex in contentious parent applications, where there could be disagreement between the guardian and parents over what the child's view was. There was a general concern raised by interviewees that children may be repeating the views of their parents rather than expressing what they truly wanted. In these cases, children were caught in the middle, which could be a traumatising experience for children, although again it is acknowledged that parents and children's direct experiences here are not known. Case Study P provides a specific example of issues in a situation where there was fatal domestic violence and abuse.

Case Study P: Tensions surrounding child involvement

GG01: Father's application for discharge. A child (14 years old at the time of the discharge application) had been placed on a care order with a family member and their partner, after her father was convicted of the manslaughter of their mother. The child had contact (phone calls and visits) with her father while he was in custody. The father was released on licence and the child reported wanting to spend more time with him. The child then made an allegation of abuse against her carer – this was not substantiated by social workers but the placement broke down, and the child went to live with another family member. The child refused to speak about her mother's death and her behaviour deteriorated after her father was released from prison, with evidence of suicidal thoughts and ritualistic behaviours. The father was manipulative towards professionals and appeared to exert a significant influence on his child – this was particularly relevant given the context of the father's manslaughter conviction. The father was seen to present a high risk of harm to future partners. The father made an application for discharge. The father wanted his child to complete education with regular unsupervised contact and for them to return to live with him once they were 18 and no longer subject to a care order. The child wanted to return to live with their father. The guardian voiced concerns over the lack of clarity about which application was being pursued (ongoing contact or discharge) and that a significant number of documents were missing from the care proceedings bundle. The local authority opposed the discharge; the father accepted in court that there was no merit to the discharge application, which was dismissed by the Judge.

Within the English SAIL data, 37 discharge applications had been made by the index child; of these 23 were made by girls and 14 by boys, with a mean age of 15.3 years. Of the 31 applications made by children where the outcome was known, 12 (39%) were discharged. Due to the relatively small numbers involved and the risk of disclosure within the Welsh SAIL data, it was not possible to determine whether any children had made a discharge application; only one discharge application made by a child was sampled in the e-casefiles. A minority of interviewees had heard of children making applications but had not dealt with this directly. One IRO discussed two cases in which children almost made an application but decided not to after the local authority made an effort to listen to, and address, their concerns. One judge raised the concern that some child applications may act as a conduit for parent grievances:

She was a very bright, very capable girl [but] there was a real sense ... that this was mother's application with the child being sort of led... She was hell bent on telling us that this was her application and what she wanted but of course, you know, lots of children who aren't in the care system are influenced by their parent's views sometimes to good effect and sometimes to bad effect and it's really hard to separate what actually is her genuine view (Judge, F.P6)

In spite of mixed involvement with children, there was evidence of good practice in engaging and seeking their views. Interviewees emphasised the need for accurate representation of children's voices and utilised a variety of resources to facilitate this:

Undertaking that direct work with the child or young person so their wishes and feelings are very, very clearly relayed to the court and the children or child has an understanding that a judge may not go necessarily with what they say but their voice has been heard... Cafcass have a number of very kind of appropriate tools that sometimes we use, not with all children because some children don't particularly want to use the tool kits that are available. But that's where the guardian's role is crucial (Guardian, E4.3)

Participants also gave examples of direct involvement in discharge applications, such as requesting separate representation or writing letters to, or asking to meet, the judge:

You can absolutely say, ask them to write a letter to the judge, ask them to come along and give their comments on it. And make sure that young person knows I'm using their words, using their handwriting, their pictures, their words and it's important that the judge sees that. And even though, and I'm very clear with young people I work with, I may not agree, and it may not be my recommendation to support the application, their words will be shared (Guardian, E4.5)

6.5.2 Parent involvement and the importance of legal aid, advice, and representation

Parent and carer involvement in discharge applications raised a number of different but over-lapping issues, including the extent to which they are – or should be - involved in applications led by the local authority, and the support and advice they are able to access when submitting their own applications. Parental involvement is affected by the provision of legal aid, advice and representation; these are also considered below.

The e-casefile analysis showed that parents and carers did not often have legal representation in local authority applications (16% of cases in total). Whilst some interviewees considered representation to be unnecessary in uncontentious cases, others were concerned about how informed parents and carers were throughout the discharge process:

I think the court arena is so alien to most parents, I think it's incredibly difficult for them to navigate it without legal advice and legal representation. I mean, even the very fact now that it's all a virtual [hearing]⁷⁰. That's actually really difficult for a lot of the parents we work with... Whether it would need to be legal representation or just a specific support person, I don't know, but I think courts are so intimidating and work in such a peculiar way to anyone who has never had anything to do with them (IRO, W1.2)

In particular, there were cases in the e-casefile analysis which were 'straightforward' LA applications, which were then contested by the guardian. Without legal advice and support, the parents in these cases may have been in a very difficult situation.

Parents were more likely to be represented when they made the application themselves. However, there was confusion among interviewees about how legal aid and representation was acquired in these cases. Legal aid is means and merit tested and, as such, parental cases which are unlikely to succeed will be assessed as lacking merit, thereby restricting access to legal aid and legal advice (HM Government, 2021). Interviewees discussed specific difficulties that arose when parent applicants were litigants-in-person (LIPs), such as prolonged proceedings, delayed or missing evidence, and communication barriers in court:

It's a mother seeking to discharge the care order. She has serious mental health issues. She has no true ability to represent herself. Indeed, her application arises to a large extent from her mental health problems because she can't see what the benefits to the children are of not living with her, but the lack of legal aid creates real difficulties in actually been able to control the court process to get her to understand what needs to happen (Judge, M.P2)

One interviewee (a LA solicitor) explained how they would try to assist parents in these LIP cases, which could create a conflict of interest if the local authority opposed discharge:

If I'm in court and I've got a litigant-in-person parent, it is a nightmare because it's way more difficult obviously, [to] deal with someone who perhaps doesn't quite understand or doesn't really know what they're asking for, but as a local authority, we will always try and just do the most to save them and do the most talking to save them as much as possible as well (LA Lawyer, W3.4)

Interviewees also discussed different processes for supporting litigants-in-person, including supporting access to remote hearings, providing an advocate, and ensuring good communication with social workers. Having appropriate legal advice prior to submitting an application was seen as crucial for parents, particularly as a way of avoiding the submission of applications that were premature, had minimal chance of success and caused more disruption to the child. It was noted, however, that parents often did not have this kind of advice prior to application due to a lack of public funding:

I think the problem is, it's kind of unmediated as it were. Parents can just put in their application... it inevitably causes disruption to the child if it's a hopeless application and always they have discussed it in confidence and mum's said, 'I'm fighting to get you back' and it's very tough on kids and it would be interesting to see if some kind of – there should be

⁷⁰ Many hearings have been conducted online due to the COVID-19 pandemic; this was not a key focus for this study but may have a range of implications, including for parental involvement, which warrant further research

some kind of hurdle you surmount before you're allowed to issue your application. It used to be you went to see a solicitor who said 'don't be daft' but that's not there now (Judge, F.P3)

They get a certain bit of advice from their local friendly solicitor, 'do that', because there is no public funding for it anymore. Whereas if there were public funding, 99 out of 100 they'd get clear advice, 'no you're not gonna succeed on this' (Judge, M.P2)

Good legal advice, however, was not just needed to advise parents against making applications. It could also be to empower parents to make strong applications when the LA had failed to act proactively.

As noted at the beginning of this chapter (section 6.2) one of the discharge 'types' identified by this project were applications that aimed to force the re-examination of aspects of the child's care, rather than to seek discharge itself. These types of cases were evident in the e-casefiles, however interviewees also noted that the provision of good legal advice could help to identify alternative processes and to 'flush out what actually a parent was trying to achieve' (Judge, F.P1).

Overall, interviewees had differing opinions on forced re-examination applications, which are arguably an inappropriate use of the discharge process. The majority felt that parents used the discharge process in this way when the local authority had failed them, and explained how the court arena gave parents the opportunity to get their voices heard:

It's sometimes frustration. They don't feel that they are being listened to by the local authority and they do it to try to, you know, basically to force the issue (LA Lawyer, E3.2)

It was also noted that there could be limited avenues for parents to challenge local authority decisions:

The remedies available to parents aren't that great once a care order's made. I mean theoretically you can go to the Ombudsman, but they never do. There's a complaints process, but that is purely internal and usually you know doesn't leave them feeling listened to... because the procedure is the social workers investigating themselves (LA Lawyer, E3.2)

In addition, making a discharge application was sometimes considered to be the only effective way a parent could contest child removal:

If the local authority want to move that child out of that placement, they should give the parents 14 days' notice. Unless it's considered you know very high risk of harm, we're finding that that threshold isn't really very clear, and so the local authority are just walking in and taking these children and putting them in a different placement. And literally the only thing the parent can do is apply to the court for discharge (IRO, W1.2)

As such, parents using the discharge process to challenge the LA seemed to be a relatively rational and proportionate response. Without alternative meaningful processes which parents can engage in, it is likely that the discharge process will continue to be used to force re-examination of other issues.

