



Pre-Proceedings in England and Wales: Sharing Practice Perspectives

**Summary report of an NFJO stakeholder event held 9th
May 2019**

Nuffield Family Justice Observatory for England & Wales

The Nuffield Family Justice Observatory

The Nuffield Family Justice Observatory aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. It is being established by the Nuffield Foundation to meet the needs of practitioners who make pivotal decisions in the lives of children and families by:

- Working with them to identify priority issues where research evidence may help guide practice.
- Providing reliable summaries of what is, and is not, known from research or administrative data.
- Combining knowledge from research with insights from policy, practice and user experience.
- Working with practitioners, policy makers and organisations representing families and children to develop, update and test guidance and other tools based on that knowledge.

Development team

The Nuffield Foundation has appointed a development team to complete the set-up of the new Observatory. The development team is working closely with stakeholders to finalise the Observatory's initial priorities and to inform its work plan. Team members are:

- Professor Karen Broadhurst, Lancaster University (Principal Investigator)
- Claire Mason, Lancaster University
- Carey Oppenheim, Nuffield Foundation
- Dr Lisa Holmes, Rees Centre
- Dr Ellie Ott, Rees Centre
- Dr Susannah Bowyer, Research in Practice
- Mary Ryan, Research in Practice



Background

This report provides a brief overview of the event held by the Nuffield Family Justice Observatory (NFJO) on 9th May in London. Readers are also encouraged to consult the [NFJO website](#) to access the slide packs of each of the presentations from the day.

Purpose of the Event:

The Nuffield Family Justice Observatory is in a unique position to bring together the perspectives and practice experience of Judges, Cafcass, local authority and private practice lawyers, social workers, third sector organisations and families. This event was designed to contribute to the current debate within the Family Justice System about the potential for the pre-proceedings process to contribute to reducing the numbers of cases coming into care proceedings. The event considered effective practice within the formal pre-proceedings phase and barriers to achieving this.

The event was designed to be small scale to allow for discussion among the participants. It included short presentations from legal and social work practitioners focused on different examples of practice in the use of pre proceedings. The expert panel at the end of the day ensured that the views of all those involved in the family justice system were heard.

The FULL event programme can be found in Appendix 1.

This report contains a brief note of each of the presentations on the day and the contributions from the expert panel, as well as a note of the key points raised in discussions and in question and answer sessions during the course of the day.

Opening Address Sir James Munby – Chair of Governing Body NFJO

The family justice system continues to be under considerable pressure because of the number of cases coming into proceedings.

Research has indicated differences and discrepancies in case numbers across local authority areas and across family justice areas in England and Wales.

The discrepancies suggest that there is no one reason for the rise in proceedings, but relevant factors include the behaviour of professionals in the legal and social care system and the culture within which individuals are operating. Culture change has to come from and be led by practitioners.

The formal pre-proceedings process is not working as well as the architects of the Public Law Outline (PLO) had hoped, and practice varies greatly across the country, but the system is now working better than pre 2014.

Pre-proceedings activity is more effective when there is trust and engagement between families and social workers and where the local authority legal department is engaged as well. More can be done to engage legal departments more actively in pre proceedings.

Improved systems for collecting and analysing data will help us understand better the journey of children through the system.

Ensuring adequate opportunities for social workers and lawyers to receive training and information about the legal framework is essential, particularly with regards to what are often seen as 'landmark' judgements, which are often widely misunderstood leading to distortions in practice.

Pre-Proceedings in England and Wales: An Overview

Mary Ryan and Susannah Bowyer, Research in Practice and NFJO Development Team

The slides accompanying this presentation are available on the website

Pre-proceedings in its widest sense is any activity by children's services agencies to support children and families prior to legal proceedings.

Today's focus in the formal process which begins when a local authority, having decided that the threshold for an order has been met and that they need to consider issuing proceedings, sends a letter before proceedings to the parents.

