"*This can never happen again" – how has the law evolved in respect of protection of children from abuse*?

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Dedication:

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Introduction

This paper will critically analyse how the law has evolved with regards to protection of children from abuse.

This research will explore the depths of the meaning of child abuse throughout history and outline the statutory powers of the local authorities. The judicial balance of rights will also be evaluated when considering The Children Act 1989. This research will further set out the effectiveness of the guidance provided after the Cleveland Inquiry to clarify how policies, provisions and procedures are introduced to protect children from abuse, whilst also ensuring the provision for families to remain together, albeit only when it is safe to do so. This paper will also highlight the controversial issues surrounding duties owed to children in need.

Family law practitioners outlined the need for the courts "*to catch up*".[1] But, since the formation of CAFCASS[2] in 2001 which provide a foundation to family justice by enabling the views of the children to be adequately represented following their principal functions of representing children in the court of law, means that family proceedings are influenced by the welfare of the child. Due to the additional complexity of safeguarding, the statutory developments in respect of child protection will be considered.

Furthermore, this research will consider the measures used in proceedings involving children. Necessarily, these measures will promote safeguarding should adequate evidence be available. Additionally, do our current and past legislation protect children from suffering significant harm in circumstances where intervention is essential?

Chapter 1 History

"*By the term "child abuse and neglect" we mean any act, or failure to act, by a parent or caregiver… and anyone who has an educational role or caregiving, which leads to*

[1] A Musgrave, *'Lessons to be learned from Re: L [2019] EWHC 867 (Fam)'* (Family Law Week, 2019) available from: <Family Law Week: Lessons to be learned from Re: L [2019] EWHC 867 (Fam)>, accessed: 29/03/2021
[2] The Child and Family Court Advisory Support Service

physical or emotional harm, sexual exploitation or abuse, or death; or an act, or failure to act, that results in imminent risk of injury".[3]

Due to the broad definition of child abuse, it is apparent that the term 'child abuse' is applicable to all persons who owe a duty of care to the child in question. Moreover, any actions carried out against a child, or the failure to prevent actions, which cause harm, death or are detrimental to the child's health will suffice in satisfying the criteria of abusing a child. Health Minister Nadhim Zahawi further agreed, "*every child, no matter what hand they have been dealt, deserves the opportunity to grow up in a stable, loving family so they can develop into confident adults".*[4]

Throughout history, children have effectively been treated as property of the parents.[5] But the leading legislation at the time, namely the Criminal Damage Act 1971, provided no statutory obligations to give the parent or guardian the right to have the authority to sell, kill or sacrifice a child, neither to render them as property and yet the opposite happened. In essence, the male leader of the family exercised their powers and used children for profit. In the 1960's, before the Cleveland Inquiry when radiology developed, physical abuse and child neglect were officially recognized in the justice system, but sexual abuse was not for another decade.[6]

Basannavar emphasized sexual crimes in the mid-60's to be of satanic nature.[7] A crime which shook Britain in 1963, also known as the Moors Murders, where the offenders Brady and Hindley who sexually abused, tortured and recorded tapes of children suffering were convicted of five murders.[8] Following the sentencing of life imprisonment, the courts were clear that they would not reduce Brady's and Hindley's sentence following the changes under the Murder (Abolition of the Death Penalty) Act 1965 and expressed in *R v Secretary of State for Home Department Ex*

[3] F. Pietro 'From "classic" child abuse and neglect to new era of maltreatment', (2017), Italian Journal of Paediatrics, 1
[4] Department for Education, '£15 million investment to help keep families safely together ', available from: https://www.gov.uk/government/news/15-million-investment-to-help-keep-families-safely-together, accessed: 24/01/2021
[5] D Barriere, 'History of Child Abuse' (*Darlene Barriere*, 23 February 2017) <https://www.child-abuse-effects.com/index.html> accessed 12/10/2020.
[6] ibid.,
[7] N Bassanavar, 'Sexual Violence Against Children in the 1960's' (*NOTCHES,* 21 April 2016) < https://notchesblog.com/2016/04/21/sexual-violence-against-children-in-the-1960s/> accessed 12/10/2020.
[8] R v Hindley and Brady ((unreported))

parte Hindley,[9] that it was for the Home Secretary (Leon Brittan) at the time, to make the decision for the "*Nazis*".[10] Lord Lane CJ, clearly expressed he would "*never release Brady… this is the case if ever there is to be one when a man should stay in prison till he dies".*[11] But, *Waldron* further stated that the judge or legislator should make a decision that will stand in the name of large numbers of others in the society, and it was not appropriate for the judge's moral reasoning to be autonomous in that sense.[12]

Upon the conviction of Brady and Hindley, it is evident that morality sat on Lord Lane's conscience, contrary to *Waldron's* theory, *Dworkin* clearly presented that a judge has a *"duty of fidelity to existing law, even when some of the laws are not what he thinks of morally competent*",[13] and further expanded that "*morality might filter out evil*".[14] In this case despite several moral comments being made, the conviction ensured the public was aware that no acts of similar nature to Brady's and Hindley's will be acceptable to society.