This is, obviously, a misuse of the discharge process. More critically, it can be de-stabilising - for the child and the parent. While there may be positive outcomes (eg contact changes), applications could backfire with the outcomes placing parents in a worse position than when they started:

It actually is a complete double whammy from her point of view. Not only has she not got what she wanted but she's actually losing contact that she had previously got because the

local authority hadn't been examining the issues of the dynamic that was occurring between her and the children in the contact (Judge, M.P2)

6.5.3 Carer and special guardian involvement

The role of carers in local authority applications where the intended outcome was for a SGO could be problematic. The e-casefile analysis indicated that prospective special guardians were rarely made party to discharge proceedings and, even when listed as respondents, were unlikely to have legal representation. Granting party status may help to empower prospective SGO carers by increasing their involvement in the discharge process. However, a small number of interviewees explained that not granting party status was a tactical decision, made according to the carer's circumstances and relationship with the birth family:

The special guardian and the parents absolutely get on really well and they were all in agreement for this plan at the beginning. But then I think the parents thought actually this could be our last-ditch chance to get him back.... My concern right at the beginning is I didn't want to pitch her [the special guardian] against the parents. It was really important that they maintain that relationship because if our plans succeeds, she's going to be organizing their contact and my view was that they need to maintain that keep her slightly in the background, blame the local authority, this is the plan, and so she's protected from that. So in the end, she wasn't made a party (LA Lawyer, E3.4)

A further concern for SGO carers related to the submission of SGO and discharge applications. Local authorities cannot make SGO applications but can only ask the court to make a SGO on their discharge application. Requiring the carer make a SGO application imposes an additional burden on carers, particularly as they are not entitled to legal aid. E-casefile and interview data highlighted confusion over this process, with some judges directing carers to make an SGO application during the discharge proceedings. Some social workers and lawyers explained how they would support the carer to make an SGO application, which would then automatically discharge the care order, avoiding the need for the local authority to apply for discharge. Applying this way meant that SGOs could receive LA-funded independent legal advice:

Certainly for special guardians, we do provide funding for them to access independent legal advice about special guardianship and the support that is on offer, and that's non means tested. So that's part of their SGO support (Lawyer, E3.4)

As with other elements of the discharge process, there was little consistency across different judges and local authorities.

6.5.4 Re-traumatisation

The interviews repeatedly highlighted that the process of discharge could be traumatic and distressing for children, parents and carers. Aside from legal advice (which was patchy), parents and carers rarely had access to support, with only a minority of interviewees identifying local authority or community services which could help respondents through the discharge process. This lack of support is significant given that returning to court is potentially re-traumatising for families, whatever their role:

These are families that have worked really hard to kind of move forward, otherwise they wouldn't be on the discharge list in the first place... and the trauma that they feel at the time of the initial proceedings, it's re-triggered by the idea of going back for a discharge (Social Worker, W2.1)

This was particularly felt in parental applications, where parents were considered to be very much on their own, and where the process of fighting their case could be detrimental to wellbeing:

It's poor, the support, and I think that that already vulnerable, totally disempowered people are being expected to stand up against the courts and the state to prove that they're good enough to look after their children. And I think that that actually morally that's objectionable, given what lots of them have been through and the experiences of being involved in those systems that actually quite often compound those the issues that they had in the first place (IRO, W.1)

The re-appointment of experts who supported the previous care order or opposed previous attempts to discharge could also be problematic and increase the distress felt by parents and children:

You might be inviting re-examination by the same expert that frightened them [parents] half to death at the time of the care proceedings, and whom they may continue to carry on resentments about... I wonder about this slavish devotion to having the same expert as well as having the same guardian... Why? You've got the guardian's report, you've got the independent expert's report, the psychologist, psychiatrist or whatever, you've got that. Why do you have to have the same person revisiting that work?... I think that it would assist parents quite often if that was looked at afresh (Social Worker, W2.2)

While there could be administrative benefits of reappointing professionals involved in the original care proceedings, where case familiarity could increase the efficiency of proceedings, there were also concerns that professionals may be swayed by their involvement in the original care proceedings; as one interviewee said: 'I worry that certain professionals might feel that a discharge suggests that they were wrong in the first place' (Social Worker, W2.1).

Participants tended to discuss these issues in relation to contested applications. However, the assumption that proceedings are largely administrative in uncontested LA cases may also fail to recognise the impact proceedings can have on parents, carers, and children. Moreover, despite the low rates of success in parental applications, interviewees did not discuss how parents might be supported after their application was dismissed or withdrawn. Overall, it was acknowledged that there needs to be greater recognition of the impact discharge proceedings may have on the families involved and appropriate support provided.

6.6 Support post-discharge

Post-discharge support from the local authority was often a sticking point at court and could prolong proceedings, even when discharge was agreed by all parties. Some local authorities took a 'stepping down' approach, agreeing further support through a child in need plan (or care and support plan in Wales), or ad-hoc arrangement, without the need for a further order. Where supervision orders were requested, interviewees questioned their efficiency and had concerns regarding thresholds. Special guardianship orders could also be contentious, particularly regarding ongoing financial support.

6.6.1 Support arrangements with no further order

There was a sense that some local authorities saw the discharge of a care order as the end of their involvement with a family, unless a further order was made:

Unless, it's a supervision order, with some support in place or an SGO with an SGO support plan, if it is a simple discharge... that's sort of the end really. The local authority social worker might go and say goodbye, but I don't think there's much afterwards now (IRO, W1.2)

Whilst this might be appropriate in some circumstances, the decision to end support may be driven by pressures on local authorities to free up resources rather than being based on the needs of the family or child. Interviewees suggested that some families may struggle to cope with this sudden withdrawal of support:

The mum was really upset and really didn't know what to do without a social worker. She's had people coming to her house pretty regularly over the years and then it was 'we're going to have no one'... She was scared that actually she had almost become institutionalized with the local authority, and it was about how do you come out of that? (Guardian, W4.5)

Interviewees suggested that other local authorities reduced support more gradually, often implementing a child in need plan. This stepping down process was particularly important when a child had been in care for a long time. However, in the e-casefile data, only a minority of final orders made reference to child in need plans, though these numbers may be subject to reporting limitations. There were also occasional references to written agreements regarding counselling for parents and contact arrangements. Information about life story work was largely lacking from e-casefile data and likewise interviewees felt this kind of work did not often happen when care orders were discharged.

Particular support issues arose when children named on discharge applications were close to ageing out of care. Information on housing and post-16 support was often absent from e-casefiles, and interviewees raised concerns about the impact of discharge on leaving care support. Interviewees did comment that sometimes local authorities decided to delay discharge to ensure children could secure the benefits associated with being a care leaver:

When we were initially considering discharge, the IRO did kind of say to her 'look, if you still access the service by 16, you will have access to all of this support. If you were to look to go to university, you know there's grants, there's funding, you can get a young person's advisor that will support you with all of this'. So it was kind of put to her, right, well if you can hold off a little bit, you get all of this and then we can discharge and it just seems a little bit daft that you kind of have to do that just in order for her to access that support (Social Worker, W2.5)

This highlighted how the no-order principle is interpreted and applied in discharge cases, with some professionals being mindful of the protections afforded by a care order, particularly around 'concrete' support, such as 'financial support, social work support, priority access to education, things like school admissions' (LA Lawyer, E3.2).