The first Public Law Outline (PLO) in 2008 introduced the formal pre-proceedings process which has remained roughly the same following amendments to the legislation and the PLO in 2014. Guidance on the formal pre-proceedings process is limited, describing just the basic process and suggesting a time limit of 12 to 16 weeks.

Pre-proceedings has always had a dual function – potentially to divert cases from coming into proceedings and/or to ensure the local authority evidence is well prepared before they issue proceedings – which creates a tension and explains some of the variations in practice.

Research findings on pre-proceedings since 2008 indicate that:

- On average around 25% of cases are diverted from court, but some of those subsequently come back into the system

- practice varies widely in the way the process is used by different local authorities
- the process can act as a wake-up call to parents and help focus the work of the local authority
- the process can also lead to delay and drift in planning for children
- there is little evidence that the use of pre proceedings reduces the time cases spend in court
- there are concerns about the representation of the views of children and about the availability of adequate legal representation for parents in the pre proceedings period
- the system works well when there is a good relationship and trust between the parents, local authority and parents' lawyer and when adequate and sufficiently intensive services are available.

Pre-proceedings is one of the work strands of the President's Public Law Working Group and is a focus of the work plan for this year for the national Family Justice Board and local FJBs.

The Care Crisis Review suggested that revised guidance should be issued to provide more detail about effective practice including the importance of relationship-based practice and harnessing the wider family. It recommended that such guidance should be produced in consultation with all those involved in the family justice system, including families.

The Chief Social Worker's paper 'Care Proceedings in England – the case for clear blue water' recommends reviving pre-proceedings as a key point of hope for engaging parents and the wider family, providing there is a sufficiency of resources and effective interventions.

Presentation 2: 'A local authority lawyer's perspective'

Lucy Moore, Directorate Lawyer, County and City of Swansea

Lucy played a key role in revising the pre-proceedings process in Swansea as part of activity to reduce the high number of cases coming into proceedings which was resulting in poor preparation of a cases and a crisis response to families.

Swansea have reduced their budget for care proceedings from £1.3 million to £360,000 and Lucy considers this to be due largely to the improvement in the use of pre-proceedings.

There are trigger points for a legal gateway (legal planning) meeting (LGM) in Swansea, which include:

- child in s.76 accommodation (Welsh equivalent of s.20) for more than 12 weeks and there is no plan for child to go home

- If there is no engagement by family or they show little insight into the local authority's concerns by time of 1st review or 2nd review of a child protection plan
- If the child has been on a child protection plan for 9 months or more
- If the mother is pregnant at end of care proceedings or there are concerns re unborn child.

In Swansea, the role of the lawyer at the LGM is to help social workers to clarify their concerns about the child, and to scrutinise what intervention has been offered, to act as a critical friend to the social workers and to assist them to be as clear as possible about the evidence which establishes significant harm or likely significant harm. The LGM also considers what has been provided to the family to meet their needs so far and what more could be provided.

Social workers are required to bring a genogram to the meeting to support discussion about contact that there has been with the wider family. A detailed plan is developed, and the case returns to the LGM within 12 weeks for review.

If a decision is taken to start formal pre-proceedings, there is a focus on ensuring the plan and the expectations are clear to both the parents and the social workers. We emphasise the importance of direct work with children and parents.

At the final review in the pre-proceedings stage we look at whether it is necessary to go to court

We treat pre proceedings as last chance saloon. We want to ensure we have done everything to keep the child with family.

All paperwork is submitted and reviewed by the Lawyer and Principal Officer from children's social care in advance of the gateway meeting. If the papers arrive late, the meeting is adjourned. Gateway meetings happen once a week and last all day.

We are committed to ensuring that our decision making is transparent and so all decisions at the meeting are minuted.

When we started to address our problems the threshold for intervention was hugely inconsistent across Swansea, now there is much more consistency because fewer people are making the decisions, there is less drift in the process and better communication. Our approach means that numbers of proceedings being issued are not rising. We have shifted the culture so that LA is better at working with risk and with the wider family.