Despite evidence of clear child sexual abuse, the courts were still reluctant in charging the defendants by only acknowledging mainly the murders with minimal emphasis placed to the use of 'sexual abuse', evidenced by not considering the pornographic pictures of one of the victims.

Moreover, in the 1970's women were educated to bring up an environment of a nuclear family and over 82% of women expressed religious beliefs,[15] indicating that in the minority of cases where women were involved, the courts attempted to swerve away from the idea that, a female could possibly harm a child, as this goes against the key principles of the Bible (the 10 commandments) "*thou shall not kill*". This indicates that the restrictions in decision making of Brady's and Hindley's sentence remained limited, which equally provides a potential explanation as to why Brady took majority of the blame from the media and a harsher sentence.

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[9] [1997] EWHC Admin 1159
[10] W.L.Jones, 'The Moors Murder' (1967) Medio Legal Society, 20.
[11] (n 5) [12]
[12] J Waldron, 'Judges as moral reasoners', (2009), 7 International Journal of Constitutional Law 6
[13] ibid.,16
[14] N Stravropoulas, 'The Debate That Never Was' (2017) 130 Harvard Law Review 9
[15] B Clements, 'Re-examining religious and paranormal beliefs in mid-1970s Britain', 2016, available from: < http://www.brin.ac.uk/re-examining-religious-and-paranormal-beliefs-in-mid-1970s-britain/>, accessed: 03/02/2021

A more modern approach was followed in Canada by Luka Magnotta,[16] who played out *Basic Instinct*, in which he followed a similar approach to Brady's and began by torturing animals in the adolescent stage, further preyed upon the vulnerable adults using dominance submitting that, the lack of sympathy by the perpetrators will not disappear from existence. Whilst Magnotta targeted older individuals, the nature of the forbidden acts by Magnotta, Brady and Hindley remain unforgivable.

On June 23rd, 1987, the *Daily Mail* ran the headline '*Hand over your children*…". This placed emphasis on the Cleveland Report. The Cleveland Inquiry "*spotlighted the unsatisfactory state of law concerning parental rights… and the lack of a child-centred approach which also caused problems for the children*", states *White*.[17] *Quirk* further outlined that, "*errors of justice can have devasting consequences*".[18] This is illustrated by the shock of events in Cleveland 1987, whereby the public attention was drawn to investigations concerning child abuse. The year child protection professionals were shocked by a storm of quite another nature and 'sexual abuse amongst children' reached front page headlines. Over the period of a couple of months, two paediatricians diagnosed sexual abuse in over 120 children, most of whom were removed from their homes under place safety orders.

The 1988 inquiry chaired by *Baroness Butler-Sloss* blamed the crisis due to the lack of proper understanding by agencies of each other's functions, including lack of communication.[19] From this it can be deduced that, all forms of child protection must be managed in a multi-agency way, as established by Crane J in *R (LH)*[20] that *"collaboration between all relevant agencies so as to achieve a full understanding of the child*"[21] in order to allow the law to continue in protecting the children from harm and protect the family's privacy, as outlined by *Dingwall.*[22]

[16] R v Parent, 2014 QCCS 132, 308 CCC (3d) 493.
[17] R White, K Jones, 'Issues from the Cleveland Report', 1988, Vol 138, Page 1, NLJ 551
[18] H Quirk, 'Identifying Miscarriages of Justice: Why Innocence in the UK is Not the Answer', (2007) 70(5), MLR, 759-777
[19] N Valios, 'Progress in child protection since the Cleveland child abuse scandal', (2007), available from: < https://www.communitycare.co.uk/2007/04/25/progess-in-child-protection-since-the-cleveland-child-abuse-scandal/>, accessed: 27/01/2021
[20] [2006] 2 FLR 1275
[21] ibid., [18]
[22] R Dingwall, T Murray, 'The Protection of Children: State Intervention and Family Life (Blackwell, 1983), 219

Moreover, it is clear the crisis occurred because of incorrect diagnostics, consequently leaving social services with a dramatically increased workload meaning that all the statutory bodies - social, medical and legal found themselves stretched to the limit as a result of the crisis. The report on the other hand, does not answer how many of these children were in fact victims of abuse. But given that 90/124 had returned home, it can be suggested that following Section 17(1),[23] the local authority promoted safeguarding to the children who did not return home.

Furthermore, the law evolved from the Cleveland Report, by adapting measures of multi-agency approach by stating,

"*where there was an allegation that a child had been abused, there should be a joint investigation by police and social services, and that the evidence of children in the course of such inquiries should be video-recorded*".[24]

Additionally, since 1987 greater interagency working was promoted by the Local Safeguarding Children's Boards, with greater focus on research around physical signs of child abuse. But more importantly, besides the resolutions approach which works with families who find themselves to be in dispute with the authorities, Working Together 2015 consisting of 216 pages of advice about safeguarding developed to support the Local Authority, Chief Executives, Directors of Children's Services and many other organisations and agencies that provide services for children and families.

Cruelty to children hit the headlines when the death of seven-year-old Maria Cowell occurred.[25] Following which, there was a re-evaluation of the then approach and an area of child protection committees was set up. The Children Act 1989 aimed to protect the children from abuse, but the creation of the bill came with minor flaws.