Other professionals described reaching ad-hoc agreements for leaving care support in order to discharge a care order:

The girl was 17 and she wanted the care order to be discharged before her 18th birthday... She wanted to emerge as an adult, not in the care of the local authority. But [we said we] 'won't prejudice any of your leaving care entitlements, so you'll have exactly the same care leaver benefits that you would have had had you reached 18 still in the care of a local authority'. So that was a bespoke agreement (Social Worker, W2.2)

6.6.2 Support arrangements with further orders

As noted in Chapter 4, supervision orders were rarely made post-discharge. Some interviewees questioned the suitability of supervision orders, suggesting that if there was no longer a need for a care order, then the threshold for a supervision order had not been met either. Some guardians felt that stepping down to a supervision order suggested there were still significant issues with safeguarding that would need to be addressed before they could support discharge:

I would worry, to be absolutely honest, if at discharge of a care order it was then stepped down to a supervision order. Because I would then, as the children's guardian, question, actually, is this safe? Can this be successful? (Guardian, E4.5)

Although other guardians felt that a supervision order provided a guarantee of continued monitoring and support, some social workers suggested this was a question of trust, which could result in continued and unnecessary involvement:

I think sometimes Cafcass quite like local authorities to have a supervision order as a bit of a security blanket, and I think that's a misuse of the supervision order because when you look specifically about what is required under that supervision order, so the befriending and assisting the family, you're actually seeing a child far more often than you would have to when they were looked after. So that can be a lot more intrusive to a family so often it's not proportionate (Social Worker, W2.3)

Continued financial support for carers was the predominant issue raised by guardians in SGO applications. This often included financing for re-housing or extensions where prospective SGOs had multiple children in their care. In some cases, carers faced a substantial drop in their income if the care order was discharged because of the loss of fostering allowances. Anecdotal reports in guardian statements suggested prospective SGO carers were poorly informed of the financial consequences of discharge. This could considerably delay proceedings whilst the guardian or other professionals negotiated on the behalf of the carer with the local authority:

The grandparents physically didn't have a lot of room and space in the house and they would need some sort of extension... when we came to court, it was quite interesting because the local authority were pushing for an SGO, which grandparents were committed to but were very clear, you know, 'this is until they're 18 and beyond. As they get bigger and physically bigger, we need this space. We can't do this. They will end up back in foster care'. Myself and the guardian disagreed with and challenged the local authority. Now that could have been a very quick one... but this took three years to do (IRO, E1.1)

In these cases, professionals encountered a significant amount of red tape when trying to secure agreements and funding with local authorities. In one e-casefile, these issues resulted in the discharge being made before continued financial support was agreed (see Case Study Q).

Case Study Q: Discharge before agreement is reached on SGO support

CS01: A local authority application for discharge to SGO. Two young children were placed with their maternal grandmother who also had an SGO for three older siblings. Original CO due to concerns regarding parenting capacity and substance misuse. Parents did not engage with the local authority after the end of care proceedings; the mother had no contact for over a year and the father is now deceased. The children were thriving in kinship care and no concerns were raised since the placement. The case was initially allocated to the magistrates' court; however, significant concerns arose about the local authority's progression of plans to finance a house extension. The guardian was critical as the grandmother now had five children living in her care. Due to extended delays on the part of the local authority the case was reallocated to a circuit judge. The case was eventually discharged to SGO with a supporting 12 month supervision order as a final agreement on continued financial support had not been reached.

Some local authorities developed SGO support packages. In doing so, carers were more likely to agree to the discharge:

We completely revamped our support for special guardians, including the financial support to make it so that they didn't have a massive hit financially and a massive sort of suddenly they're on their own with the child. So there's a whole package that supports the ability to discharge those cases to special guardians rather than keeping us involved forever. And that ... seems to have made a huge difference in the numbers coming through (Lawyer, E3.4)

However, these solutions are reliant on the resources at the disposal of the local authority.

6.7 Summary

This chapter has highlighted some of the complexities and tensions experienced by professionals, parents, carers and children when discharge applications are made. Motivations and purpose in respect of discharge applications varied, resulting in the identification of a typology of six types of discharge case, highlighting the potential need for different legal responses to different types of discharge application. While there is some recognition of this in existing fast-track practices, these responses vary across regions. Furthermore, there is need for careful consideration to ensure that balances between risk and expediency are managed effectively, and that processes are not reduced to 'rubber-stamping' exercises. There is also concern that processes which prioritise 'easier' cases, such as successful kinship or placement with parents, may be at the expense of more complex cases which nonetheless could be suitable for discharge.

Concerns were raised about the processes for identifying cases and the subsequent progressing of discharge applications, with many examples of 'drift and delay' cited, resulting from resource pressures, a lack of prioritisation and staff turnover. Routine reviewing of a child's legal status was not guaranteed, and the effectiveness and consistency of IRO escalation processes were questioned. Tensions were identified in respect of professional roles, power and influence, with guardians being seen as having a pivotal role in discharge applications, including as gatekeepers to children's involvement. This was mostly felt to be appropriate but could be contentious if guardians were felt to be 'risk averse' or mistrusting of the LA. Parental involvement in discharge applications was affected by the provision of legal aid, advice and support, and professionals reported that parents may not be aware of their rights or understand the discharge process, which could also be re-

traumatising for parents and children. Support for parents, carers and children following both successful and unsuccessful applications was limited and ad hoc, with some LAs taking a 'stepping down' approach by providing further support through a child in need plan, or an agreed ad hoc arrangement. Ongoing support for special guardians as well as post-discharge support were subject to varying local practices and budgets.

The following and final chapter draws together the key findings and conclusions of the research, before presenting a series of recommendations for policy, practice and further research.

Chapter 7 Conclusions and recommendations – Improving Discharge Proceedings

7.1 Summary of Findings

This study is the first of its kind, and creates a profile of discharge applications, orders and processes, providing a robust evidence base for recommendations for how to improve discharge proceedings for all those involved. The combined findings from the anonymised administrative data on discharge, the detailed analysis of e-casefile data about the children subject to discharge applications, and the qualitative interviews with family justice professionals highlight a range of key issues relating to the discharge of care orders. This final chapter provides a brief summary of the study's main findings before considering recommendations for practice, policy and research.

The e-casefile sample of 209 discharge applications relating to 327 children demonstrated that the majority of applications made were for a single child (rather than sibling groups) and were first time applications, and occurred an average of 32 months after the initial care order was made. The children were aged between birth and 16 years at the time of the care order, with an average age of five years, and were aged on average 7.8 years at the time of the discharge application. No significant associations were observed between age, gender or ethnicity with the outcome of the discharge application.

Depending on the data source, between two thirds and three quarters of the discharge applications were granted. Local authority applications were much more likely to be granted than parental applications. The e-casefile sample showed that, in parental applications, children were less likely to be living with their intended carers, and there were a higher number of concerns about the parent/s' ability to provide adequate care for the child. Further orders, including SGOs, SOs, and CAOs, were made in two thirds of the cases that were discharged.

Interviews with professionals highlighted the range of reasons that LA applications may be more successful than those made by parents. These include: LAs filtering out potential unsuccessful cases and prioritising straightforward situations; high levels of internal scrutiny before application; pre-submission discussions with relevant professionals including the guardian and LA lawyer. By contrast, parents were thought to be more likely to make applications that are considered premature, without sufficient evidence that issues have been addressed, or to make applications that are unsupported by the LA. Typically, parents have limited access to legal advice, which might mean applications are not well prepared (and may prevent parents applying in the first place). Parents are not able to engage in conversations with the guardian and/or local authority lawyer prior to the application being made, so potential problems may not be identified until proceedings have commenced.

The study demonstrates clear differences between motivations and reasons for discharge applications and the likelihood that they will be granted quickly and efficiently. Based on the e-casefile analysis and interview data, a new typology of discharge applications has been proposed, consisting of six types. These are:

- Placement at care order assessed as stable
- Reunification to birth parents
- Unsupported by the local authority

- Stable placement found post care order
- Forced re-examination or discharge used as appeal
- Ineffective care order

This typology shows clearly the different types of discharge applications dealt with by the court system, including applications which were using the discharge process to force re-examination of the LA's plan. This indicates that the discharge process could be adapted to address these different types of application to increase efficiency and reduce potential re-traumatisation for parents and children.

The e-casefile sample included only one applications made by a child and there were just 37 applications made by children within the English SAIL data. In interviews, professionals noted that it was very rare that children would make their own application for discharge, with some indicating that they would dissuade a child from doing so - primarily so the child could maintain access to leaving care support. In addition, professionals noted that some children's applications may be viewed with distrust. Where children were the subject of discharge applications, guardians reported actively seeking the views of most children and professionals felt that children were sufficiently well engaged in the process. However, there were occasions where guardians felt the child was too young to be involved or that being involved could be too traumatising and disruptive for the child. In these instances, guardians acted as gatekeepers to protect children from the impact of applications that were highly likely to be refused, balancing the concerns about their right to participate with the risk of re-traumatisation. It remains important that decisions to not engage the child with a process which is about them are done so carefully and with a clear rationale.

Examples of drift and delay were apparent both within the e-casefiles and the interviews, with inadequate case management being identified as one of the reasons for this. Limited resources and questions of prioritisation were discussed, with more immediately pressing child protection concerns often taking priority over discharge for children in seemingly settled placements. The amount of preparation needed to make cases ready for discharge also acted as a disincentive. Failures to update care plans to reflect current needs meant that social workers believed discharge would be refused due to work with the families not having been completed. Conversely, some of the judges interviewed felt that a more generalised assessment of 'good enough' care could be sufficient, rather than absolute adherence to the original care plan. Planning towards discharge should be an integral part of case management but, from interviews, it appeared inconsistent, meaning that the initiation of discharge is often reliant on the tenacity of individual social workers and team culture.

