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## EMERGENCY POWERS FOR CHILD PROTECTION

Parliament often makes family laws ‘in the dark’ – that is, without any clear picture of how the family justice system works, or the eventual impact of those laws once they are in place. (Department of Constitutional Affairs, 2006a)

### INTRODUCTION

This is a book about child protection, the accountability of professionals using child protection powers and the effectiveness of the courts in controlling emergency child protection. It is based on, and discusses the findings from, two empirical studies into the use of emergency powers for child protection conducted between 1998 and 2004, and funded by the NSPCC and the Nuffield Foundation. These studies explored the way in which emergency powers were used to protect children. Who used them? Why? When? And in what circumstances? These studies sought to follow the socio-legal tradition of understanding the operation of the law in practice through the analysis of case records and interviews with practitioners, using the intentions of the legislators and the interpretations of judges only as reference points. The work explores the gap between the law in books, the Children Act 1989 and the law in practice (Abel, 1973) in order to explain the structural limitations that prevent practice from matching the intent of legislation and restrict the courts’ ability to hold local authorities to account.

Child protection professionals work in a legal context doing ‘statutory social work’, but they also work within agencies and inter-agency structures where different professionals interpret their legal responsibilities differently, where law is not the only determinant of action, and where it is not always the dominant influence (Dickens, 2006; Braye & Preston-Shoot, 2006). Law is both a source of power and of control for social work action; social workers are also

empowered and controlled by their status as workers in child protection, by other professionals within their agencies and by colleagues in the interagency network, particularly the police who also have powers to provide immediate protection for children.

This chapter sets out the theoretical, legal and practice context within which emergency child protection powers are exercised and controlled. It outlines the current law on emergency intervention, the extent to which powers are used and gives a brief account of the research. This provides the background to the subsequent chapters, which examine the development of emergency protection powers, their current use and control and proposals for their reform.

### **THE NATURE OF EMERGENCY POWERS AND EMERGENCY SERVICES**

States of emergency operate without their normal legal and administrative structures that limit and control state power. At times of emergency, states suspend legal protections in order to focus their resources and forces on what threatens them. Schmitt argued that without provision for emergencies, normal rules would be subverted, and safeguards removed, to provide for extraordinary cases. Emergency laws were therefore essential to protect the public. But, in the absence of the usual controls on state action, the public are also more vulnerable. For this reason, emergency powers should be kept distinct from general powers and their use should be subject to extensive review (Müller, 2003, 187). Similar arguments can be used about child protection laws. Special rules are necessary to deal with emergency cases so that children can be made safe without subversion of the ordinary provisions.

Parallels with emergency relief and emergency medical treatment are also instructive. Treating a problem as an emergency brings additional resources that are not available for ordinary cases and creates further incentives to identify problems as emergencies. Attention is focused on providing a rapid response to the crisis, and less thought is given to long-term resolution or to accountability (Lipsky & Smith, 1989).

Treating cases as emergencies prioritises a quick response over considering a wider range of possibilities, including planning action and making arrangements that are more durable. An emergency repair may not last. It may only fix the immediate problem and not deal with the underlying causes. Where medical services are focused on emergency treatment, fewer resources are available for routine care. But planned services for chronic conditions such as asthma and diabetes can reduce the need for emergency admissions and improve the quality of patients' lives (Dr Foster Intelligence, 2006). So emergency intervention can displace the preventative care, which, if properly designed can reduce the need for emergency services.

Labelling a problem as an emergency still leaves questions about what special response is required. Not all emergencies justify the same treatment; even emergencies have to be prioritised. For example, a driver whose car has a flat tyre wants the breakdown service to come as quickly as possible but may have to wait. Recovery services generally prioritise those travelling with small children, the elderly and people with disabilities. For each driver, the breakdown requires an emergency response, but some are more urgent than others. Again, neither motorist nor mechanic wants to delay the response, dealing with the breakdowns as quickly as possible is what is normally required, but some circumstances justify a faster response than others.

The rush to treat can mean that mistakes are made; issues are overlooked and occasionally greater harm results. Risks are higher and mistakes by those handling emergencies are more understandable and more accepted than in other cases. Professionals handling emergencies are not expected to operate at the same standards as those handling routine matters with less pressure. Account has to be taken of the need for quick decisions and the more limited access to information and advice. Where emergency action is taken, risks are greater and protections are less, but this is justifiable because the consequences of not allowing intervention or not intervening are assumed to be worse.

Identifying a service as 'for emergencies' may appear to suggest that it is not intended for use in every case. But for some incidents, such as accidental fires, an emergency response is the only response. Without quick action the fire may spread, adding to the damage and increasing risk to life. An emergency response, calling the fire brigade and rushing to the scene is normal. The distinction between emergency and non-emergency child protection accepts that a more measured response is better for some cases, or alternatively that there are children who can wait for protection. But even then it is necessary to decide whether a particular incident should be treated more like a fire or a flat tyre.

### **CHILD PROTECTION EMERGENCIES**

Most child protection systems make special provision for cases that need a swift response. They may provide speedy procedures through which social workers can obtain a warrant from the court, or allowing them to make 'warrantless apprehensions' of children who need immediate protection (Masson, 2004). Special procedures allow the usual means of securing children's safety to be bypassed. For example, in New Zealand a family group conference is generally required before care proceedings can be started but a social worker can apply to the court for a warrant to remove the child before the conference takes place. The police also have a power to remove children without a warrant (Aitkin, 2000).

In England and Wales, emergency powers allow children to be removed from danger without the need for either court proceedings involving parental participation or proof of significant harm. In doing so, they overcome the obstacles to child rescue created by highly formal court proceedings and deference to parents' rights. Emergency powers override the normal rules in care proceedings, which safeguard family privacy, to allow protective intervention but they place parents and children at greater risk of unrestrained action from child protection agencies, including the police. Moreover, where they are seen as avoiding unnecessary procedural complications, simplified emergency systems can become routine responses (Social Services Select Committee, 1983–4, para 123). Emergency child protection powers are restricted; their use is subject to conditions, procedures and time limits, but these are defined in such a way that the primary purpose, securing children's safety, is not frustrated. Not only do they ease children's entry to the child protection system they may also help to keep them there. The limited standards applied initially under emergency procedures may become determinative because all those charged with reviewing cases are influenced by the fact that such action was considered necessary (Cooper Davis & Barua, 1995; Chill, 2004).

Protecting children in emergencies necessitates a rapid response – *acting in time* (Ferguson, 2003). Government guidance on child protection, *Working Together*, includes a section on immediate protection, emphasising the importance of acting quickly 'where there is a risk to the life of the child or a likelihood of serious immediate harm' (Department of Health *et al.*, 1999, para 5.23; Department for Education and Skills, 2006, para 5.49). Immediate action creates the space for decisions to be taken about the child's future care. However, the focus on securing the child's safety, may lead attention away from balancing safety with the risks of intervention.