Moreover, *Hale* stated that the "*scandals of the 1970's (Maria Cowell) had concerned the failure of the system to rescue children from gravely abusive*

[23] Children Act 1989

[24] P Collier QC, 'Safeguarding in Church and State over the Last 50 Years: 'From Ball and Banks to Beech via Bell'- (2020) 22 ,ELJ, 156-193

[25] DHSS, *Report of the Committee of Inquiry into the Care and Supervision Provided in Relation* ***to Maria Colwell*** (London, 1974)

homes".[26] This should have had a major influence on the child protection sector when drafting the Children Act, by placing a greater emphasis on protection rather than rehabilitation. But *Hale* further commented that "*numerous opportunities to realise that a child is being ill-treated were missed by… children's services*",[27] presenting that the law itself can only be partially blamed and those who interpret it such as local authorities are equally responsible.

On the other side, local authorities are only permitted to act in circumstances where there is substantial evidence to prove the child is "*at risk of suffering harm*". As established in Section 120 of the Adoption and Children Act 2002 which clarifies that,

"*a child may be at risk of suffering includes any impairment of the child's health or development as a result of witnessing the ill-treatment of another person, such as domestic violence".*[28]

Ryder J further agreed in *Re L*[29] by stating, "*that separation is only to be ordered if the child's safety demands immediate separation*".[30] This presents that intervention is only permitted in limited circumstances and only where it is essential.

The Children Act 1989 further, *"rests on the belief that children are generally best looked after within the family with both parents*".[31] Whilst that remains true for some, this is inapplicable to other vulnerable members of the society including children who are sexually abused or neglected.

On the other side, when considering Section 31(10) of the Act which states,

"where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child".

This presents that a child will be judged objectively against another child who would respond in a similar manner subject to pedagogical methods carried out by the local authorities. From this it can be deduced that, this section applies to each child fairly,

[26] B Hale, 'Scarman Lecture 2019: 30 years of the Children Act 1989', (2020),32, *CFLQ,* 5.
[27] Ibid., 10
[28] S 31 Children Act 1989
[29] [2008] 1 FLR 575
[30] ibid., [34] – [35]
[31] Speight N, Wynne J, 'Is the Children Act failing severely abused and neglected children?', (2000), 82, *Archives of Disease in Childhood*, 192-196

despite the barrier of attempting to keep the child in their family, as presented by Lord Templeman in *RE KD*[32], "*the best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish…public authorities cannot improve on nature*".[33] Additionally supported by the theories of *Plato*, who expanded that children learn through their environmental nature.

The Children Act evolved in a manner which attempted to protect children in need when considering the provisions of Section 31 by setting a high threshold as established in Section 31(2).

A court may only grant an order, if it is satisfied that "*the child concerned is suffering, or is likely to suffer, significant harm; and… that harm, is attributable to the care given*". Whilst harm is defined in Section 31(9)[34] as "*ill-treatment*", there is controversy as to the meaning of *"significant*". *Re L*[35] on the other hand stated that "*by virtue of s31(9), 'significant harm' includes the significant impairment of intellectual or social development*".[36] This shows that the law evolved since the 1970's as; sexual abuse, learning difficulties, emotional disturbance also constitutes a risk of significant harm as presented in *Re L*, which are types of abuse that had never been recognised before or tolerated to satisfy the threshold criteria.

Moreover, *Speight* further commented that the Act diminished a happy ending as following the 1989 Children legislation 'trial of rehabilitation' meant that greater evidence was required, which therefore permitted children to be re-abused before legal proceedings could commence.[37] The end result ultimately meant that the child's emotional and physical health has been affected before allowing them a second chance away from abuse. However, considering the principles outlined in Section 1[38] that the welfare of the child is of paramount importance, it is also noteworthy that the Act prevents children being removed from families without having sufficient evidence to do so (prevents another situation arising - Cleveland) based on the principles that every child has the right to be raised within their family unless it is unsafe, as

[32] [1988] 1 AC 806
[33] ibid., 812
[34] The Children Act 2004
[35] Re L (Children) (Care Proceedings: Significant Harm) [2007] 1 FLR 1069
[36] ibid., [29]
[37] ibid., 195
[38] The Children Act 1989

established in Article 7 of the UNCRC "*right to be cared for by their parent"*. This presents that the law attempts to intervene mainly in situations where the intervention is of crucial importance, but it does not guarantee safeguarding.

Alternatively, as the legal proceedings are very costly, the courts did not; acknowledge why a social worker would trouble to file proceedings, putting the child on the Child Protection Register when taking the expenses into account, but since the 1989 Act did not have a clear guidance as to what the best interests of the child were, and the Act already having stated that children should be kept in their natural families meant there is no escape for children in need, showing the system failed neglected children.[39] On the other side, the welfare checklist which concentrates on the wishes and feelings of the child was available as guidance. Moreover, no appeals had been made regarding the 'flawed Act'.