The e-casefile and interview data demonstrated that the guardian's role was highly influential in discharge decisions, with their recommendation being followed by the court in all but two of the e-casefiles. While social workers were often in agreement with the guardian, there were concerns that the guardian often held the 'trump card' and was able to override the social workers' opinions. Some professionals suggested that courts and guardians may have 'lost faith' in social workers, rather than recognising social workers' expertise and knowledge of specific families. There was evidence to suggest that different professionals (particularly guardians and social workers) had different thresholds and understandings of 'good enough' care which could lead to disagreement over discharge applications.

Finally, the study demonstrated that ongoing support for special guardians was subject to regional differences and local budgets. A lack of financial, housing and other support could deter foster carers from seeking SGOs, which would discharge the care order. The provision of ongoing support post-discharge was inconsistent and often ad hoc. Some LAs took a 'stepping down' approach, with supervision orders occasionally being used to 'step-down' LA involvement, although the efficacy and appropriateness of using SOs in this way was questioned by some.

7.2 Recommendations

The recommendations from this study are presented below in relation to: general discharge process recommendations, specific recommendations for local authorities and for guardians, and recommendations for support for parents, carers and children. Suggestions for future research are then presented.

The process recommendations are made reflecting on the typology of discharge applications developed by this study; it is recommended that discharge process is adapted to address these different types of applications.

1) Introducing a pre-proceedings process

A pre-proceedings process, modelled on that for care proceedings, should be introduced for all discharge applications, to ensure that parents and carers have independent legal advice about the case for discharge, its legal effects, the plan for post-discharge support and an opportunity to discuss concerns about proposed care and contact arrangements. This kind of process would quickly identify different types of discharge, and the types of action which may need to be taken to ensure a positive outcome for all parties (which may not involve the discharge of a care order). The suggested pre-proceedings process builds on the fast-track system for discharge applications that is used in some LAs. Relevant guidance and training would need to be provided to support the consistent implementation of the process.

The pre-proceedings process would be triggered by the IRO or a social work manager seeking discharge, a request by a parent for discharge of the order⁷¹, or a carer's decision to seek a SGO or CAO for living arrangements. In attendance would be the social worker, LA solicitor, the parent/carer, a lawyer for the parent and, ideally, the guardian. The pre-proceedings meeting would provide an opportunity to explore and resolve the concerns of parents and carers about future relationships; help to ensure that applications for discharge had the support of those involved, including the local authority; and clarify for the parties the process and timescale. Through the pre-proceedings process parents and carers would have access to some legal advice and information. This is particularly important given the current lack of legal advice and representation for parents and carers in discharge processes.

The aim of the process would be to agree the way forward; this could mean the local authority proposing to apply for discharge at a particular point or making amendments to its plans for support (for parents or carers). An account of the pre-proceedings process, what was/not agreed, and the guardian's view, should be filed with the local authority's discharge application or its response to the parent or carer's application. Clear timelines for pre-proceedings and any subsequent proceedings need to be established, so that if applications are going to be contested by any party, objections are

⁷¹ Although it is noted that parents do not have to notify the LA of their intention and could apply to the court for a discharge unilaterally.

identified – and where appropriate, addressed - within a set timeframe, to avoid unnecessary distress and delay.

The pre-proceedings process would be particularly useful in addressing the following types of discharge application:

- ***Straightforward, uncontested applications (eg placements that are assessed as stable)***

A pre-proceedings process should help to ensure that uncontested, straightforward discharge proceedings can be managed through an administrative process. Streamlining the process is less anxiety-provoking for parents, carers and children, is less demanding on social workers and children's guardians' time and takes up fewer court resources. The overall effect should be a reduction in cases, with the majority not requiring multiple hearings. As noted above, this would be similar to the fast-track or accelerated process used by some LAs in relation to discharge applications.

- ***Applications made by parents to force re-examination or those that are likely to be unsuccessful***

The pre-proceedings process could not prevent applications from parents/carers for discharge (or SGOs) that are not supported by the local authority. However, it would help divert proceedings that would be unlikely to result in discharge to alternative dispute resolution processes. This would be suitable for discharge applications that are made to force re-examination of the LA plan or due to unresolved concerns about the LA's handling of the care plan. Legal advice would be provided to parents in order to help them articulate their concerns regarding the local authority and negotiate issues relating to support and contact. It is noted that any alternative resolution system (eg a complaints procedure) needs to be efficient and fit for purpose. The overall effect should be a reduction in cases, with the majority not requiring multiple hearings, and less potential re-traumatisation for parents, carers and children.

- ***Cases requiring further court scrutiny (eg where the care order is considered ineffective)***

As the study identified, there are discharge applications that require close scrutiny and that are unlikely to be resolved through pre-proceedings meetings. For example, an application for discharge because the care order is not achieving what was hoped or is not possible to enforce due to a lack of acceptable placement, the child's own wishes or particular care needs, may warrant increased scrutiny. A pre-proceedings process would establish the details of the child's situation, the LA's attempts at enforcing the care order and the suggested plan for the child which can then be presented to the court for consideration.

2) Uncontested applications to become administrative process with celebratory event

The discharge process in agreed or uncontested applications should be changed to engage parents and carers more in the application process (including the pre-proceedings process), to avoid aspects of the proceedings that parents or carers find daunting (such as repeated court appearances) and to provide recognition for the efforts parents or carers have made to regain or acquire full responsibility for the child. The decision to discharge would continue to be made by a judge but administratively, through review of the papers, as judicial box work, rather than through hearings. The only court attendance would be for a (non mandatory) celebratory event, with the parents or carers, the local authority social worker and judge, corresponding to that attended by adoptive parents after an adoption is finalised. This would create an opportunity to formally acknowledge the efforts of parents or carers in taking full responsibility for the child, and provide a foundation for

stronger relationships between the parents or carers and the local authority in the future.

To facilitate the discharge of uncontested applications, and to reduce re-traumatising parents and children, it is suggested that these applications are made by the LA with parents, carers and would-be special guardians named as parties not respondents. Ideally this could be done as joint applications made as joint applications, drafted by the local authority and countersigned by the parents and carers. This would mean the common form for public law applications could not be used; as an alternative a simple document, agreed and signed in the pre-proceedings process, could be attached to the application, making it clear that this was an agreed application.

3) Development of national guidance on thresholds to reduce inconsistency

Cross-discipline policy on thresholds for discharge may help reduce national and regional variations in outcomes. Such guidance would help to clarify what constitutes ‘good enough care’ at the time of discharge and to ensure that all parties have the same understanding of what is needed for a discharge to be granted and which sorts of issues may preclude this. This guidance could also include information about situations where the original aims of the care plan have not been completely met, yet the care order is no longer necessary. The guidance would need to be developed collaboratively, with input from local authorities, independent reviewing officers, the judiciary, Cafcass and Cafcass Cymru, and ideally parents, carers and children.

4) Local authorities to promote active case management

It is essential that clear and consistent oversight of the active assessment of child welfare is promoted within LA teams. This includes reviewing all aspects of the care plan, including the necessity of legal orders, so that relevant cases for discharge are identified and addressed in a timely fashion, as part of an ongoing process, rather than in response to external pressures to reduce the number of children in care.

Social workers, supported by their managers, need to ensure that care plans are dynamic and actively reviewed, with support identified within the care plan provided when appropriate, to ensure that discharge is not delayed. This requires a ‘whole family’ approach that prioritises work with parents as well as meeting the expectations of care order processes and duties, and the creation of capacity within social work caseloads to enable this work. Care plans also need to reflect a realistic view of the availability and accessibility of services for parents and carers.

5) Local authorities to develop expertise and knowledge exchange

At a local level, LAs should seek to ensure that social workers have access to expertise in making discharge applications to address issues of delay and drift. In some local authorities, the role of ‘discharge champion’ was assumed by more experienced social workers on an ad hoc basis; this could be formalised with a Senior Social Worker holding specific responsibility for advising and supporting social workers making discharge applications. At a national level, LAs, along with the Principal Social Worker Network, Association of Directors of Childrens Services (in England) or Association of Directors of Social Services (in Wales) need to proactively share best practice in identifying and progressing cases for discharge, to facilitate the implementation of effective practices more widely and more consistently.