Child protection emergencies can arise from physical abuse where injuries require treatment. Long-term neglect is also recognised as significant harm, and may require an immediate response because of its damaging physical effects. Child protection emergencies are not defined entirely by the child's physical condition; the family context is crucial for the child's safety. The parents' response to a proposed intervention can create additional risks to the child through retaliation, self-harm or flight, and any of these may necessitate acting without warning parents. Emergencies may arise without warning but others can be predicted. *Working Together* refers to 'planned emergency action' on the basis that child protection interventions should, where possible, be based on interagency discussions not the views of a single agency alone (Department of Health *et al.*, 1999, para 5.50). Planned emergency response also occurs where the risk arises immediately an event occurs but it is unclear when this will be; for example, where a child will be born to a mother unable to provide safe care.

Like other aspects of child protection, identification of emergencies is a subjective matter where assumptions about how a situation will develop and

perceptions about what is expected influence thresholds (Dartington Research Unit 1995, 17). Intervention is about both protection and prevention. Abuse is a predictor of further abuse; there are risks to children of not intervening once harm has been identified. Both victims and other children in the family may need to be separated from alleged perpetrators. The culture of blame means that workers are, or feel, at risk if they fail to prevent serious harm (Ferguson, 2003, 116; Scourfield, 2003;) and may therefore focus on making defensive decisions (Dingwall, Eekelaar & Murray, 1995; Fernandez, 1996, 178; Parton, 1996, 13). These considerations also apply to child protection generally; terms such as 'real emergency' or 'dire emergency' are used to distinguish cases justifying use of special powers from others where action needs to be taken but the ordinary powers can be used (Department of Health, 1991d) but it is not clear that there is agreement about what these mean or that it is possible when faced with an emergency to know whether it is (or will be) dire.

Just as nursing support can prevent the need for emergency medical admission, increased family support may enable parents to care for their children. For example, parents who are substance misusers may receive treatment for their addiction and be able to focus on their children's needs rather than their own. However, such a change is not simply about refocusing services from investigation and intervention to family support (Dartington Research Unit, 1995), it requires a change in the relationship between social workers and parents with increased levels of trust and respect. Local authorities have to make services available for families before a crisis has been reached, and parents and the community as a whole have to be willing to accept that health and social care professionals have a role in directing the way children are looked after by their parents.

### **PARTNERSHIP WITH PARENTS**

The Children Act 1989 sought to rebalance relationships between families and the State by extending local authorities' responsibilities to support families and to set clear limits and procedures for intervention in family life. 'Partnership with parents and consultation with children on the basis of careful joint planning and agreement' was stated as the 'guiding principle' for the provision of services (Department of Health, 1991b, para 2.1). Rather than focusing on parental failings and seeing parents as disposable, the Act sought a change of emphasis, recognising the strengths of parents and their capacity to cope with their difficulties. The aim was to create positive relationships between families and local authorities so that parents would draw on their support when they needed this and local authorities would not have to resort to their powers of compulsion. Such co-operative working is more effective in securing children's well-being (Department of Health, 1995, 9), and reinforces both

parental responsibility for children and the local authority role in supporting families.

Partnership with parents is not limited to circumstances where children are supported in their own homes, but includes arrangements where children are accommodated by local authorities. Accommodation (still sometimes referred to as 'voluntary care') was presented as a service to families without stigma (Parton, 1991, 155). Parents would remain fully involved in decisions about their children's care. In contrast to the previous law, parents retain the right to remove children from local authority accommodation, just as they would if their children were staying with relatives or friends. Parents do not have to give notice of their intention to remove their children; and if the local authority wants to continue to look after them it must obtain a court order. Changing the law in this way was controversial; concerns were expressed that foster carers would have to hand over children to parents who were obviously not in a fit state to look after them. However, Lord Mackay who piloted the Bill through the Lords, asserted that foster carers could keep children in such circumstances by relying on the general powers to safeguard children (Children Act 1989, s.3(5)). This explanation was not very convincing (Cretney, Masson & Bailey-Harris, 2003, 710), but it indicated that the government intended to hold onto the balance it had set in the Bill and to leave social workers and carers to manage the consequences as best they could.

Compulsory measures, requiring families to accept services or having children removed and placed in care, are only available where children are 'suffering or likely to suffer significant harm' (Children Act 1989, s.31(2)). The courts decide whether a case for compulsory measures has been established. Court orders are not routine; the 'minimum intervention' principle (Children Act 1989, s.1(5)) allows orders to be granted only where they are necessary for the child's welfare. This was intended to encourage local authorities to work with parents and gain their co-operation, rather than to resort to the courts. The Act recognised that children continued to need protection but sought to change the way protection was provided with greater reliance on protective agreements with parents and more limited use of the courts.

### **Partnership in Practice**

Initially there was a decline in the number of care proceedings, but this may have reflected local authority uncertainty about bringing cases under the new provisions rather than major changes of approach. Early research on child protection cases brought to the courts suggested that proceedings were less likely to be crisis driven than they had been previously. Rather than rushing to court, local authorities made strenuous efforts to avoid compulsory powers and relied on providing accommodation or agreements for children to live with

relatives. This change meant that fewer emergency orders were made than before the Act, but such orders were still used in cases of crisis where children were at home (Hunt, Macleod & Thomas, 1999, 67). Research on the use of accommodation also suggested that it had partly replaced proceedings. The majority of children who were being accommodated after the Act were very similar to those previously removed under court orders (Packman & Hall, 1998, 257). Emergency admissions to accommodation rather than planned arrangements were common; in one of the two authorities in Packman and Hall's study, two out of three admissions occurred with less than 24 hours warning, as did three out of five arrangements for 'difficult adolescents' overall (Packman & Hall, 1998, 78, 121). As in the case of proceedings, a quick response was linked with viewing the provision of accommodation as a 'last resort'.

### **Partnership and Compulsion**

The Children Act 1989 enables local authorities to protect children by working with parents, or if this is not possible, to use their compulsory powers. Compulsory powers provide the context in which agreement is given or withheld. Parents' power to accept or reject proposals for their children's care is limited by social workers' powers. Packman and Hall identified cases where explicit threats had been made to parents to agree to accommodation. They questioned the voluntary nature of accommodation agreements where there were child protection concerns and commented that the use of threats of legal action meant agreements were just a sham. Also, if the response to a parental decision to remove a child from accommodation was court proceedings, this could feel little different from the previous law where they had to give notice and their parental rights could be taken away. Such an approach was contrary to the spirit of the Children Act, but made it possible to avoid court action as the Act intended (Packman & Hall, 1998, 95, 265).