As a result, the Children Act in many ways was expected to act as a front line to prevent child abuse despite the high burden of proof as established in *A v W*,[40] "*findings of fact had to be based on evidence, not on speculation*".[41] Whilst Article 8[42] establishes a statutory right to privacy, it is equally important that only substantive evidence is relied upon, as opposed to speculations – statements consisting of no proof, as this could potentially breach the family's private life and result in unnecessary intervention.

But statistically it has been proven to be effective. Between 1991 and 1995 (being the first four years of the Act) there was a decline in the numbers of children who were in care from approximately 60,000 in 1991 to 40,000 in 1995.[43] On the other side it could have meant that less cases reached the courts due to the high standard of proof required before the court which then later bought about the Cleveland crisis or the therapeutic work had a substantial effect with the abusive families. Contrary to criminal trials where the standard of proof is even higher, as the courts convict on "*the balance of probabilities*" as established in *Re H*[44], whereas family courts have a lower threshold to satisfy. This suggest that whilst the burden of proof has a strict

[39] Ibid., 194
[40] [2020] EWFC 68
[41] Ibid., [48]
[42] Human Rights Act 1998
[43] ibid., 195
[44] [1996] AC 563, Lord Hoffman

threshold to meet, it is lenient compared to other areas of law, which presents that law evolved with greater precautions towards safeguarding children.

But given the case of Rikki Neave, a 7 year old boy who was murdered after his mother requested that social services take him away who declined to do so claiming in defence they were following the Children Act in attempting to keep children in their natural families.[45] This placed a greater onus on 'who is guilty'; the social services who followed the element of the drafted legislation to 'keep children in their natural families', or did they neglect him in doing so? Or was it the mother who committed the crime which could have been avoided if her request were followed?

On the other hand, when considering the case of *Re B*[46] it has been established that *"a Court can only separate a child from her parents if satisfied that it is necessary to do so, that nothing else will do".*[47] This shows that "*a high degree of justification is required before an order can properly be made*".[48] Additionally, Justice Hedley also stated in *Re L*[49] that *"society must be willing to tolerate very diverse standards of parenting".*[50] This presents that if there is insufficient evidence then it leaves Social Care in real difficulties. Similarly, the Children Act 1989 also aims to protect families to ensure that the State does not attempt to involve itself in every family where there may be some low-level issues or lack of evidence.

Moreover, *Gore* stated that "*there needs to be a focus on all agencies being proactive in identifying families where there is abuse*".[51] Substantial developments were amended within the 2004 Act[52] from the 1987 Act. It reinforced the multi-agency approach required to safeguard children and introduced more accountability for agencies. Furthermore, the Children's Commissioner was also introduced which is a public body ensuring rights and welfare of children are protected subject to Section 1 of the Act. The Act also set out that each area is required to set up a Local Children's Safeguarding Board, which is crucially important when dealing with

[45] ibid., 193
[46] (2013) UKSC 33
[47] Ibid., [145]
[48] Ibid., [130] Lord Wilson
[49] [2007] 1 FLR 2050
[50] Ibid., [50]
[51] S Gore, 'Safe Lives: getting it right the first time – [2015] Fam Law 475(2)',
[52] The Children Act 2004

designation pursuant to Section 31(8). Additionally, the court in *Re Y (a child)*[53] relied on the principles from *Northampton*[54] in which Thorpe LJ stated,

"*section 31(8)…was intended to… enable the court to make a rapid designation of the authority upon which is to fall the administrative, professional and responsibility for implementing the… order*".[55]

This allows a multi-agency approach of enabling local authorities to share previous and current history of the engagement between the family, which shows that the law evolved in a manner that respects confidentially, ensures that families are supported throughout the country, and protects children from a risk of harm. As presented in *Re K*[56] by Thorpe LJ "*only a small degree of risk will be tolerable*".[57]

Although, the enactment of the Children Act in the 90's was attached with many improvements, such as the recognition of the different types of abuse, it has come with positivity with the results of the reduction in numbers of children in care. Moreover, since the Cleveland Report, the law evolved in a manner which aimed to promote a multi-agency approach, its effectiveness is considered in Chapter 2.

Chapter 2 – Victoria Climbie

Whilst Chapter 1 has clearly established that child abuse will not be erased from headlines, this chapter will analyse the events after the Children Act 1989, namely the Children Act 2004 and the Lord Laming Inquiry which was enforced because of the lack of knowledge in relation to a multi-agency approach.

The Children Act 2004 as previously outlined in Chapter 1 came about as a response to Lord Laming's inquiry into the death of Victoria Climbie.[58] But what exactly happened to Victoria Climbie?