The relationship between practitioners in children's social care and the local authority legal department needs attention. Lawyers need time to work with social workers on a case.

Key Points from Q and A

Relationship between legal team and social workers is complex. Important that both understand and respect each other's differing expertise.

Social workers, like families, are themselves experts but not always treated as such. Legal departments acting as 'critical friend' to social workers can be very helpful in preparing social workers for giving evidence in court.

Importance of pre-proceedings as a space to think about intervention not just preparing for proceedings.

Presentation 3: 'The advantages of a case progression manager and a tracking system'

**Jonathan Broad, Solicitor, Head of Children and Families Legal Services and
Chantelle Whitehead, Solicitor, Deputy Head of Children and Families Legal Services,
Manchester City Council**

The slides accompanying this presentation are on the FJO website

In the legal department in Manchester we separated out pre-proceedings work from work once cases had been issued. We made a business case for investing in a well-supported pre-proceedings process that would be able to divert cases from coming into proceedings.

We appointed a case progression manager who is a social worker. This was based on the model of case progression manager developed in the Tri-Borough in London and then used in other areas to prepare for the 26-week timescale in care proceedings and the emphasis in the PLO on completing assessments in the pre-proceedings period. The case progression manager takes the role of critical friend, advising social workers on their evidence. She follows all cases through from the gateway/legal planning meeting onwards, checking to ensure that actions are carried out if agreed and contacting all the relevant people if timescales are starting to drift.

The case progression manager tracking cases ensures that we have easily accessible data on the numbers of cases in pre-proceedings, timescales, and the outcome of the process.

Having this data source also enables us to focus on specific issues, for example domestic abuse, to see why some cases end up going into court while others are diverted.

We challenged the use of professional language and jargon to ensure it was transparent for families because the tone and language is so important. We use the child development

timeline for the child to try to demonstrate to parents where the issues lie and sometimes write this in the child's voice eg 'I have not been fed. You don't take me to school'.

We aim for the social worker to do a home visit within 36-48 hours of the legal planning meeting to check that the parent has understood the plan and the time scales.

Sings of Safety approach has been embedded in Manchester and this worked very well in pre-proceedings.

Another key element of a good pre-proceedings and PLO approach is good communication between lawyers, social workers, Cafcass, the judiciary. We would like to institute reviews of cases, as carried out in the Tri-Borough, where there was discussion about process issues in relation to closed cases to help inform improved responses in the future.

A key message is 'understand your data and its story'.

Case progression manager provides the golden thread through the process.

We have diverted nearly a quarter of all children in pre-proceedings - stepped down to child protection cases or children in need cases, with estimated £2million cost savings

When people are under pressure because of the volume of work, what can be helpful is a 'how do we do this' guide to practice.

Key Points from Q and A

How much is dependent on people – eg is case management role always good no matter who is in it?

Good relationships between LA children's services and legal is crucial.

Should be thinking about possibility of proceedings from CP plan onwards.

In Manchester we want to improve approach to newborns and also working to ensure more cases go into pre-proceedings – too many coming into court without having first been through pre-proceedings.

Presentation 4: 'The point of hope'

Deborah Woodcock, Director of Operations and Rebecca Key, Head of Children and Family Services, Stockport Council

Slides accompanying this presentation are on the website

We use a restorative practice model in Stockport and we have a focus on early permanence planning.

80% of work in children's services is with adults and not with children, so a whole family approach is vital.

We have moved away from transfer points so ideally a family will stay with same social worker throughout their contact with children's services.

We see pre-proceedings as a productive time of hope, but we also put rigour into the legal planning meeting providing high challenge plus support to SWs.

The process involves rigour/challenge/support/ re-group/refresh/re-plan

Our style of working is strengths based, trauma informed, honest and transparent.

We know that we have more to do in relation to the use of s20, pre-birth assessment and Family Group Conferences.

We have a low number of looked after children in Stockport, but we are experiencing a rise in the number of proceedings.