From a lawyer's perspective, avoidance of proceeding poses further problems, relating to the control of local authority power and the protection of the interests of parents and children. Legal proceedings are intended to ensure a fair hearing for all parties. If arrangements are made outside proceedings, the basis for intervention is not tested; threats may produce a response which the courts would not impose. The effect of the agreement and the duration of any arrangement may not be clear; there may even be uncertainty about what has been agreed. Agreements may be made which serve the interests of the parents and the local authority, but take little account of the child's wishes and feelings. Where there are court proceedings, a children's guardian puts forward the child's welfare interests, but outside the proceedings the child's interests are taken to be protected by the parents.

## CHILD PROTECTION POWERS

As well as providing for agreements for accommodation and other services, the Children Act 1989 includes two methods of securing the protection of children in an emergency where the parents will not agree. Any person can apply to a magistrates' court under s.44 for an emergency protection order (EPO). Alternatively, all police officers have a power under s.46 to take children into 'police protection' without the need for any court proceedings. The grounds, procedures and effects of these provisions are considered below.

### Emergency Protection Orders

An emergency protection order is a short-term court order to secure the child's immediate protection. Department of Health guidance states that the purpose of the order is to allow the child to be protected 'in a genuine emergency' and stresses that it should not be regarded as 'a routine response to allegations of child abuse or as a routine first step' for care proceedings (Department of Health, 1991a, paras 4.28, 4.30). Although the order is termed 'an emergency protection order' there is no specific requirement for an emergency, or for urgency, except in cases where child protection workers cannot get access to the child. The court must be satisfied that the order is necessary, which would not be the case where the parent could safely have charge of the child until care proceedings can be heard on notice, a period of three days.

The order requires anyone who can to produce the child if asked to do so; it gives the person with the order power to remove the child, or to prevent their removal, and parental responsibility. These powers are limited. The child can only be removed to safeguard their welfare and must be returned if it is safe to do so; the parental responsibility granted by the order only permits action that is 'reasonably required to safeguard and promote the child's welfare' (s.44(4),(5), (10)-(12)).

Emergency protection orders can be sought by anyone. In contrast to all other orders under the Children Act 1989, there are no restrictions on who can apply for them. Controlling EPOs is a matter for the courts. The court is responsible for ensuring that the conditions for making an order are satisfied:

The court may make the order, if but only if, it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if –

- (i) he is not removed to accommodation provided by or on behalf of the applicant; or
- (ii) he does not remain in the place in which he is currently being accommodated. (s.44(1)(a))



The court assesses the evidence presented by the applicant, and will also hear from the parents if they have been notified, attend and want to make representations. The basis for the order is the court's acceptance that there is sufficient evidence to establish a serious risk to the child. The standard for intervention is on a par with the first part of the test for a care or supervision order but it is not necessary to prove significant harm, only that there is 'reasonable cause to believe' that it is likely. Alternative grounds apply to cases where a local authority (or the NSPCC) is making enquiries and these are being frustrated by an unreasonable refusal of access to the child. Refusal of access during child protection inquiries is a serious matter and has been an issue in a number of cases where children have been killed (Thomas, 1994, 77). In such cases, the local authority must seek a court order unless it is satisfied of the child's welfare (s.47(6)). The court considering any EPO application only needs to be satisfied that the applicant has 'reasonable cause to suspect' that the child is suffering or likely to suffer significant harm and 'reasonable cause to believe access to the child is required as a matter of urgency' (s.44(1)(b),(c)). In all cases, the court must also be satisfied that the order is necessary and in the child's best interests (s.1(1),(5)).

### Procedures and Guidance

EPO applications are made to the Family Proceedings Court (the lowest level of court with jurisdiction in family matters) unless there are proceedings relating to the child underway in a higher court. Most applications are dealt with by 'lay' magistrates rather than professional judges. The Court Rules provide that applications should normally be made on one day's notice but allow applications *ex parte*, that is without notice to the parents, with the permission of the magistrates' clerk. Without notice applications can be heard by a single magistrate. *Volume 1* of the guidance on the Act (Department of Health, 1991a) appears to have assumed that orders would 'usually be heard *ex parte*' because the 'very fact that the situation is considered to be an emergency requiring immediate action will make [notification of the parents] inappropriate or impractical in most cases.' Also, '[i]t should be borne in mind that in certain instances to put the parents on notice of the application might place the child in greater danger' (Department of Health, 1991a, para. 4.46). However, *Volume 7* stresses the need for arrangements to be put in place for the immediate appointment of a children's guardian for EPO applications. It notes that *without notice* applications need the permission of the court, that a procedure for contacting a guardian at very short notice is required, and that the courts and guardian service should clarify their expectations about these appointments (Department of Health, 1991c, paras 2.69-70).

When granting the order, the court may include provision for the applicant to enter and search premises and/or a warrant to allow the police to assist them, using reasonable force if necessary (s.48). The Department of Health advises applicants to consider making such applications but points out that in 'dire emergencies' the police can use their powers under the Police and Criminal Evidence Act 1984 (s.17(1)(e)) to enter and search without a warrant (Department of Health, 1991a, para 4.57). The court may make directions about contact with the child or medical assessments so that it controls these aspects of the child's care. In addition, it has the power to exclude a person from the child's home if this would protect the child and avoid the need to move him or her, providing that there is someone else who is able and willing to care for the child there (s.44A).

The order lasts up to eight days; a local authority (or the NSPCC) can apply for it to be extended further for up to seven days. However, the Department of Health notes that even where the EPO has been obtained following a 'genuine emergency' it should be possible to make the application for a care order without seeking an extension (Department of Health, 1991a, para 4.66). Any challenges to the order should be made in the magistrates' court and not by judicial review (*Re M*, 2003). There is no appeal, but after 72 hours parents, carers and the child can apply for the order to be discharged if they were not notified of the original proceedings or were not present when the order was made (s.45). If the order is refused, the applicant cannot appeal but can apply again with further evidence (*Essex County Council v. F*, 1993) or ask the police to use their powers of police protection.

Recently, three High Court judges have used their judgements in care cases to express anxieties about EPOs. Their views have been formulated at a considerable distance in time and space from the pressure to protect experienced by front line workers and without the experience of regularly making decisions in EPO cases. In response to specific examples, including one (*Re X*, 2006) of poor practice by all concerned, they have suggested a more restrictive approach to the use of such powers and greater emphasis on protecting parents' rights. Such statements are not binding interpretations of the legislation but they are expected to influence both local authority applications and magistrates' courts' willingness to grant orders.