[53] [2019] EWCA Civ 2209
[54] [1999] EWCA Civ 3031
[55] ibid., [18]
[56] [1999] 3 FCR 673
[57] ibid,. [45]
[58] Laming The Victoria Climbe Inquiry (2003) TSO

"*On 25 February 2000 Victoria Climbié, an 8-year-old girl, died at St Mary's Hospital in Paddington. Victoria came from the Ivory Coast in Africa to have a "better life" in the United Kingdom. In this country she was looked after by her aunt, Marie-Therese Kouao, and by Carl Manning, the aunt's partner. Victoria suffered appalling ill-treatment at the hands of Ms Kouao and Mr Manning. This caused her death. On 12 January 2001 Ms Kouao and Mr Manning were convicted of murdering Victoria. They were sentenced to life imprisonment".*[59]

Throughout the duration of the local authorities involvement with Climbie, there were failures of correctly assessing Climbie's injuries[60], removal of document's, false and misleading statements in relation to Climbie and failures of ensuring guidance on child protection; *to monitor and evaluate* were equally breached.[61] Moreover, in *Re M*[62] the court found that "*there is nothing more embarrassing for an expert (as well as time-wasting in court) than to be confronted with a document… which he or she had not previously supplied*".[63]

It is therefore apparent that, the proceedings surrounding Climbie were heavily relying on state intervention. In accordance with the Children Act 1989, the Local Authority must promote and safeguard the welfare of every child in its area. In accordance with the welfare checklist (s.1(3))[64] the child's wishes, and feelings must be considered accordingly throughout the duration of the proceedings. There may be circumstances in which the child is determined as competent in which to voice his/her wishes and feelings, such that s/he is determined as competent following the principles set out in *Gillick*.[65] However, it is reasonable to suggest that a high percentage of children suffering significant harm or who are at risk of suffering significant harm[66] are not competent. In any event, even if the child is competent, the Court are bound by the same statutory rules (e.g., threshold criteria) in determining whether a child is suffering or is at risk of suffering significant harm and therefore whether the said child should be removed from his/her carers to prevent

[59] [2001] EWHC Admin 698, [7] Jackson J
[60] ibid., 283
[61](n 57) [14]
[62] [1994] 1 FLR 749
[63] ibid., 758, Wall J
[64] Children Act 1989
[65] Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112
[66] Section 31(2) Children Act 1989

further harm. The threshold test is the only relevant test for the purpose of long-term removal in accordance with the Children Act 1989. If the evidence is not such that the test is met, a child will not be removed from the carer's care.

This clearly presents that, Climbie was not old enough to be regarded as competent to request a measure of removal from the local authorities. Moreover, the children are simply removed or in the instance of Climbie forced to remain in the neglected care of their guardians. This could be potentially viewed as that, Climbie was placed in "*a world where only parents speak and decide for children*".[67] But, due to the failings of the Local Authorities and other agencies meant that there was insufficient evidence to satisfy the bar required to instigate care proceedings, such that the child was left suffering harm and consequently subsequently died. Furthermore, the Local Authority can only present the evidence that is available, as opposed to allegations. There would have been heavy reliance on medical evidence, but it must be available for the Local Authority's to act upon it. In addition, Lady Hale expressed in *Miller*[68] that the children's welfare "*should also involve ensuring that the primary carer is properly provided for*".[69] and therefore equal consideration of the parent must be considered during any intervention.

During the progress of criminal proceedings, the employee's sought a judicial review in relations to their dismissal to which the defendant (employer) stated "*you failed in your duty of care in your social work practice in the care and protection of a child*",[70] and lead to the employee's suspension. Whilst the allegations of document tampering were questioned during the hearing, between 2001 and 2002 research showed that over 45% of children in care had a mental health disorder,[71] which meant that local authorities obligations increased; protect the child from neglect and to protect the child from self-induced harm.

[67] K Gollop QC, GOSH's Position Statement, (13 July 2017), available from: <https:www.gosh.nhs.uk/file/23611/download?token=aTPZchww> , accessed: 17/02/2021
[68] Miller v Miller; v McFarlane v McFarlane [2006] UKHL 24
[69] ibid., [128]
[70](n 57) 289
[71] 'Statistics briefing: looked after children', (2019), 10, available from: < https://learning.nspcc.org.uk/media/1622/statistics-briefing-looked-after-children.pdf>, accessed: 17/02/2021

But the chain of neglect could partially be blamed on the *"state run NHS*[72] *[which is always] looking for ways to cut costs"*[73], suggesting that when Dr Mary Schwartz examined Climbie and concluded her injuries were due to scabies, had more funds and less budget cuts been in place Climbie's death could have been prevented if more efficient equipment was available at the time to assess her injuries which would have eliminated barriers of medical negligence. Lord Laming further stated that in relation to the lack of the multi-agency approach in the Climbie case "*it may be that some organisations will be subject to criticism… but fairness will dictate*".[74] From this, it can be deduced that where the negligence reaches the barrier of gross-negligence by an organisation that failed to act proportionately, the consequences of such misconduct could be severe and may result in criminal liability.