Mothers from Stockport took part in the Lancaster research into mothers experiencing repeat care proceedings. Those discussions led to the setting up in Stockport of COMMA and CAMEO to support women who had experienced more than one child being removed. We were able to identify from the Lancaster data that we had a high proportion of parents experiencing recurrent proceedings.

In addition to COMMA providing support post proceedings, our service New Beginnings developed by Jadwiga Leigh at Lancaster University, is addressing the high level needs of parents who are at risk of losing their children. It is based on the Flemish 'Stobbe' model, an intensive group programme for parents in this situation. Parents attend at least 3 days in the week for:

- Trauma informed group reflection
- 1 to 1 counselling
- Access to a range of holistic therapies, eg art, narrative storytelling, yoga.

At the end of this women can train to become accredited peer mentors.

Presentation 5: 'SWIFT; a multidisciplinary approach to pre-proceedings work'

Anna Wilson, Operations Manager SWIFT and Katie Smee-Giles, Practice Manager, SWIFT & FDAC, East Sussex

The slides accompanying this presentation are on the website

SWIFT is a multidisciplinary assessment and intervention service jointly funded by health and children's social care, with most of the funding coming from health. It was set up originally as an assessment and intervention service for parents with substance misuse problems who were at risk of losing their children. SWIFT staff carry out both pre-proceedings and in proceedings assessments. The focus of work now also includes DV and MH problems.

Crucially our approach is not just about assessment it is also about bespoke packages of intervention. We have started to adopt an approach of 'assessment as intervention'.

In addition to providing assessment and intervention with parents, we offer consultation to social workers about substance misuse, mental health and domestic abuse.

We collect existing assessments and information about interventions tried, we do some assessment ourselves, and we use formulation to develop a plan for each parent.

We work hard to ensure that the questions to us in the Letters of Instruction (LOI) are worded in such a way that they are completely transparent and understandable for parents so parents can give their informed consent.

We have very high levels of engagement and low drop out rates.

We work to written guidelines which have been signed off by the judiciary so there are no issues about our independence, and it is rare for the court to order additional assessments.

We operate an assertive outreach approach and we visit people at home.

Our FDAC is located within the SWIFT service. Our FDAC service is currently unfunded so the number of cases we can deal with has reduced - only 4 cases at the moment concerning 10 children.

We also have Foundations in East Sussex – a service for women facing recurrent care proceedings. This works with mainly women, but also some men, with the aim of preventing the removal of future children.

Key points from table discussions

General feeling that pre-proceedings as a process has potential benefits but there are currently differing cultures and beliefs as to the purpose of pre-proceedings. Fundamental tension between pre-proceedings as key point of intervention and as an opportunity to collect evidence.

In Manchester and Southwark they use the term 'deal breakers' to indicate to parents what sort of situations will lead to the LA issuing proceedings.

Pre-proceedings needs invigorating to ensure it is used to give families the best possible opportunities to address the LA concerns and divert from proceedings.

Pre-proceedings should not be adversarial. The language and tone used at pre-proceedings meetings is key to engagement with families at that point.

Little is known about long-term outcomes of children in pre-proceedings. Therefore no idea whether it is working.

Relationships are crucial – not only between parents and professionals but within local authorities between social work and legal departments.

Systemic issue that neither social workers nor families valued as experts. Mutual distrust pervades the family justice system

We should work towards lawyers and social workers understanding each others' roles and expertise better. Mutual respect required.

The impact of poverty on families and the impact of austerity in terms of cuts to services makes it harder to deliver what is needed for families in the pre proceedings period. Post-code lottery for intervention services. Lack of practical support available for families in most areas. Austerity stripping out important services and basic services now often not delivered well. S17 budget hit by cuts.

Austerity requires us to think smartly about how we do use resources. Greatest resource is ourselves. Multi-disciplinary teams are an opportunity to release resources and avoid silo working.