6) Local authorities to provide support to parents

Local authorities have a central role in actively providing support to parents and carers throughout the discharge process, regardless of the anticipated outcome of the application. This includes

ensuring that parents are informed about their rights, including how to complain or contest the plans for their child, without having to resort to making a discharge application. As discussed above, agreed applications should be presented as if they were jointly made with the local authority rather than placing the LA and parents in potential conflict with one another. LAs need to remain aware that the process for discharging a care order may be traumatising and difficult for parents, carers and children.

7) Encourage open dialogue between families and professionals

Experienced children's guardians can bring extensive knowledge to discharge proceedings, particularly advising about the need for an order and the advantages and disadvantages for the child of continuing it. However, guardians who have fixed views about the family or the local authority based on prior experience, or circumstances which justify discharge and the utility of orders after discharge can have a negative effect on families and social workers, without producing positives for the child. Given the influence of the guardian's position on the outcome of the discharge application, it is important that guardians remain open to hearing the views of parents and/or carers, social workers and, where appropriate, children, and to recognising positive changes that have been achieved during the care order. This is not to say that guardians should ignore concerns or potential risks, but that this must be balanced with acknowledging change that has occurred over time and questioning whether the threshold for a care order is still met. Having clearer guidance on the thresholds for discharge should aid this and help to ensure that judges do not simply acquiesce to the guardian. The potential side-lining of social workers by guardians could be avoided by encouraging dialogue (eg via a pre-proceedings process) between social workers and guardians to consider what is the best outcome for the child *before* the court hearing, and to do this *with* rather than against the parent/s, so that proceedings are resolved more efficiently, and are less adversarial or distressing for families. Such dialogue could also help to address variation in views and thresholds of what is 'good enough' care and ensure that all decisions are fully explained and justified.

8) Guardians to engage children

It is noted that the study explored e-casefile data from previous years, and may not reflect more recent practice and policy changes within Cafcass and Cafcass Cymru – the recommendations below may already be incorporated into current practice.

Children have the right to be involved in matters affecting them – as a matter of their rights and welfare (UNCRC 1989). The starting point should be that children will be included and engaged with as part of any discharge process, unless there is good reason for them to not be. This decision should be a careful balance between their right to be involved and what is in their best interests. The decision not to talk to a child should be made jointly between the social worker, IRO and the guardian, and that information clearly presented to the court.

Based on the study's findings, there was evidence that some guardians tried to keep children away from assessments relating to discharge, due to concerns about re-traumatisation and unnecessary intervention; this was particularly the case where guardians judged the likelihood of the application being successful as low. There were evidently excellent practice decisions made to protect children from applications that would have been highly traumatic and the recommendation here is not to supersede practice judgement, but rather to highlight that the decision not to engage a child is one that should be taken jointly across professionals.

9) Advice about discharge to be made available for parents, carers and children

Support prior to, during and post-discharge application (whether or not the discharge is granted) should be provided to parents and carers as a matter of priority. A pre-proceedings process for discharge with access to independent legal advice would go a long way towards meeting the needs of parents and carers for support and information, including about their prospects of obtaining discharge, and the processes involved. Clear and accessible explanations of the discharge process, including the potential impact on post-discharge support (including financial support) and leaving care eligibility would be beneficial. This could be provided in written formats, such as leaflets, or short videos/animations online or via a mobile app. Cafcass and Cafcass Cymru provide a variety of online resources; information about the discharge process could be added to their websites.

Suitable mechanisms need also to be developed for children to be more informed about discharge and the discharge process, including resources that parents and carers, social workers and guardians can use to discuss the effects, advantages and disadvantages of ending their care order and signposting to legal advice for older children who may wish to make their own application.

10) Financial and practical support to be provided to SGO carers

Potential disincentives to discharge, such as the detrimental impact discharge has on foster carers becoming special guardians, should be removed. Appropriate support (including financial and housing support) needs to be provided to carers to enable them to become special guardians without detrimental effect. National schemes and agreed standards for ongoing support for SGO carers should be developed so that the support available does not vary according to the resources of individual local authorities. Ideally this would be consistent across England and Wales.

7.3 Further research

There is clear need for further research with parents, carers and children to explore their experiences of the discharge process, their interactions with the different professionals involved, and the support they do (or do not) receive. The insights and experiences of parents, carers and children is vital to further understanding and improving the discharge process.

The study's findings could also be used as a baseline to compare trajectories and outcomes for children with care orders where no discharge application was made; and to explore the extent of social work involvement with children and families after the discharge is made. It would be useful to further explore the long term outcomes of children whose care orders were discharged to understand how many were referred back to the children's social care system, how many returned into the care of the local authority and what factors were associated with these outcomes. If it is the case that SGO arrangements that are not funded are more likely to breakdown then it would be useful to conduct a cost benefit analysis, comparing the cost of children remaining in care with the cost of subsidising SGO arrangements.

This study has highlighted the potential of the Nuffield Family Justice Data Partnership curated data held within the SAIL databank. However, there is a need to improve the quality and accessibility of the data and associated meta-data. For example, more work is needed to make the database 'research ready' (McGrath-Lone et al, 2022) including reducing the duplication of data, enabling more efficient mechanisms for linking data and improving the overall functionality of the SAIL gateway. The research has also identified gaps in some of the older Cafcass data held in SAIL, such

that data pre-2015 may not be useful for complex analyses; the more recent data (particularly the English data) is more complete and appropriate for the type of complex analysis presented here.

Similarly, although the e-casefiles elicited important data, there were differences in the types of documents included in the e-casefiles and in the amount of data included, which made it difficult to draw definitive conclusions about some cases. Researchers wanting to conduct similar studies should be aware that the process of accessing the e-casefiles was resource-intensive, particularly when information had to be redacted. During the course of this research, it also became apparent that research access to the e-casefiles and SAIL databank could not occur concurrently, due to the framework implemented to maintain anonymity and confidentiality. Clearly, ensuring that GDPR requirements are not breached is important, but the regulations need to be applied in a more nuanced way to enable researchers to continue to conduct high quality research efficiently. Consideration needs to be given to developing a more efficient process to apply for, access and analyse research critical data.

While this study aimed to provide a picture of discharge applications across England and Wales, there were differences in the amount of data available within each nation. Qualitatively, the study engaged with Welsh social workers while no English social workers were recruited. In the e-casefile and SAIL data the opposite was true, with the English data being much more detailed (e-casefile) and available over a longer time frame (SAIL) than the Welsh. The reasons behind the availability of participants and accessibility of data are complex and multifaceted, however there is scope for similar organisations in Wales and England sharing strategies and best practice for engaging with research.

7.5 Conclusions

This is the first study to provide a baseline and in depth understanding of discharge process and outcomes in England and Wales. It has demonstrated key issues and inconsistency in applications for and the use of the discharge process. The typology of discharge applications presents clear evidence for the need for changes in procedure and practice. The recommendations for practice could be relatively easy to implement and would lead to improvements for children, their parents and carers, and all of the professionals involved in discharge applications. The study has showcased the research capabilities of the Cafcass and Cafcass Cymru data held within the SAIL databank and has provided a solid foundation for future research with children, parents and carers on their experiences of discharge.

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Appendices

- Appendix A Technical report on SAIL
- Appendix B Details of the interview and focus group participants
- Appendix C E-casefile ethnicity data from English sample
- Appendix D Parental and kinship carer concerns

Appendix A Technical report on SAIL

Securing Access to the Anonymised Cafcass Records

Access to the Cafcass data was secured via SAIL Databank's Information Governance and Review Panel (IGRP) process. This process includes gaining permission from the data owners to use the anonymised records held within SAIL to address the research questions posed for this project.

Both analysts are approved researchers under the Digital Economy Act, 2017 and have undertaken the necessary training to work within SAIL's secure environment. This includes operating within the five safes of data governance: Safe people; Safe projects; Safe settings; Safe outputs; Safe data. As a result of this all file out requests are subject to robust checks for statistical disclosure.

Initial access to the data in SAIL was granted in September 2020. Access to the data in SAIL was paused between May and September 2021 whilst members of the team were engaged in the e-casefile analysis. The impact of the Covid-19 pandemic and related restrictions occasioned delays to various elements of the project, including the extraction of data from SAIL, necessitating an extension, which the Nuffield Foundation, Nuffield Family Justice Observatory and SAIL kindly agreed.

Inclusion Criteria and Period of Interest

The analysts were granted access to the national level CMS and ECMS data tables for the period from 1st April 2008 to 31st March 2019, and to the Cafcass Cymru database for the period from 1st April 2011 to the same endpoint. These tables include information pertaining to family court cases, applications and hearings from across England and Wales where Cafcass or Cafcass Cymru have been involved. As such it includes both public and private law cases.