Due to the failures of the multi-agency approach which may have prevented Climbie's death, the law evolved in a manner which ensured strict information sharing between organisations, as well as provided guidance via the Laming Inquiry which Lord Laming emphasized "*may help avoid, so far as is possible, a tragedy of this sort happening again*".[75]

Lai presented that the main purpose of the 2004 Act[76] was to *"address 'past failings', and to strengthen the effectiveness of the system in protection for all children*".[77] Moreover, Lord Laming's recommendations of the core principles to effective protection of children concluded that; safeguarding and promoting children's welfare were to remain as a priority, effective information sharing to prevent children from exposure to a risk of harm must be identified correspondingly with children's needs. In achieving these principles, the 2004 Act imposed stricter policies on children's services to safeguard and promote children's welfare, and to work together to promote children's well-being, by sharing information.[78]

[72] National Health Service
[73] C Thomas, 'Charlie Gard – the state is not God', Fox News, (13 July 2017), available from: https://www.foxnews.com/opinion/charlie-gard-the-state-is-not-god, accessed: 17/02/2021
[74] (n 57) 49
[75] (n 57) [15]
[76] Children Act 2004
[77] A Lai, 'The Children Act 2004 and Asylum Seeking Families – Every Child Matters? (2008) 22, JIANL,174 - 182
[78] S 10/11 Children Act 2004

However, children within supported asylum-seeking families are exempt from the benefits of these provisions as the BIA (previously known as NASS)[79] is excluded from the ambit of Section 10 and 11[80] which is an indication that in the early 2000's a loophole of prevention from neglect and abuse had not yet been filled, as in 2004 over 9,830 asylum seeking families required support.[81] *Lai* further suggested that this provision is *"inadequate and will restrict its primary function of immigration control*".[82] On the other hand, the intended duty of the Act is to ensure agencies are correspondingly working together to promote safeguarding, and "*by no means restricts the main purpose of immigration controls*".[83] From this it can be deduced that, there is no indication of evidence to suggest that a duty to safeguard children's welfare will undermine immigration control.

Furthermore, the welfare principle was developed by the courts in the late eighties. Prior to this, the father was the legal guardian of his 'legitimate' children. Towards the end of the eighteenth century the Chancery Court developed a new approach which attempted to protect children by the criminal law from abuse and injury and applied principles of fairness to mitigate the harshness of the common law developed in the King's court.[84] It followed that it would be in the society's best interests if the children were educated and heard. But the courts observed in *Re Agar Ellis*[85] that *"[T]he father knows far better… what is good for his children than a court of justice can*".[86] In addition the law evolved in 1925, with the enactment of the Guardianship and Infants Act 1925 which allowed mother's gain equal custody of their children.

The "*welfare principle is probably one of the most accurately understood legal principles*".[87] But Lord Nicholls, outlined that,

[79] National Asylum Support Service
[80] ibid., 175
[81] Commission for Social Care, 'Safeguarding Children. The Second Joint Inspector's Report on Arrangements to safeguard Children', (2005), para 7.5
[82] (n 57), 177
[83] Children Act 2004, Explanatory Notes, para 68
[84] Fake Law, 'The Secret Barrister – The Truth About Justice in an Age of Lies', Picador, Published in 2020, 309
[85] [1883] 24 Ch D 317
[86] ibid., Bowen L.J.
[87] J. Herring, 'Farewell Welfare?', (2005) 27(2) JSWFL, 159-72 at 169

"in reaching its decision the court should always have in mind that in the ordinary way the rare ring of a child by his or her biological parents can be expected to be in the child's best interest… and should not be removed without compelling reason".[88]

From this it can be deduced that, if the principle of 'keeping family's together **only** if it is safe to do so' was followed, it is apparent that, had the Victoria Climbie case been heard in 2021, the likelihood of her removal is far greater than it was in early 2000's as the courts would place greater emphasis on *"the child's present and future life as a human being*".[89] The Children Act 1989 was subject to improvements and more importantly stricter safeguarding procedures have been implemented (Laming Inquiry).

The Laming Report mandates that each Local Authority must appoint a children's director in the Statutory Local Safeguarding Children's Boards when replacing the Area Child Protection Committees. The report emphasized measures *in Every Child Matters* that improvements of information-shares are crucial,[90] as this has "*demonstrated benefits… which allows to track down children*".[91] Section 11(5) of the Children Act 2004 further imposes a statutory duty on children's services to co-operate with arrangements on information sharing. Whilst the obligation of information-share is greatly emphasized throughout statute, the information-share approach failed once again following the death of Baby Peter. But the report highlights that restrictions for intervention is due to the lack of available resources, which strips children of early intervention and prevention.[92]

The multi-agency approach was questioned once again. On May 13, 2009, the CQC published a report in relation to systematic failings in the healthcare services provided by the NHS to Baby Peter.[93] Peter had 34 contacts with health

[88] Hodak v Newman [2006] 4 All ER 241, [2]
[89] RE B (A minor) (wardship: sterilisation) [1988] AC 199, 2020, Lord Hailsham
[90] DFES *Every Child Matters* (2003) TSO, para 4.1
[91] (n 57), 177
[92] ibid., 178
[93] Anonymous, 'Baby Peter Aftermath – [2009]', Fam Law 635

professionals and upon review it was found that an inadequate approach was taking place namely,

"actions of protection lacked urgency, staff adapted a threshold of concern for taking into that was too high and; if doctors, lawyers, police officers and social workers had adopted a more urgent approach the case would have stopped in its track at the first serious incident".[94]

Williams further elaborated that according to LSCB's[95] and Serious Case Review the interventions made in the case were 'lacking in urgency'.[96] But, Kay LJ stated, *"[W]hilst I accept there was a degree of urgency… [T]his is not a case of a front-line social worker who may cause damage to children*. [97] This presents that a degree of accountability will not be placed on the errors made on behalf of local authorities, but those who satisfy the *actus rea* (physical act) of the offence towards the child.