Munby J, hearing a care case where children had been removed by EPO following a long history of concerns and lack of parental co-operation over the children's medical treatment, suggested that a child assessment order (CAO) should have been used rather than an EPO. The local authority had obtained an EPO without notice so that the children could be medically examined to establish whether the parents were following the children's drug therapy appropriately. It is unlikely that evidence would have been obtained had the parents been given seven days notice of the assessment which is required for a CAO (Masson, 2004b). Munby J acknowledged that EPOs were 'in principle'

compatible with the European Convention on Human Rights, even where they were sought without notice to the parents but stressed the 'heavy burden of responsibility' on local authorities applying for, and courts granting, such orders (*X County Council v B*, 2005, para 34–5). He suggested that some practices, such as the use of eight-day orders, restriction on applications for discharge, the lack of appeal and the possibility of repeated removal, might not be fully compatible with the Convention. For this reason,

it was all the more important that both the local authority and the justices in the Family Proceedings Court approach every application for an EPO with anxious awareness of the extreme gravity of the relief being sought and a scrupulous regard for the European Convention rights of the child and the parents. (para 41)

This approach was followed by Ryder J (who had acted for the local authority in *X County Council*). The local authority received information which suggested that a couple who were claiming to be the parents of a baby might have obtained him illegally in Africa and trafficked him to England. After discussion with social workers, the parents agreed to DNA tests. The day after the local authority obtained results indicating that the couple were not the child's parents, it obtained an EPO without notice and removed the baby. Ryder J was highly critical of this. Giving a short period of notice would have been adequate protection against the 'supposed risk' of the couple disappearing with the child and would have allowed them to participate in the proceedings (*Haringey LBC v C*, 2005, para 26). The fact that adults were claiming to be parents of an unrelated child did not justify removing the child without allowing them to take part in the proceedings.

Most recently, McFarlane J was extremely critical of the decision to seek an EPO, without notice and against the advice of the local authority lawyer. He said less about the obvious failures of the court to assess whether the order was justified. The case illustrates how weak accountability mechanisms can be. In the (unidentified) local authority an application could be made without legal or senior management approval; the court granted the order with little evidence giving 'totally inadequate' reasons in (*Re X*, 2006, para 97).

The application had been made immediately following a case conference where there had been no suggestion of any need to remove the nine-year-old girl from her parents. The action was not precipitated by a decision that an emergency response was required to protect the child but rather because the opportunity to intervene arose when the mother took her to the Accident and Emergency department of a local hospital and asked that she be examined for 'stomach pains'. Not only did the case identify defective decision making by the social workers and managers involved, it also indicated failures in the legal process. No children's guardian or solicitor was appointed to represent the child. The court never considered whether an application without notice to the

parents was justified and did not assess the local authority's case adequately. It did not wait to hear evidence from the social worker who had most knowledge of the case but accepted, apparently without question, the assertions of the team leader. These failures of practice did not become apparent for many months; the child was separated from her family and placed in foster care for over a year before the local authority's care order application was rejected.

McFarlane J stated that cases of emotional abuse, non-specific sexual abuse or fabricated/induced illness where there is no medical evidence of immediate risk of physical harm 'will rarely warrant an EPO' (para 101l). EPOs should be limited to cases of 'genuine emergencies' and the court should consider separately whether there was a case for a hearing without notice. He questioned the wisdom of giving magistrates effectively the sole jurisdiction in EPO cases. In any event, magistrates needed to give more time and attention to these cases even if this precluded them hearing other cases. He restated and expanded the guidance given by Munby J, with the aim of raising the standards of court proceedings for EPOs.

### **Police Protection**

Police protection is a power that police officers can use where the requirements of the Children Act are met. The Act automatically grants the power to those who are police officers, just as other legislation gives the police powers to arrest suspects or enter premises without a warrant. The officer does not have to obtain authority from a court nor from a senior officer. However, social workers, lawyers, police officers and even Her Majesty's Inspectorate of Constabulary (HMIC, 1999, 25) refer to 'police protection orders' or 'PPOs' as if use of the power were subject to external control.

Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may –

- (a) remove the child to suitable accommodation and keep him there; or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated, is prevented. (Children Act 1989, s.46(1))

The basis for intervention is the police officer's belief about the risks to the child. Mere suspicion is not sufficient, the officer must have 'reasonable cause' for believing that the child is at risk. Not all risks justify the use of police protection; the officer must believe that child is 'likely to suffer significant harm'. As with an EPO, the standard for intervention reflects the first part of the test for a care or supervision order; but there is no need to establish

the cause of the harm or that intervention is in the child's best interests. And nothing has to be proved to a court. The power allows control over where the child is accommodated for up to 72 hours so long as a 'designated officer considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.' The designated officer can also apply for an EPO on behalf of the local authority (s.46(7)). This allows the police to secure the child's protection beyond 72 hours even where the local authority is unable or unwilling to do so. The police do not gain parental responsibility for the child but have both a power and a duty to take reasonable action to safeguard and promote the child's welfare (ss.3(5) and 46(9)).

Once a child has been taken into police protection, the police have specific obligations to liaise with the local authority both where the child was found, and where the child usually lives. An officer who has removed a child from home or elsewhere must arrange for the child to be accommodated by a local authority or placed in a refuge. Local authorities are required to receive and provide accommodation for children in police protection (s.21(2)(a)). The officer must inform the child about what they have done and what else they propose to do, and must try to find out the child's wishes and feelings. He or she must also inform parents and carers about the immediate plans for the child and arrangements for contact. The officer's action is supervised by a 'designated officer' who is responsible for conducting inquiries and making further decisions about the child's care and contact with their family.

Supervision by the designated officer provides the only check on the proper use of police protection. There is no provision for external review, or for appeal, although in theory, misuse of the power could be challenged though a writ of habeas corpus or by seeking judicial review of the officer's decision. The short duration of the power makes it practically impossible to use court proceedings to secure release from it but if the power were abused, a child who was removed unlawfully might claim compensation.

### **Guidance on Police Protection**

When the Children Act was implemented, the Home Office issued non-binding guidance to police forces in the form of a Circular. This largely repeated to requirements of the statute, giving much less guidance than the Department of Health provided on other aspects of the Act (Barry, 1993, 9). Police protection was intended to be used when there was 'insufficient time' to apply for an EPO (Home Office, 1991, para 13). No further guidance was given about the circumstances when the power should be used but officers were directed to the definitions of harm in s.31(9) and alerted to the need to 'use a standard appropriate for the child' and take account of the child's particular characteristics (para 14). Guidance issued by the Department of

Health was slightly more expansive, acknowledging that police protection replaced the former police place of safety order 'which was used to hold children such as runaways and glue-sniffers or whose parents had abandoned them' (Department of Health, 1991a, para 4.71). Police protection was not only intended to provide an immediate response where the local authority intended to apply for an EPO, it was a general power for protecting any child at risk of significant harm who came to police attention, including children at risk from their own behaviour.