Impact of agency staff, problems in staff retention, difficulties in recruiting social workers and local authority lawyers impact on quality of pre proceedings. Churn in staff leads to lack of confidence in managing risk

Culture of commissioning out interventions has led to de-skilling of frontline social work workforce. Should be investing in upskilling social workers.

Legal funding for the family in pre-proceedings is minimal which often leads to legal representatives lacking required experience and expertise.

There are now 'legal aid deserts' when there are virtually no solicitors firms with a legal aid franchise. Each firm can only represent one party in care proceedings which then creates problems. There used to be a reasonably good supply of lawyers who had considerable experience in public law cases but now 'expertise has fallen off the cliff'.

Fathers are insufficiently represented in pre-proceedings.

Decision making requires time. We need to be braver and push back. Serious Case Reviews demonstrate the danger of making crucial decisions too quickly.

In some places decision makers expect a case concerning 5 children to be presented in 15 minutes, process should not interfere with good decision making.

The quality of work under the child protection plan impacts on the pre-proceedings process, that is about the core group functioning as well as the quality of the CP conference. Reports from the CP conference should ideally be clear, providing cogent evidence ready for a threshold statement.

The letter before proceedings setting out the concerns to parents should not just be a repeat of the child protection plan, it should clearly be a next step upwards.

The clarity with which the social worker and/or team manager expresses the issues to parents at the legal planning meeting is critical. It is unfortunate that we still see 30-page child protection plans which are repetitive and lack clarity.

Having multi-disciplinary legal planning meetings is very important. Ensures you can consider what services are available and to think about forward planning, for example, placement.

Encouraging parents to invite family members and friends to the LPM can be helpful.

The effectiveness of pre-proceedings will be affected by the effectiveness of the local safeguarding partnership. Helpful to think about providing support or templates for health visitors or education staff for example to write their evidence.

There are fewer examples now of courts wanting all assessments to be re-done once the case comes into proceedings but there is still a culture (among lawyers, social workers, Cafcass and Judges) of wanting a label for someone. There is also a tendency to request a PAMs assessment, even where this would not seem to be necessary.

Panel – Key points

Ofsted

A third of Ofsted reports highlight pre-proceedings. The features of 'good' LAs in relation to pre-proceedings include appropriate use of escalation, timeliness, tracking, management oversight, time in pre proceedings and clarity about nature of concerns and what needs to change, also a focus on children's experiences.

Ofsted will be publishing a blog about the use of the pre-proceedings process.

Cafcass

Need to improve use of pre-proceedings to achieve diversion

Cafcass Plus pilot sites are still being evaluated but all those who take part have consented to take part, so it is a slightly biased sample. We have identified that a significant proportion of diverted cases come back into the system.

Need careful consideration about Cafcass role in pre-proceedings but the importance of supporting the child in pre-proceedings is clear.

ADCS

The things we have to be hopeful about are that we are trying to bring professionalism back into social work; we are focusing on leadership rather than management; we are creating a culture in which good social work can thrive.

Pre proceedings requires good relationship-based practice and the harnessing of family strengths.

The key challenges are austerity, continuity and retention of social workers, time-limited interventions, lack of access to interventions and cuts to early help.

ALC

There are issues of justice and fairness in a pre-proceedings process which, it can be argued, is a form of alternative dispute resolution but it lacks the crucial element of an independent judge or adjudicator, with very limited legal aid for parents (which can impact on the adequacy of their representation) and no separate representation for children

Agreements reached or plans made in the pre-proceedings meetings are not monitored and there are no sanctions for non-compliance

LAs have focused on the process of pre-proceedings but processes don't bring about changes for families, you also need access to the right services and support.

Derisory remuneration for legal aid lawyers leads to disparity of experience and quality of legal advice for parents in pre-proceedings and in court proceedings. Legal help for pre proceedings is a fixed fee of £365 regardless of the length of pre proceedings period.

The child's voice is represented in proceedings, but not in pre-proceedings. This needs further thought because if it is important enough for Guardians to be appointed in proceedings then why not in pre-proceedings? In both settings important decisions are being made about the child future.