As a result of over 50 injuries Baby Peter was pronounced dead in 2007, after a series of reviews which identified missed opportunities. One missed opportunity involved not looking into the background of Barker (carer for Peter), who as a child tortured animals – skinning the latter before breaking their legs for which he was prosecuted for.[98] On the other hand, this could have brought an action against local authorities contrary to Article 8 'the right to a private family life'.[99] Moreover, the Serious Case Review also outlined that *"what was required was an authoritative approach to the family, with a very tight grip on the intervention"*. [100]

Following the death of Baby Peter, the serious case review in relation to Baby Peter suggested 'a multi-agency approach' is crucial was published.[101] SCRs[102] *"is a local enquiry carried out where a child has died or been seriously harmed and abuse or*

[94] ibid., 637
[95] Local Safeguarding Children Board
[96] L Onaran and E Williams, 'Statutory Accountability in Safeguarding Children: The Shoesmith Scenario', 2011 Fam Law 979
[97] R (On the Application of Shoesmith) v Ofsted) [2011] EWCA Civ 642, [61]
[98]Anonymous, 'Baby Peter – Background', https://actionagainstabuse.wordpress.com/baby-peter-connelly-01032006-17082007/baby-peter-background/, accessed: 17/02/2021
[99] Human Rights Act 1999
[100] Serious Case Review – Baby Peter, 2009 16
[101] (n 82) 636
[102] Serious Case Review

neglect are suspected".[103] The SCRs often identify learning points, areas for improvement in the processes of the organisations and suggests future actions to reduce the risk of future child deaths.[104]

This suggests that the Laming inquiry and other written policies are not enough to avoid mishandling by officials, missing, and delaying meetings, miscommunications amongst officials and failings to follow through with decisions despite heavily concentrating on safeguarding. Whilst the review recognised poor communication between agencies and poor recruitment practice (lack of training) it does not ensure sufficient staffing levels or ensure communication takes place particularly when dealing with referrals.[105] However, due to shortages in staffing (nurses, consultants, and administrative staff) which cannot be controlled easily it is apparent 'poor recruitment practice' cannot be effective unless more qualified individuals enrol into the system as a practitioner.

Moreover, *Williams* further stated "*Baby Peter's horrifying death could have been prevented. If the principles had been applied*".[106] But he may have suffered physical and psychiatric injuries which would not have been reversable and would have impacted his life. *Robson* further suggests that our elected representatives should control "*outburst in tabloids about punishment*"[107] and implement harsher sentences which would result in a fundamental shift in the family justice system. Although, no statistical research has been published in support of 'less usage of social media will lead to harsher sentences. However, when considering public policy justifications, the courts are already permitted to use their discretion and implement harsher sentences wherever it is reasonable to do so.

Following Climbie and Baby P, it can therefore be established that a multi-agency is critically important when dealing with matters that concern the child's welfare. *Johnson* further elaborated on new laws which will be expanded in England that will

[103] P. Sidebotham & others, 'Pathways to harm, pathways to protection: a triennial analysis of serious case reviews 2011 – 2014', DfE, (2016), 11
[104] ibid., 19
[105] (n 82) 636
[106] (n 85) 981
[107] G Robson, 'Learning the Hard Way', (2009), 173, CLJW, 391

prohibit sexual relationships between students and teachers[108] (awaiting amendments of the Sexual Offences Act 2003[109]), which is a proportionate shift in child abuse laws, as this will potentially reduce the risks of grooming. Moreover, the amendments of the Children Act 1989 allowed further laws to be implemented namely, The Children and Social Work Act 2017 and The Children Act 2004.

The 2017 Act[110] introduced Corporate Parenting Principles which aims to 'have regard to the need' to take certain actions in their[111] work for children[112] in care such as "(*a) to act in the best interests, and promote the physical and mental health,[113] (e) promote high aspirations".*[114] This suggest that the intervention not only concentrates on the safe removal of the child should it appear that they are at risk of suffering significant harm, but also promotes their independence through education and employment which is of paramount importance, especially throughout the COVID-19 pandemic as "*available evidence indicates that self-reported mental health and wellbeing worsened during the first national lockdown of the COVID-19 pandemic*".[115] But, with an active response of the government which has recently awarded £79m to support mental health means that Local Authorities will be able to concentrate on the mental wellbeing of the children with greater precautions.[116]

In addition, Section 13 of The Children Act 2004 introduced LSCB's[117] which must take reasonable steps outlined in Section 14 to:

"(a) co-ordinate what is done by each person represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area".