The Home Office guidance emphasised that children should not be brought to police stations, which had been defined as 'places of safety' under the previous legislation. Suitable accommodation for a child removed into police protection 'will clearly not be police premises except for a short period in exceptional circumstances.' Chief Constables were expected to liaise with local authorities to ensure there was provision for children who were removed (Home Office, 1991, para 15). They were also advised 'to consider designating officers of the rank of Inspector' to take on the role of designated officer (para 19). Designated officers were 'legally in charge' of children in police protection, even where they were accommodated elsewhere. The responsibilities they had for the child were equivalent to the limited parental responsibility conferred by an emergency protection order (para 23).

Following the inquiry into the death of Victoria Climbié (Laming, 2003), the 1991 Circular was replaced to provide 'greater clarity about when and how' to use the power (Home Office, 2003, para 1). The new Circular considered at much greater length what amounted to significant harm, indicating a range of circumstances when intervention might be required but stated,

Police protection powers should only be used when necessary, the principle being that whenever possible the decision to remove a child from a parent or carer should be made by a court. All local authorities should have in place arrangements . . . whereby out of hours applications for EPOs . . . may be made speedily and without an excess of bureaucracy. Police protection powers should only be used where this is not possible. Save in exceptional circumstances (e.g. where there is an imminent threat to the child's welfare), no child is to be taken into police protection until the investigating officer has seen the child and assessed his or her circumstances. (paras 14–16)

The Circular repeated but expanded on points made in the earlier guidance about the role of the designated officer, providing suitable accommodation and liaising with the local authority. It stressed the separate roles of the officer who initiates police protection, the investigating officer, and the designated officer who provides 'an independent oversight' and should be 'at least of the rank of Inspector in all cases' (paras 8–9). Designated officers should regularly review the continued use of the power in respect of a child even though the child will normally be accommodated elsewhere (para 40). 'A police station

is not suitable accommodation' but the Circular advised that where children were exceptionally brought to a police station 'every effort should be made to ensure that the child is physically safe [and] comfortable ...' (paras 28–9). Arrangements could be made for children to stay with relatives but 'basic appropriate checks' should be made in relation to proposed carers (para 30). Police officers could apply for an EPO in their own right and the designated officer could do so on behalf of the local authority, whether the authority know of or agree to this. The police should 'make reasonable efforts to consult' the local authority before making such an application (para 53).

### **CONTROLLING THE POLICE VIA POLICE PROTECTION**

Police officers are asked by the public for help in all sorts of situations which have nothing to do with law and order or the protection of life, limb or property, such as delivering babies and providing family advice and assistance (Punch & Naylor, 1973; Shapland & Vagg, 1988). These are part of community policing, and depend on mutual agreement rather than any exercise of power. The police are traditionally the temporary repository of lost and abandoned children (Thomas, 1994, 74) and occasionally come across children in distress in the course of their work. Police protection provides a way of policing such children who would be at risk if the police had no power to take charge of them. It sets limits; unless other powers are exercised, children can only be removed if they are at risk of significant harm. They cannot just be rounded up and taken from the streets. Unlike adults, young children cannot agree 'to help with police enquiries' nor to accompany an officer voluntarily; parents have the right to make these decisions, and even then, child suspects who are questioned are entitled to the support of an 'appropriate adult' to protect them from police authority (Hodgson, 1997). The existence of the statutory power to take a child into police protection avoids officers seeking to rely on discretion or natural authority and imposes controls on them. An officer who takes charge of a child in order to protect him or her becomes subject to a series of duties to inform the child, parent and local authority, and the supervision of the designated officer. These protect the child by ensuring there is oversight of the officer's actions and other people know where the child is.

### **EPOS AND POLICE PROTECTION COMPARED**

The main differences between EPOs and police protection are the length of time they last and the way they are obtained. Although the parents of lost or abandoned children may be found quickly, and injuries which were thought to be inflicted may turn out to be accidental, there will be many circumstances

where the problems are not resolved within 72 hours. In such cases, police protection must be followed by new arrangements to safeguard the child. The short duration of the power makes it impractical to move directly to care proceedings and so there must be an agreement with the parents or an application for EPO to cover the period between the end of police protection and the hearing of the interim care order (ICO) application. In such cases, the EPO can be seen as a way of extending the protection initiated through use of the police power.

Police protection is also a means of protecting a child before an EPO can be obtained. It is much simpler for police officers to decide to use their powers, than for a social worker to make an application to the court for an EPO, even though this can be done without notifying the parents or providing any written evidence. There are practical considerations such as the special arrangements that have to be made for legal advice or court proceedings out of normal working hours, whilst the police provide a service 24 hours a day. There are also questions of standards for intervention and the protection of human rights. Although the tests for an EPO and using police protection are almost the same, only an EPO is subject to external review before it is used. This is intended to provide some check against unjustifiable action, and some protection for the parents' and child's rights to family life. Evidence provided to the Climbié Inquiry suggested that, at least in London, there was general reliance on police protection in place of EPOs. Lord Laming recommended that legal advice should be available to local authorities 24 hours a day (Laming, 2003, rec 47), but this was not carried forward by the Government. However, the revised Home Office Circular, Department of Health Guidance and the new *Working Together* (Department of Health *et al.*, 1999) all indicate a stricter approach to the use of police protection.

If it is necessary to remove a child, a local authority should wherever possible – and unless a child's safety is otherwise at immediate risk – apply for an emergency protection order. **Police powers should only be used in exceptional circumstances where there is insufficient time to seek an emergency protection order or for reasons of immediate safety of the child.** (Department for Education and Skills, 2006, para 5.51; Department of Health *et al.*, 2003, para 23.3 emphasis in original)

A recent claim by a child and his parents that their rights were infringed by the use of emergency powers required the courts to consider the interrelationship between police protection and EPOs. The Court of Appeal stated that the Children Act 'accorded primacy' to EPOs because they are 'sanctioned by the court' and involve 'a more elaborate, sophisticated and complete process' than police protection (*Langley v Liverpool City Council*, 2005, para 38). Reversing the lower court, it accepted that a police officer who knew an EPO has been obtained could still use the police power but such action was restricted to



cases where there were 'compelling reasons' (para 46). Since there were no such compelling reasons, the police were liable for removing the child, even though a social worker could have done so under the EPO which had already been granted. It remains to be seen whether the additional test will raise the threshold for the exercise of the power.

