



Nuffield Family Justice Observatory Pre-Proceedings Practice Event

Context - Mary Ryan and Dr Susannah Bowyer

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Purpose of Today

- Testing out responsive work of Nuffield FJO
- Providing opportunity to allow practitioners to connect and share practice perspectives
- Helping to pull together strands of work already taking place in this area of practice

The context

- What do we mean by pre-proceedings?
- Brief history of pre-proceedings process
- Messages from research
- Recent and current activity

Pre-proceedings

Any activity by the Local Authority following a referral including, ultimately, the **formal** pre-proceedings process:

- Local Authority legal planning meeting
- Letter before proceedings
- Limited legal aid available
- Pre proceedings meeting with parents and lawyers
- Plan and timescales
- Review
- Diversion from court or issuing proceedings

Brief History of formal pre-proceedings process

1996 – Avoiding Delay in Children Act Cases

2003 – Protocol for Judicial Case Management introduced

2008 - Introduction of the first Public Law Outline – main focus on court process, but included expectation that local authority would send parents a letter before proceedings and invite parents to a meeting.

Purpose of meeting:

is either to deflect proceedings or, at least, to narrow and focus the issues of concern (para 3.3 of guidance)

Brief History

2011 Family Justice Review – refers to research by Judith Masson and colleagues. Suggests that process will need to be reviewed once research findings available, alongside ‘remodeling of the PLO’ (paras 3.108-3.110). Also suggestion of role for multi-disciplinary expert teams in pre-proceedings.

2014 Revised PLO introduced, alongside changes in the Children and Families Act 2014.

Guidance ‘Court Orders and Pre-Proceedings for Local Authorities’ (2014) DfE.
Replacing ‘Children Act 1989 Guidance and Regulations: Volume 1 Court Orders’ (2008) Department for Children, Schools and Families.

Brief History

Messages in guidance – formal process set within the wider activity of local authority from first contact

Stress on duties under s.17 to support children to live at home

Emphasis on importance of engaging parents and engaging wider family - references to FJCs and Family and Friends Care guidance and policies

Stress on importance of clarity in LA concerns and clear plan of action with timescales of 12 to 16 weeks – suggests review at 6-8 weeks.

Guidance contains template for a letter to parents.

Research

Jessiman J, Keogh P and Brophy J (2009) *An early process evaluation of the Public Law Outline in Family Courts*. MoJ

Masson J, Dickens J, Bader K, & Young J (2013) *Partnership by Law? The pre-proceedings process for families on the edge of care proceedings*. School of Law, University of Bristol (and linked articles)

Masson J (2017) Using the formal pre-proceedings process to prevent or prepare for care proceedings. In Dixon L et al (eds) *Wiley handbook of What Works in Child Maltreatment: an evidence based approach to assessment and intervention in child protection*.

Broadhurst K and Holt K et al (2013) *Coventry and Warwickshire Pre-Proceedings Pilot Final Report*.

Holt K et al (2014) *Liverpool Pre-Proceedings Pilot Final Report*

Bowyer et al (2016) *Impact of the Family Justice Reforms phase 3- exploring variation across 21 local authorities*. DfE/Research in Practice

Messages from Research

Very consistent messages throughout:

- Cases are diverted from proceedings (around 25% on average, but proportion of these come back into the system later, and variations between local authorities on proportion of cases diverted)
- Very variable processes and timescales in different local authorities
- Pre proceedings activity can contribute to reducing time in court, but does not always do so, and in some cases the court seeks further assessments
- Are concerns over limited legal aid available to parents and the lack of representation of child at this point
- There is evidence of some confusion over purpose – to divert or to ensure all evidence for proceedings ready
- Good practice is linked to the ability of the LA to engage parents, good legal representation for parents, clarity about the plan and the services or support that will be made available
- Multi-agency panels are helpful

Messages from Research

- The use of FGCs or family meetings varied. Where the use of FGCs is embedded they tend to be held at an earlier stage
- Local authorities have shifted to obtaining specialist assessments in the pre-proceedings period and which can contribute to delay and increases the costs on LAs
- Case tracking at the pre-proceedings stage is very varied
- Cafcass plus pilots had slightly higher diversion rates than comparison, but numbers small
- Cafcass plus pilots regarded as giving FCA headstart and ensuring focus remained on child
- Diversions in Cafcass plus pilots were because family carers were identified

Current activity

Care Crisis Review - a sector led review, launched reports in June 2018, start of a process of sector led change

Publication of 'Care Proceedings in England – the Case for Clear Blue Water' Isabelle Trowler, published in November 2018

DfE/MoJ deep dive work in six Local Family Justice Boards

Family Justice Board – work programme to tackle the impact of rising volumes of cases and variations in the system

President's Public Law Working Group

Current activity – recommendations from

Care Crisis Review – formal pre-proceedings set within all activity prior to proceedings. Submissions to review in line with research findings. More focused guidance for formal process should involve consultation with all stakeholders – including children and families.

Clear Blue Water – resurrect formal pre-proceedings as key point of hope for engaging parents or wider family; importance of resources to ensure provision of appropriate intensive services.

Family Justice Board – work programme to refocus on pre-proceedings as an opportunity to divert cases; more attention to resources within wider family; improved access to advocacy for parents; reduction in variation of practice.

Role of Ofsted – good practice in pre-proceedings identified in inspections