[108] H Johnson, 'Child abuse laws in England and Wales to be expanded and close legal loophole – full details explained', Yorkshire Post, (9 March 2021), available from: < Child abuse laws in England and Wales to be expanded and close legal loophole - full details explained | Yorkshire Post>, accessed: 10/03/2021
[109] Section 16 – *Abuse of position of trust*
[110] The Children and Social Work Act 2017
[111] Local Authorities
[112] (n 109) Chapter 1
[113] ibid., Section 1(a)
[114] ibid., S 1(e)
[115] PHE, 'COVID-19 mental health and wellbeing surveillance report – 2. Important findings', (25 February 2021), available from: < 2. Important findings - GOV.UK (www.gov.uk)>, accessed: 10/03/2021
[116] DoHSC, '£79 million to boost mental health support for children and young people', (5 March 2021), available from: £79 million to boost mental health support for children and young people - GOV.UK (www.gov.uk), accessed: 10/03/2021
[117] Local Safeguarding Children Boards

This therefore suggests that the LSCB's function includes careful reviews or investigations of the agencies involved in proceedings to ensure that each organisation acts accordingly.

Whilst there are significant similarities between the Children Act[118] and the Social Work Act[119], the Children Act 2004 places greater emphasis on ensuring the organisations act in the best interest of the child, whereas the Children and Social Work Act 2017 aims to offer additional support with matters that concerns the child's 'future', as well as increasing accountability for partners – it makes significant changes in terms of safeguarding at national and local levels as established in Section 1. In addition, Section 3 of the 2017 Act places greater emphasis on '*Advice and support'* as the Local Authority must *"(b) prepare a pathway plan for the former relevant child".* This is also like Section 23CZA of the Children Act 2004, which suggests that safeguarding children is a crucial element during intervention. Moreover, several sections such *as Section 4 'looked after children'* and *Section 8 'care orders'* are remarkably close to being indistinguishable to those mentioned in the Children Act 2004, suggesting that amendments of the Children Act would have saved Parliament funds and time as opposed to implementing repetitive statutory guidance. This would have allowed for the left-over sources to be passed onto another organisation that finds themselves in need.

More importantly, the Children and Young Persons Act 2008 places further awareness of safeguarding, whereby Section 7(1) states that "*it is the general duty of the Secretary of State to promote the well-being of children in England*". It is therefore clear that, legislation regarding children intends to provide high levels of safeguarding. The high levels of safeguarding reach a barrier of preventing the child being exposed to 'significant harm' and even death, which is an undoubtedly high standard of expectations. From this, it can be deduced that the law surrounding child protection has and continues to evolve in a manner which places extreme emphasis on safeguarding and early intervention. Moreover, the 2021 response in relation to

[118] The Children Act 2004
[119] The Children and Social Work Act 2017

new child abuse laws (reduction of grooming) means the law is constantly attempting to remove loopholes in policies and legislation to protect children from harm.[120]

Conclusion

The Children Act 2004 is a core provision for family law proceedings, but it is essential that the law surrounding child protection is one that places equal emphasis on human rights namely Article 8, whilst ensuring many children receive an adequate opportunity to be protected from harm. Given the many functions of the 2004 Act, it is apparent that the complex nature of powers and duties is limited if there is lacking evidence to support measures such as removal or to file proceedings.

The emotive reality of the decisions that are placed upon Local Authorities, other provisions such as Working Together 2018 which cover strict guidelines which additionally supports the organisation involved in such proceedings, to promote an adequate and fast response. Although, many cases such as Baby Peter and Victoria Climbie prove against this effectiveness, the current available sources; The Children Act 2004, The Children and Young Persons Act 2008 and the Children and Social Work Act 2017 ensure adequate guidance on safeguarding is clearly set out and ensures that the core aims of agencies working together to prevent children from suffering significant harm are consistently promoted.

Crucially, there is a lack of statistical data in respect of the effectiveness of the inquiry's.[121] However, what is clear is that there are legislative provisions in place which outline thresholds, importance of a multi-agency approach and their responsibilities, such that there is a higher level of protection in place. Additionally, the 1989[122] Act allows provisions to safeguard children in need through several proceedings, whilst also ensuring Local Authorities do not remove children and build safe family relationships where it is safe to do so. Without such measures, the courts

[120] H Jackson, 'Child abuse laws in England and Wales to be expanded and close legal loopholes – full details explained', Yorkshire Post (9 March 2021), available from: <Child abuse laws in England and Wales to be expanded and close legal loophole - full details explained | Yorkshire Post>, accessed: 17/03/2021
[121] Lord Laming Inquiry, Cleveland Inquiry
[122] Children Act 1989

would not be able to remove or retain a child which would only lead to a clash in society.

Furthermore, the law since 1989 has evolved in a manner which strictly prohibits the acceptance of child abuse through several provisions; s31 which assesses the child's development needs and s11[123] which imposes a statutory duty on a multi-agency approach. Whilst protection of children is not guaranteed, the strict policies covering safeguarding do in fact prioritise child protection against abuse. It is therefore safe to assume that since the 1980's children have greater protection, as physical abuse and mental health are officially recognised which allows the Local Authorities to understand the child's feelings and wishes and upon assessment allows such organisations to create a pathway based on improvements, which creates an effective aim for protection against abuse.

Finally, the implemented policies and legislation since the early 2000's target children in need to ensure they are protected from a risk of harm.

Word Count: 6, 496

[123] Children Act 2004

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