### THE USE OF EMERGENCY POWERS

Numbers can show trends but cannot indicate whether too much or too little use is made of these orders, or whether applications are being made in the right cases. The quality and usefulness of the data may be seen as reflecting the interest taken by agencies and government departments and suggest, at least in the case of police powers, significant neglect.

There are two main sources of data on emergency protection orders but neither provides a complete or accurate picture of their use. The *Judicial Statistics* (Department for Constitutional Affairs, 2003), published annually from a return completed by court staff, records the numbers of applications and orders for each calendar year. However, because returns are filed by only half of magistrates' courts the tables use imputed data. The Department for Education and Skills (and previously the Department of Health) publishes detailed statistics based on returns completed by local authorities in relation to each child who is looked after by a local authority (Department of Health, 2003a; Department for Education and Skills, 2004). This includes census information, a snapshot of the population of looked after children on 31 March each year, and information about children who enter or leave public care each year, using the standard financial year, April to March. In addition, it produced the annual *Children Act Report*, which included data on EPOs up to 2002.

There are two distinct ways of measuring the use of emergency powers, the numbers of applications and orders, or the proportion of care proceedings starting with emergency action. Table 1.1 reproduces the figures, from the *Judicial Statistics* (Department for Constitutional Affairs) for EPO applications and from the *Children Act Reports* (Department for Education and Skills) for orders made and extensions to EPOs. It also includes unpublished data on completed EPO cases from Her Majesty's Courts Service which were provided to the researchers, and calculations of the proportions of orders granted and extended. The number of applications shown in the *Judicial Statistics* is substantially lower than that in the Courts Service data; between 2000 and 2002 the published figures indicate a decline in use but the Court Service data show that the number of cases was stable or rising. Data from 1992 to 1996 make it possible to calculate the proportion of orders that were extended. Approximately one in eight orders were extended. The proportion of EPO

**Table 1.1** Numbers of EPO applications and orders

Year	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
EPO (HMCS)							3761	3494	2928	2942	3333
EPO app ( <i>Judicial Statistics</i> )	2321	2505	3072	2959	2417	2821	2799	1750	2488	2121	1960
EPO DH; DFES	2064	2282	2754	2697	2237	2621	2612	1516	2232	1890	1728
EPO + ext (DH; DFES)	2423	2546	3144	3054	2565	2393	2473	1516	2232	2127	NA
extensions (DH; DFES)	359	264	390	357	328	—	—	—	—	—	—
% extended (DH)	12.5	11.6	14.2	13.2	14.7	—	—	—	—	—	—
% success ( <i>Judicial Statistics</i> )	88.9	91.1	89.6	91.1	92.6	92.9	93.3	86.6	89.7	89.1	88.2

Sources: (DH) Department of Health, 2000, 2002; (DFES) Department for Education and Skills, 2003; Department of Constitutional Affairs, 2003 and unpublished data from Her Majesty's Court Service (HMCS).

applications resulting in emergency protection orders appears fairly constant at just under 90 per cent. More detailed information about the outcome of the EPO applications in the study is discussed in Chapter 7.

Table 1.2 reproduces figures from the *Looked after Children Statistics* (Department for Education and Skills, 2004) and provides information on children entering the care system under a care order, police protection, an EPO or by agreement under s.20. It indicates that the proportion of children entering through the use of emergency powers increased from nine to 12 per cent between 1994 and 2002; there was a slight increase in the use of emergency powers and a substantial decline in admissions under s.20, and overall. However, these figures do not provide the complete picture of the use of emergency powers. They record only the child's status on first entry to public care. Entry under an EPO appears low given the number of orders shown in Table 1.1 because many children would have entered under police protection with an EPO being made when the police power ended. The figures also omit children who are made subject to emergency measures in two different circumstances. First, children who are taken into police protection but do not enter the care system because they return home; second, children already looked after when emergency powers were used. These include children who run away from care and are returned by the police and those whose parents seek to remove them having previously agreed to their being accommodated under s.20.

Table 1.2 does not indicate what proportion of children with care orders first entered under emergency powers. The figures for care orders (which include interim care orders) relate to children who were not looked after before the care order was made and therefore were not subject to emergency measures. For information about the proportion of care proceedings initiated following use of emergency powers, it is necessary to look at research studies.

Table 1.3 outlines the proportion of care proceedings that were preceded by an emergency protection order in four separate studies. The first by Thomas and Hunt (nd) is the highest but probably reflects a substantial decline from the pre-Children Act position. Over 5000 children were removed under a place of safety order made by a magistrate in the year ending 31 March 1991, approximately twice the number of EPOs made in 1992 (Department of Health, 1994, para 3.10). The studies indicate considerable variation between authorities, and according to the ethnicity of the parents. The studies by Brandon *et al.* (1999) and Brophy *et al.* (2003) both show substantial use 'voluntary' accommodation (s.20) prior to care proceedings, and Hunt and colleagues comment that 'crises which would previously have attracted a place of safety order were being dealt with in other ways' (Hunt *et al.*, 1999, 68). High use of emergency powers was linked in these studies with agency culture, the involvement of the police and a lack of co-operation between parents and social workers.

**Table 1.2** Looked after children and admissions to the care system 1994–2002

	1994	1995	1996	1997	1998	1999	2000	2001	2002
Children looked after	49100	49500	50600	51200	53300	55500	58100	58900	59700
Children who started being looked after	30400	32800	31900	31400	29700	28400	28600	25100	24600
Admitted under care order	2400	2950	3090	3180	4600	4300	4300	4300	4100
Admitted under PP	1100	1100	1200	1500	1400	1500	1600	1500	1600
Admitted under EPO	1600	1300	1600	1600	1600	1800	1700	1300	1400
Admitted under s.20	24600	25200	24800	22200	20500	19100	19500	17200	16700
% entering by emergency powers	9	8	8	10	11	12	12	11	12

Sources: Department of Health, 1998b; Department for Education and Skills, 2004.

