

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

Executive Summary

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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.