Within the national level datasets it was possible to identify the original application for a section 31 Care Order (CO) for a child, along with the details of any applications made to discharge this either by the local authority or other applicants including the index child themselves, the parents and/or their extended family.

All discharge of Care Order applications made during the period of interest were identified. However, it was not always possible to find evidence of a prior CO if it was granted before the start of the period of interest; where this occurred, the record was included in outcomes reporting, but not analyses relating to the duration of care orders (left censoring). Similarly, not all discharge applications made before 31st March 2019 had been completed. It was therefore necessary to right censor the data when reporting on the outcomes from these applications.

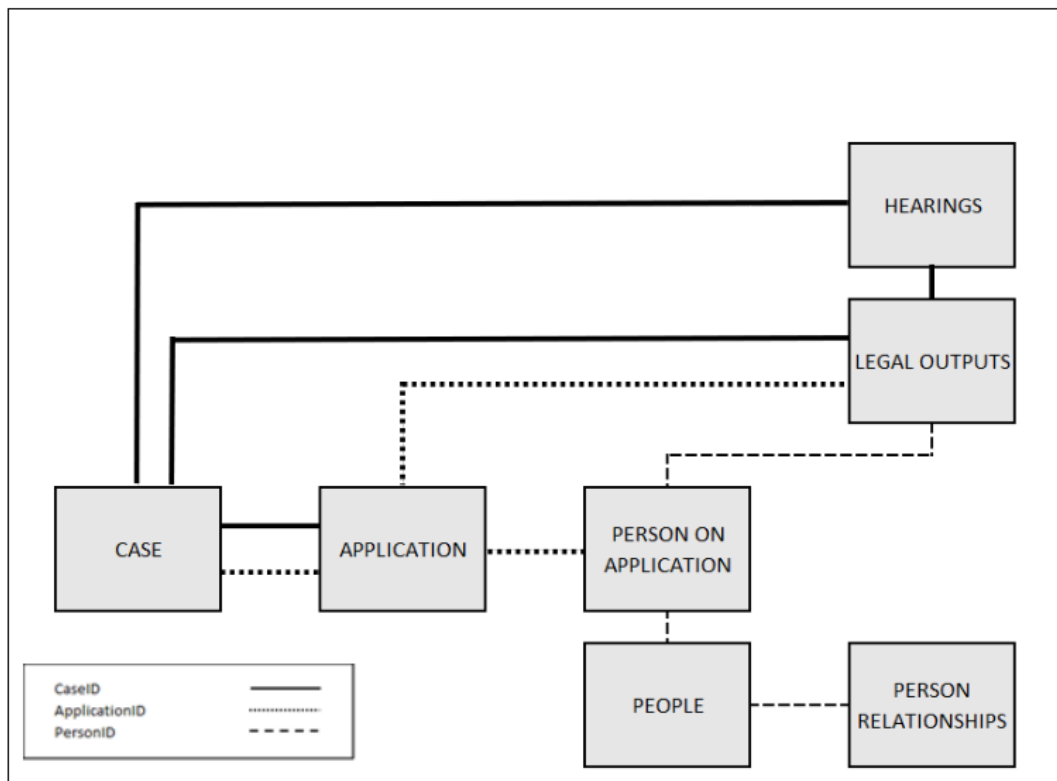
Other pragmatic decisions were made when data were missing or unclear to enable analyses to be conducted; these decisions were discussed and agreed between the analysts and wider project team and are noted here and within the main report, when relevant.

Structure of the Data

The English Cafcass data consists of two relational datasets – the CMS and ECMS; the former was superseded by the latter in 2014. Whilst the broad content is the same (ie information is held about applications nested in cases, with information about hearings and the individuals' involved in the application), the structure of the two datasets is different. Tables are linked by a series of identifiers (Figures 1 and 2); the tables contain fields that are in turn translated into meaningful variables via a series of lookup tables. For example, the respective APPLICATION tables include a numeric

and gender for each person to be added. In contrast to the CMS table where there is a single variable to reflect the individual’s role on the application, in the ECMS there are flags to denote whether or not the person is the index child, the applicant, the respondent or other. The relationship between the index child and applicant (and other roles) can be identified by linking to the PERSON RELATIONSHIP table. Legal outputs for the index children can be identified by matching the *CaseID*, *ApplicationID* and *PersonID* to the equivalent variables in the LEGAL OUTPUT table.

Figure 2: Structure of the ECMS, including linkages between tables



The Cafcass Cymru data follow a similar structure (Figure 3), with applications nested in cases and information about hearings, legal outcomes and individuals involved in the application. Some table names were not immediately representative of their content, and have been amended for exposition in this Technical Annex (eg, table CASES instead of INCIDENTS). There were four main differences from the English databases.

First, all demographics have been removed from the database version provisioned in SAIL Databank. Information such as week of birth and gender is obtained instead through linkage via SAIL Anonymised Linkage Field (ALF) between Cafcass Cymru and the Welsh Demographic Service Dataset (WDS), with measures of linkage quality being provided.

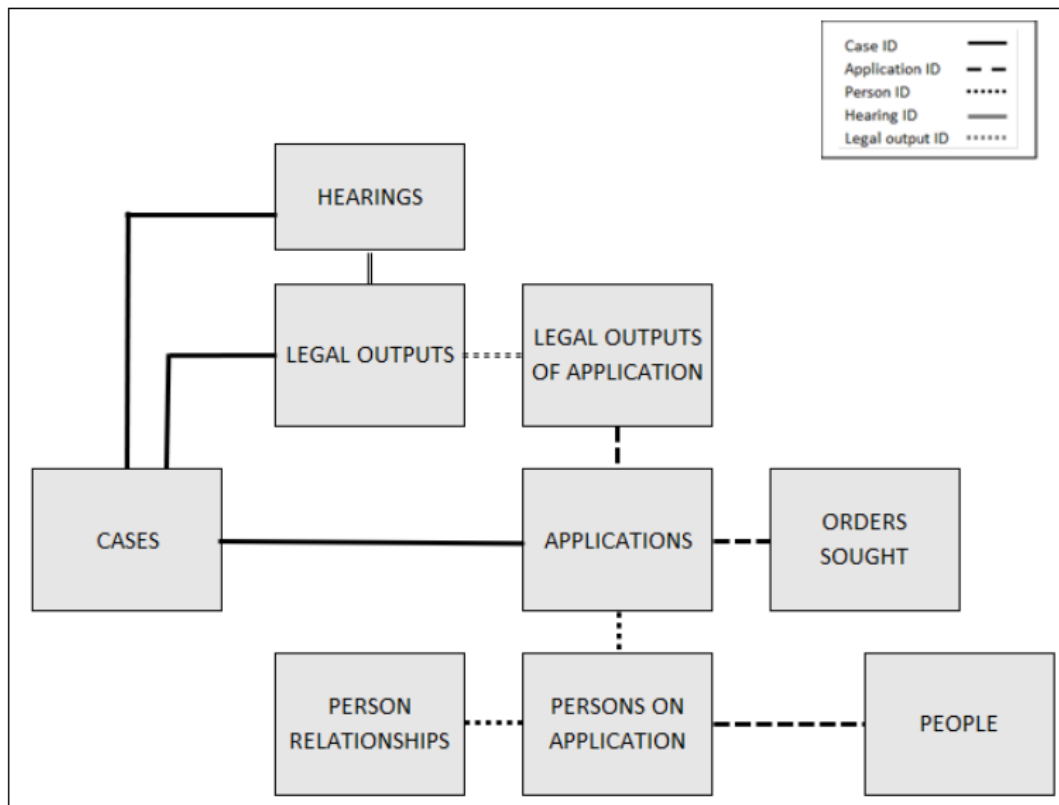
Legal outputs are explicitly connected to applications via the LEGAL OUTPUTS OF APPLICATION table. However, the table does not specify for which subjects, if there was more than one child on the application, each specific order was made. Some legal outputs are marked as ‘Final’ but there can be multiple ‘Final’ legal outcomes from the same application and/or in a same case.

Types of applications are described in a separate ORDERS SOUGHT table. The APPLICATIONS table features only one of those application types, designated as ‘Primary’. Where multiple orders are being

sought as part of the same application, it was not clear, nor systematic, what had prompted a particular order to be designated as 'Primary', nor how this might reflect different Cafcass Cymru activities.

Finally, the Cafcass Cymru database does not rely on look-up tables, which are only required for the WSDS element.

Figure 3: Structure of Cafcass Cymru database, including linkages between tables



Data Preparation

Applications, subjects and relationships

For England, the various lookups for variables contained in the tables identified in Figures 1 and 2 were added, and in the case of the APPLICATIONS table, a variable was created to denote the year to 31st March in which the application was made. Case level details were added to each application.