**Table 1.3** Use of emergency measures immediately before care proceedings

Study	% care applications with EPO	Comments
1991–1993 (Thomas and Hunt, nd) A quantitative sample from which Hunt and Macleod's more detailed study (1999) was drawn	45%	239/529 care applications preceded by an EPO 81% of EPO applications in Y1 followed by a care order application; 85% in Y2
1991–1993 (Hunt <i>et al.</i> , 1999, 58)	43%	35/83 care applications preceded by EPO. 21/35 EPO preceded by police protection
1993–1994 (Brandon, Thoburn, Lewis & Way 1999, 140)	36%	9/25 care applications preceded by EPO. 7/25 preceded by s.20. 3/12 EPOs not followed by care proceedings
1998–2000 (1996–2000 for South Asian sample) (Brophy, Jhutti-Johal & Owen, 2003, 31)	35%	Higher proportion of cases in South Asian group started by EPO 60% 24/42; lower proportion for White group 19% 9/47. For 74/182 children care application preceded by s.20
2000–2002 (Masson, Winn Oakley & Pick, 2004, 17)	18%	Wide variation between 3 authorities and over the 3 years from high of 42% to a low of 5%

Limited comparative data is available for other jurisdictions but most only report the number of times emergency powers were used. In Sheehan's study of child protection in Melbourne, over 50 per cent of court cases started with apprehension, that is a compulsory removal of the child. She comments that child protection work was 'perceived as crisis intervention with children removed because of immediate risk or harm' (Sheehan, 2001, 81). This may reflect the reluctance of courts to make orders before a crisis is reached because of an unwillingness to accept social worker's concerns and the emphasis placed on family preservation (Campbell *et al.*, 2003, 130). In Manitoba, use of emergency intervention is reported to be much lower, averaging 14 per cent of the child protection agency's caseload. Apprehension is stated in the social work training manual to be 'a last resort' and plans are made with parents specifically to avoid the need for apprehension. Nevertheless, only half the apprehensions there were classified by the child protection agency as 'emergencies' (*KLW v Winnipeg*, 2000, para 83).

### The Invisibility of Police Protection

There are no national statistics on police protection. The Home Office has never required these figures to be produced. Only a few police forces published information on their use of police protection or reported this to their Area Child Protection Committee (Barry, 1993, 14). Of the 16 forces surveyed for the first part of the police protection study, 13 kept records from which their use of police protection could be determined (see Table 3.1) but most of these did not routinely analyse their figures. Apart from the Act and the Circular, there are few references to police protection in government guidance, leaving the use and effect of the power obscure. There is no specific mention of children in police protection in the Codes of Practice issued under the Police and Criminal Evidence Act 1984. It is unclear whether Code C, *Detention, treatment and questioning of people by police officers*, applies to them. Children in police protection are not 'in custody' or 'detained' by the police, but neither are they at the police station voluntarily nor free to leave at any time. Although the power is briefly mentioned in the 1999 edition of *Working Together* (Department of Health *et al.*, 1999, 46, para 5.25), the new edition only specifically refers to it in an appendix (Department for Education and Skills, 2006, 202).

Discussion of the police power is also generally absent from child protection literature; Hunt and colleagues' study is a notable exception (Hunt *et al.*, 1999, 48, 56). Studies of court records and social services files miss it, and it is rarely referred to in accounts of child protection policing which tend to focus on the work of specialist Child Abuse Investigation Units (CAIUs) (Her Majesty's Inspectorate of Constabulary, 1999, 2005). Where the power is used to prevent a child being removed from hospital it is effectively invisible. Parents must be informed, but where it is used to prevent parents removing a new baby or an injured child from hospital they are likely to be so pre-occupied by concerns for their child and themselves that the use of the power may seem irrelevant. Only where police actually remove children from them may parents become aware of the full effects of the power. Even this may be unclear where social workers are also involved and have indicated that they will obtain an EPO. The infrequent and transient use of the power, its use away from the police station, and the sensitivity of any research that relates to children have combined to leave police protection a largely unknown power. Police exercising police protection are a 'secret social service' (Punch, 1979) whose work is unrecorded.

However, the power is widely used. The authors estimated that, outside Greater London, the area covered by the Metropolitan Police, police protection is used in at least 4,500 incidents each year involving 6,000 children. Use in London, where figures are not collated, is believed to be substantially higher than elsewhere in England and Wales. Far more children are subject to this hidden power than to EPOs.

## SYSTEMS OF ACCOUNTABILITY

Accountability requires individuals and organisations to be open about the decisions they take and the basis or evidence on which they take them (Simey, 1985, 24). Accountability may be secured through a third party, for example where the decision has to be endorsed by a manager or a court. Audit processes which check procedures have been followed or reporting and assessing against targets have increasingly been used to hold individuals and service providers to account (Power, 1997; Banks, 2004). All of these processes have been used since the mid-1980s to make social work more accountable, to parents and children, to the public and to central government. The Social Services Inspectorate has inspected social services in individual local authorities and also examined aspects of provision such as out of hours services more widely (Social Services Inspectorate, 1999). This work is now being undertaken by Ofsted and the Commission for Social Care Inspection (Poyser, 2005). Local authorities also have their own units which inspect and review the services they provide. Under the *Quality Protects* programme (Department of Health, 1998a, para 3.25) central government measured local authority performance against targets, for example on placement stability. The administration of the courts is inspected by Her Majesty's Courts Service Inspectorate, but this organisation has no remit in relation to judicial decisions. Inspections of police services are undertaken by Her Majesty's Inspectorate of Constabulary and data on specific police action has to be reported to the Home Office. These systems have not been used to make local authorities or the police accountable for emergency decisions but the use of police protection was scrutinized in the Climbié Inquiry (Laming, 2003).

The Children Act 1989 aimed to make social workers more accountable for their actions by clarifying the grounds for compulsory intervention and requiring court approval for all such action (Parton, 1991, 152, 194). It also made the courts more effective in holding social workers accountable to parents and children by ensuring parental participation with free legal representation and providing children's guardians to investigate and provide representation for children. The courts too were made more accountable; magistrates were required to provide written reasons for their decisions. The Act applied the same approach to emergency protection orders, but, as the research shows, there are practical and structural difficulties in controlling emergency decisions. EPOs are often granted without parents having an opportunity to participate in proceedings. There is no appeal; until recently magistrates and their legal advisers have obtained little guidance on the interpretation of these powers from senior judges.

Accountability for the use of police protection is provided through formal recording of decisions and their review by designated officers. This process allows for considerable discretion in terms of who has the role of designated officer and the form the review takes (see Chapter 3), but recent Home Office

guidance indicates that officers at least of the rank of inspector should be given this role and stresses the need for forms to be available for inspection and audit (Home Office, 2003, paras 9–10). However, there has been no systematic attempt to monitor the ways in which the power is used nationally and, in many forces, this is not done locally.

## **THE EMERGENCY INTERVENTION STUDIES**

In 1998, the NSPCC agreed to support a research programme on emergency intervention in child protection. A single study covering both police protection and EPOs was thought to be too complex; plans were made for a multi-method quantitative and qualitative study of the use of police protection to be followed by a complementary study of the use of EPOs. Information obtained in the police study would help identify issues for the later EPO study; as far as possible the two studies would be conducted in the same locations to facilitate access, allow maximum triangulation and develop a comprehensive picture of practice. The two studies were jointly funded by the NSPCC and the Nuffield Foundation.

### **The Police Protection Study 1998–2000**

The aim of the police protection study was to establish how frequently and in what circumstances the power was used, the factors which led officers to take this action, the information recorded, and what happened to the children. Given the lack of previous research or accounts of practice, it was necessary to explore which officers used the power, how use was recorded and the balance of decision-making power between the officers involved in order to design systematic research to capture this. The first stage used telephone interviews conducted with officers with lead responsibility for child protection in 16 forces to survey policies and recording practices, and to identify where more detailed work, reading records and interviewing officers, would be practicable. It was assumed that geography and resources would be factors in the organisation of services, the pressures on the police and their responses. Therefore, the 16 forces included covered metropolitan, rural (sparsely populated) and mixed areas, were drawn from across the country and operated in areas with a single social services authority or with more than one. Eight forces were identified from these interviews for the second stage; this sample reflected the range of the first and additionally took account of forces' use of police protection. Both high and low user forces were included. All the forces included were in England.



The second stage involved collecting data from a sample of records of the use of police protection and interviews about specific cases with the officers involved, usually one officer who had initiated police protection and the supervising designated officer. Interviews were tape recorded, fully transcribed and analysed using Word; records were analysed using SPSS. The sample included 311 instances, involving 420 children, where police protection was used. Fifty-seven officers, 24 investigating officers and 33 designated officers were interviewed.

A third stage involved interviews with local authority social workers with responsibilities for child protection policy or management, or working in out-of-hours services (emergency duty teams). Interviewees were identified by CAIU officers and worked in authorities serving all or parts of the areas of six of the eight forces. These interviews were also recorded and transcribed. At the end of the project two focus groups were held with police officers who had taken part in the study to discuss the findings and get feedback on ideas for improving practice identified during the study.

### **The EPO Study 2001–2004**

The aim was to establish the circumstances in which EPOs were used, who applied for them and for what reasons, how the courts dealt with applications, and the outcomes of the proceedings. The model for the structure and the selection of the sample was determined by the police protection study; there was a survey, a records-based study of recent cases and interviews with professionals in a small number of courts and local authorities. Three court areas (E, J and M), which are coterminous with the police forces were selected from the eight included in stage 2 of the police study.

The first stage was a national survey of court practice by structured telephone interviews with magistrates' legal advisers who had responsibility for public law Children Act proceedings. It covered 40 of the 42 magistrates' courts areas in England and Wales. These interviews focused on the practical arrangements for handling applications both during the day and out of hours; the appointment of children's guardians; and the influence of the Human Rights Act 1998. Where written protocols or guidance existed, copies were collected.

The second stage involved collecting data from court files for every application for an EPO and any subsequent care application made within the three selected court areas. These areas were all in England. Cases were identified from the court register; where care proceedings had been started subsequently, files were traced, including following transfer, and data was collected about these proceedings. There were 86 cases in the sample relating to 127 children. In each court area, magistrates' legal advisers and magistrates were interviewed

about their approach to these cases. Interviews were conducted with 24 solicitors who acted for either parents or children in care cases to cover their experiences with EPO applications; where possible a case from the court sample was discussed. The children's guardian panel (now part of Children and Family Court Advisory and Support Service (CAFCASS)) in each court area was also contacted to find out about arrangements for providing guardians for EPO cases. A short presentation was given about the research to a children's guardian meeting in each of the three areas, and guardians were asked to complete a questionnaire about their experience with EPOs.

The third stage involved interviews and file reading in the six local authorities with social services responsibilities within the three court areas. Local authority lawyers, social workers and social work managers were interviewed about decision-making in relation to the EPO cases in the court sample, and more generally. Fourteen local authority lawyers and 27 social workers and team managers were interviewed; social services and/or legal department files were read for 56 out of the 86 cases.

Towards the end of the study, three further local authorities were contacted where there appeared to be very little use of EPOs. Interviews were arranged with staff with responsibility for child-managing children's services and local authority lawyers to establish the reasons for this more limited use. These authorities are referred to collectively as Area 4. At the end of the study, two focus groups were arranged to discuss the findings and review possible changes in practice, one for lawyers and court staff, the other for social workers and policy makers.

Throughout both studies, preliminary analysis of both quantitative and qualitative data was used to inform the later stages of the work. Patterns observed in records data and ideas expressed by interviewees informed the interviews of others. The analysis used the grounded theory approach (Glaser & Strauss, 1967; Strauss & Corbin, 1990) but with detailed analysis of interviews supported by the analysis of records data to provide a wider context. The process was reflexive with issues raised in interviews explored through analysis of the data, identifying patterns across areas, professions or sub-samples, for example the babies removed at birth. Perceptions and recollections of interviewees could be compared, and related to the contemporary records from the court or the local authority. This approach to analysis allowed experiences in individual cases to be related to the wider sample, and approaches to similar cases in different locations to be compared. In this way, it was possible to identify the shared and divergent perspectives of different professionals, within different agencies and in different locations. Together these data revealed how decisions within agencies, by professionals and between agencies interacted to shape the use of emergency powers by the police and local authorities.

Further details of the sample and method are included in the Appendix A (see p. 225).

## CONCLUSION

Emergency intervention is a mainstream practice in child protection, and one that raises concerns about the balance between state intervention and family autonomy, and between child protection and parents' rights. Although the Children Act 1989 has stressed co-operative working, social workers regularly use compulsory powers to secure children's temporary protection. Formal powers obtained through the courts or held by the police exist alongside informal action that relies on parental co-operation. Where children need swift protection, social workers may negotiate with parents to obtain their agreement for protective arrangements, seek assistance from the police or apply to the courts for an order. The courts have an important role in determining whether emergency protection orders should be used but this responsibility largely falls on lay magistrates and is beyond the view of the higher courts. There is almost no public information about the use of police protection powers.

The following chapters discuss the development of emergency protection powers and the findings of the research relating to the use of police powers, local authority decision-making and the decisions of the courts. In doing so, they describe the circumstances in which the powers were used, the children and families who were affected by them, and how use of the powers impacted on the professionals, police officers, social workers, lawyers, magistrates' legal advisers and magistrates involved. The understandings of practice and the influence of law, agency relationships and power (or its absence) developed through this provide the foundation for evidence-based law reform. The final chapter discusses proposals for changes to the law relating to emergency intervention with the aim of achieving a system where workers and agencies are accountable and the exercise of these powers, which are frequently labelled as 'draconian', is effectively restricted to cases where their use is justified.