All those recorded as the subject of the application were identified and their details including the *ApplicationID*, their gender and week of birth from the PERSON table were saved in a separate SUBJECT ON APPLICATION table. This was repeated for applicants, respondents and those in other roles.

SUBJECT LISTS were created for each dataset containing a unique record for each individual along with their week of birth and gender. Using the RELATIONSHIP tables respectively in CMS and ECMS, a wide file was created which had the *PersonID* of each person recorded as having a specified relationship to the index child, taking into account their gender (if recorded).

In the process of creating the wide version of the SUBJECT LIST WITH RELATIONSHIPS, it was identified that as an artifact of the anonymisation process, there were some children who appeared to have up

to three 'Mothers' and three 'Fathers'. In each instance the respective mothers and fathers had the same week of birth but had a different *PersonIDs*. All were retained so that comparisons could be made with the *ApplicantPersonID* and that recorded for each relationship and thereby determine if the index child's mother, father, grandparent etc was involved in making the application.

For Wales, lookups from the WDS were added, and Cafcass Cymru tables were deduplicated as needed. Additional manipulations were required to deduplicate the PERSON RELATIONSHIPS table which contained a different type of information redundancy: the relationship is specified two-ways for any given pair of individuals present (ie, a separate observation for Alice-and-Bob and for Bob-and-Alice). The table was supplemented with demographic information to derive the youngest party and retain a unique observation for each child-adult or child-child pair.

The combinations of multiple types of applications were restructured at application-level. Applications for Special Guardianship were described in similar terms whether under public or private family law. New descriptions were created using the application type IDs.

Subject lists were created in a similar manner to England, using the simplified one-way relationships table. The direction of relationships was adjusted where roles on the application (subject, applicant, respondent or other) and derived ages were inconsistent with the stated relationship. Further adjustments, and a subsequent round of deduplication, were conducted using the derived age of individuals holding multiple roles on a same application.

Table 1 shows the nature of the relationships described in the three different datasets.

Table 1: Comparisons of the nature of the relationships described in the three datasets

Relationship	CMS Look Up	ECMS Look Up	Cafcass Wales
Parent	✓	✓	✓
Adoptive Parent	✓	✓	✓
Step Parent	✓	✓	✓
Guardian	✓	✓	✗
Special Guardian	✗	✗	✓
Kinship carer	✗	✗	✓
Foster Parent	✗	✓	✓
Intended Parent	✗	✓	✗
Putative Father	✗	✓	✓
Transgender Parent	✗	✓	✗
Parent's Partner*	✗	✗	✓
Sibling	✗	✓	✓
Half Sibling	✗	✓	✓
Step Sibling	✗	✗	✓
Aunt / Uncle*	✗	✓	✓
Grandparent*	✗	✓	✓
Great Grandparent*	✗	✓	✓
Great Step Grandparent*	✗	✓	✗
Great Aunt / Uncle*	✗	✓	✗
General Practitioner	✗	✗	✓
Health Visitor	✗	✗	✓
Support Worker	✗	✗	✓

* These relationships are further broken down as to being maternal and paternal. Inverse relationships are also included in the respective look up tables in England, and in the relationship variables in Wales.

Legal outputs

Having created a subject level table which combined the SUBJECT ON APPLICATION information with details about the application and case, the legal outputs were added to this. Flags were created to denote whether the application was for a discharge of care order or a care order. Where the legal output was a care order (regardless of what was applied for), these were saved as a separate file, which was later compared to that containing the applications for discharges so that the index child's prior care order could be identified.

The process of converting the file so that all legal outputs pertaining to the application (and any that might have been applied for alongside) was taken in several stages, and differed between England and Wales.

In the English data, the first stage was to identify all legal outputs relating to the subject-application combination that were recorded as having occurred at the same legal hearing. A single row containing all the legal outputs from the hearing for that subject-application was created. This was then repeated for all hearings that occurred on the same date so that the last legal order hearing date could be identified for each subject-application combination.

Having identified the last hearing in the proceedings, the index child's applications were converted to wide so that all those dealt with at the same legal hearings were nested together on the same row. Checks revealed that not all of the index child's applications necessarily had the same *CaseID*, however, this is how this series of applications can be conceptualised. There was a maximum of nine applications identified as being dealt with at the same hearing with up to six legal outputs being recorded.

In the Welsh data, legal outcomes were derived both at application-level using the LEGAL OUTPUTS OF APPLICATION table, and again at case-level bypassing that table. Different variables were derived for all legal outcomes and for 'Final' legal outcomes. These included the sequence of orders made and flags for specific orders being made that would discharge a prior Care Order. Descriptions of Special Guardianship Order were adjusted to separate between public and private family law orders.

The final application-level datasets retained for analysis of Welsh applications for Discharge of Care Orders or for Special Guardianship Orders under public family law were defined by excluding applications where (i) no subject had been recorded, (ii) the case was truncated before any hearings, or (iii) the case was cancelled without any hearing or legal outcome (ie, no indication that the application had been withdrawn, refused, dismissed or suspended).

Applicants

Applicant details were added to a copy of the initial SUBJECT ON APPLICATION table. Up to 11 applicants were identified in the English data. Their *ApplicantPersonIDs* were compared to those for individuals with identified relationships to the index child from the SUBJECT RELATIONSHIP LIST. This involved flags to be created to identify whether one more applicant identified as being the 'Mother' was involved in the application. This was repeated for all key relationships.

In the English and Welsh datasets alike, where no applicants were identified, it is assumed to be a local authority application. Having created these flags, they were used to create variables to denote the type of applicant (Table 2).

Table 2: Applicant Type

Description	Applicant Type	Applicant Type2
Local Authority	Local Authority	Local Authority
Index child	Index child	Parent or other identified person(s)
Mother	One or more parent involved	
Father		
Parent (gender unknown)		
Both parents		
One or more parent		
Other		

Prior Care Orders

Finally, details of the index child’s prior care orders were added. To facilitate analysis, the following flags were created to identify within the legal outputs recorded for the last hearing, whether one or more of the following was granted:

- a discharge of care order
- a Special Guardianship Order
- a discharge order
- a CAO live with
- a Residency Order

A catch all flag was then created to denote whether an order that could discharge the index child’s care order had been granted.

Harmonising the English datasets

Having prepared the CMS and ECMS datasets separately, these were combined into a single ‘harmonised’ dataset because, due to the respective temporal coverage, a child’s prior care order could potentially be in the CMS whilst the discharge of care order application was in the ECMS. It is this harmonised dataset that has been used for the case, application and child level analyses presented within this report. A separate dataset was created to enable children to be tracked across successive attempts to discharge the original care order, to enable a durations analysis.

Conventions when reporting

Given the nested structure of the dataset, different units of analysis have been used when reporting findings. As noted above, it was also necessary to apply both right and left censoring to the dataset and make adjustments so that the profile of the index children could be presented by age and gender, and outcomes can be presented by applicant type. Due to concerns about the completeness and reliability of data on ethnicity, and the anticipation that analysis by ethnicity in Wales would have been disclosive, data were not requested as part of the IGRP.

Reporting about the index child/ren

The decision was made to report the number of children on each application based on those recorded on the first / earliest application made within the case. In this way it is possible to avoid double

counting – the net difference in the number of children on the first discharge of care application compared to the second in the case is minimal.

When compiling the index children’s profile in the English data, it was observed that fewer than five children were recorded as Gender Unknown. Checks were made and these individuals had a week of birth which suggested that they were not an unborn child. To avoid the risk of statistical disclosure, these children, along with others on the same application, have been excluded from the child level analysis. The net impact is that prior to censoring five children have been excluded. Given the smaller size of the Welsh dataset a different approach was adopted and the very small number of children who were recorded as Gender Unknown were classified as female; while this may distort the findings slightly, it was necessary to ensure sufficient cases in each year to avoid the risk of statistical disclosure.

Application index child

For applications with more than one subject, the index child was defined as the youngest. In case of multiple births, it is the child with the best ALF matching to their demographics: 100%, [90%-100%], [50%-90%], [0-50%]. The data preparation algorithm resolved any remaining ties arbitrarily on the basis of the anonymised person ID.

Measuring Success

To enable comparisons to be made with the e-case file analysis, two measures of success have been used. The first is a binary measure which is based on whether a discharge was granted following an application for one or more discharge of care orders within a case. The second takes into account where there was insufficient information within the legal outputs recorded to determine whether a discharge was granted. Where the legal output has been recorded as ‘Unknown Outcome’, ‘Adjourned’ or ‘Consolidated’, the outcome has been treated as unknown, and the success rate calculated based on the proportion of cases resulting in a discharge where the legal output was known.

Reflections on working in the SAIL Databank

As very early users of the CAF/CASS data, the project team, and particularly the data analysts, had to navigate a number of challenging and unexpected situations, which are discussed here. These reflections aim to illustrate the problems overcome and to provide guidance for future researchers conducting analysis with similar data.

Trusted Research Environments (TREs) such as the SAIL Databank provide value-for-money research access to administrative data. Best practice for sharing administrative datasets for research purposes has evolved from direct negotiation between researchers and data owners. As a result, respective expectations are changing. Data owners increasingly expect to engage with research via trusted third parties and for their data to be accessed by researchers through TREs. Adoption of common standards across TREs, such as the 5 Safes, facilitate such agreements. Researchers are increasingly moving towards building a shared understanding of what makes an administrative dataset ‘research-ready’ (Mc Grath-Lone et al., 2022 and ADR UK, 2022). As a result, there is rapid growth of linked data collections available in TREs, sometimes accompanied with bespoke funding opportunities to demonstrate the value of the novel linkages.

However, securing approvals and working in those environments is not seamless – particularly within the context of a global pandemic. While SAIL was able to continue to operate as a trusted research environment with analysts able to access the secure platform remotely, working from home meant that interaction with SAIL Analysts and technical / IT queries were limited to emails and messages via their helpdesk. The sheer volume of work undertaken within the SAIL environment in

response to Covid-19 meant that there was a rapid expansion in the number of users which at times tested the capacity of the platform. As a result, in the earlier stages of the project, there were issues with the stability of the environment and some delays in queries being resolved. Access to the data was also restricted for routine and emergency maintenance; while the former usually occurred at regular intervals, with appropriate notification, this was not always the case and maintenance frequently took longer than expected.

For this project, restrictions on accessing the SAIL data and e-casefiles simultaneously were placed on the research team, rather than the individual researchers accessing the TREs. The restrictions had been unexpected at the time of submitting the funding application. Pausing access to SAIL while other members of the research team accessed e-casefiles negatively affected the project and placed pressure on all team members – both the analysts being expected to deliver the SAIL findings in less time than planned at the outset, and the qualitative researchers having to extract data from the e-casefiles at a faster speed than planned to allow SAIL work to resume as soon as possible. Some important SAIL work that would have been carried out to guide the direction of the e-casefile work also had to be curtailed.

Guidance from a member of the Advisory Group with greater knowledge of the Cafcass data was invaluable as there is limited expertise within the SAIL team itself and only nascent supporting documentation. It was necessary to navigate the complexities of the data, relying upon the project team's knowledge of family court processes to inform pragmatic decisions about how to prepare and handle the data. As more users start to make use of the CAF/CASS data for research, it is anticipated that a community of practice will develop which can collectively work to strengthen the supporting documentation and write standardised code. Further guidance on managing the risk of disclosure is also needed, including the implications of decisions in the context of statistical disclosure by subtraction, and agreement on what is considered to be disclosive (for example, the number of index children or the number of applications). It is not merely sufficient to remove possible disclosure from each set of findings in isolation. For a coherent narrative to emerge, different sets of findings often need to be confronted and earlier findings will need to be re-run, for example with a few data points being excluded. This can inadvertently make earlier findings released from the TREs disclosive, by comparing the initial and updated versions of the results. The strategy used here was to refrain from exporting results until the final analytical data cut is confirmed. While reducing opportunities for inadvertent disclosure, this came at considerable cost to the project in terms of both risk and time management.

References

ADR UK (June 2022) "What is 'research-ready' data? A report of the online roundtable event held on 11 February 2022, 13 pages, available from <https://www.adruk.org/news-publications/publications-reports/what-is-research-ready-data-a-roundtable-report/>

McGrath-Lone, L, Jay M A, Blackburn R, Gordon E, Zylbersztejn A, Wijlaars L and Gilbert R (2022) "What makes administrative data 'research-ready'? A systematic review and thematic analysis of published literature", *International Journal of Population Data Science*, 7(1), 15 pages

Appendix B Details of the interview and focus group participants

	Current role	Gender	Country	Region
1	Independent reviewing officer	Female	England	London
2	Independent reviewing officer	Female	England	South East
3	Independent reviewing officer	Female	Wales	Cardiff and SE Wales
4	Independent reviewing officer	Female	Wales	Central Wales
5	Independent reviewing officer	Female	Wales	North Wales
6	Independent reviewing officer	Female	Wales	Central Wales
7	Independent social worker	Male	England	London
8	Independent social worker	Female	Wales	Swansea and South Wales
9	Independent social worker	Male	Wales	Swansea and South Wales
10	Local authority social worker	Female	Wales	Swansea and South Wales
11	Local authority social worker	Female	Wales	Cardiff and SE Wales
12	Local authority social worker	Female	Wales	Cardiff and SE Wales
13	Local authority lawyer	Female	England	East of England
14	Local authority lawyer	Male	England	Yorkshire and the Humber
15	Local authority lawyer	Female	England	London
16	Local authority lawyer	Female	England	West Midlands
17	Local authority lawyer	Female	England	West Midlands
18	Local authority lawyer	Female	Wales	Swansea and South Wales
19	Local authority lawyer	Female	Wales	Cardiff and SE Wales
20	Local authority lawyer	Female	Wales	Cardiff and SE Wales
21	Lawyer (private practice)	Female	Wales	Cardiff and SE Wales
22	Children's guardian	Female	England	London
23	Children's guardian	Male	England	London
24	Children's guardian	Female	England	London
25	Children's guardian	Male	England	Yorkshire and the Humber
26	Children's guardian	Female	England	North East
27	Children's guardian	Female	England	London
28	Children's guardian	Female	Wales	North Wales
29	Children's guardian	Female	Wales	Swansea and South Wales
30	Children's guardian	Female	Wales	Central Wales
31	Children's guardian	Female	Wales	Cardiff and SE Wales
32	Children's guardian	Female	Wales	Cardiff and SE Wales
33	Judge	Male	England	North West
34	Judge	Female	England	North
35	Judge	Female	Wales	North
36	Judge	Male	England	North West
37	Judge	Male	England	North West
38	Judge	Female	England	North West
39	Judge	Female	England	London
40	Judge	Female	England	North West
41	Judge	Female	England	London

Appendix C E-casefile ethnicity data from English sample

Child Ethnicity	Frequency	Percent
White British	220	75.9
White Irish	2	.7
White Other	5	1.7
Black African	11	3.8
Black Caribbean	2	.7
Black Other	1	.3
Asian Indian	2	.7
Asian Pakistani	4	1.4
Asian Bangladeshi	2	.7
Asian Other	4	1.4
Mixed White and Black Caribbean	20	6.9
Mixed White and Asian	8	2.8
Mixed Other	5	1.7
Romany Community	2	.7
Other	2	.7
Total*	290	100.0

* Ethnicity data missing for 7 children

Appendix D Parental and kinship carer concerns

The list below presents concerns about parental and kinship intended carer identified in the e-casefiles. Information was also collected regarding whether the concern was identified during initial care proceedings, at discharge, or both. When the concern had been raised at discharge, information was collected on who raised the concern (eg children's guardian, social worker).

#	Identified concern
1	Mental health/illness (inc. self-harm, suicidality)
2	Refusal to accept support for MH (or inconsistent)
3	Drug mis/use
4	Refusal to accept support for drug mis/use (or inconsistent)
5	Alcohol mis/use
6	Refusal to accept support for alcohol mis/use (or inconsistent)
7	Criminal history
8	Suspected/confirmed current criminal activity
9	Sex work
10	Introduction to inappropriate adults
11	Sexual abuse
12	Failure/inability to protect from sexual abuse
13	Physical abuse
14	Failure/inability to protect from physical abuse
15	One off physical assault
16	Failure/inability to protect from one off physical assault
17	Emotional abuse
18	Failure/inability to protect from emotional abuse
19	Failure, or question over ability, to meet child's emotional needs
20	School attendance issues
21	Inability to control/cope with child
22	Lack of co-operation with support services
23	Misleading or lying to support services/LA
24	Lack of co-operation regarding child's health
25	Neglect inc. lack of hygiene, repeated accidents
26	Unsuitable or unsafe environment
27	Inconsistent parenting
28	Poor or inconsistent supervision of child
29	Physical disability
30	Learning difficulties
31	Health issues
32	Domestic violence and abuse in home
33	Failure/inability/refusal to engage with DVA support
34	Violence outside home
35	Chaotic lifestyle
36	Breaking contact arrangements
37	Lack of remorse or failure to understand gravity of past actions
38	Neurodevelopmental (autism/ADHD)