Your Family/Your Voice

Involving families should be at the heart of pre-proceedings. Failure to 'engage' is not the fault of the family it is social workers' responsibility to help families engage.

Key to good pre proceedings is to work **with** parents. We don't want to be told what to do. Relationships are key, but they take time to build.

If all professionals do is assess and re-assess families then it is unsurprising that relationships break down. Respectful relationships are key.

Involving the wider family is vital and we should be able to define our families.

Yes, we must hear the child's voice but also the voices of the whole family.

We've got to see families who have been through the system giving advice on service development and design and not just seen as passive recipients of services.

Your Family/Your Voice have written the Mutual Expectations Charter for parents and local authorities to promote effective, mutually respectful partnership working between practitioners and families when children are subject to statutory intervention.

Family Rights Group

The Care Crisis Review concluded that the legislative framework is still fit for purpose with working in partnership a core principle.

Relationship building is key

There are resources in the wider family that are untapped.

The challenge is to create an environment that allows partnership and harnessing family resources. To achieve this we must tackle the culture of stigma/blame and risk adversity. Reliance on procedures and targets happen when people are under pressure.

There is a lack of legal advice to families in general and not only in pre-proceedings. There is a lack of access to advice throughout a family's contact with services. The funding awarded to us to run our advice line gives us resources to answer only 5k of the 17k calls we receive.

We know from advice calls of the huge rise in cases where domestic abuse is the key issue. The growing understanding of the harm to children from domestic abuse has not been matched by improved interventions and understanding about what works.

A Family Group Conference should be a must for any family facing removal of child – too often the family is not adequately explored and there is a huge variation in practice in relation to family and friends' carers. The system for support for family and friend carers needs a complete overhaul

Guidance would be helpful on pre proceedings and s.20 but it must be sector led.

All Wales Heads of Children's Services (AWHoCS)

The challenges we have in Wales are the very high numbers of children in care, despite investment in early help.

We are good at completing cases within 26 weeks, but we are much less good at diverting cases from coming into court.

We are concerned that the political response in Wales to the high numbers of children in care is currently to set targets for reducing the numbers and these targets are too inflexible.

Comments from floor

By the time the local authority have got to the stage of sending out a letter before proceedings it is often too late in terms of the child's timescales and/or in terms of the time needed to provide the intensive support that may support the parents to demonstrate capacity to change.[comes too late.]

Least experienced solicitors sent to pre proceedings meeting and lack experience in dealing with complexity cases

Should 'competent' children be offered legal advice at the pre-proceedings stage?

Voice of child in pre-proceedings needs strengthening - UNCRC and HRA – children should be getting independent advice at pre proceedings stage.

Should we think about role for IROs in pre-proceedings?

What about voice of siblings at this point as well as in proceedings? Siblings are also absent from guidance and from statute.

Need to get away from process and deal with detail of practice. Substantive content is what is needed not new guidelines. Need to know what is effective in engaging and diverting families from pre-proceedings. Value of sharing evidence based best practice

Value of creating spaces like today to share practice and debate thorny issues.

Appendix 1

Programme for Pre-Proceedings event

**Nuffield Family Justice
Observatory**

**Pre-proceedings: Sharing
Practice Perspectives**

9th May 2019

**The Work Foundation, London,
SW1H 0AD**



Time	Activity	
10.00	Welcome from the Chair	Lisa Harker, Director of the Nuffield Family Justice Observatory
10.15	Opening address	Sir James Munby, Chair of the Governing Body
10.35	Pre-proceedings: where are we now?	Susannah Bowyer and Mary Ryan, Research in Practice and the Nuffield Family Justice Observatory Development team
11.05	Practice presentation 1: 'A local authority lawyer's perspective'	Lucy Moore, County and City of Swansea
11.25	Practice presentation 2: 'The advantages of a case progression manager and a tracking system'	Jonathan Broad, Manchester City Council
11.45	Q & A	
12.15	Lunch	
1.00	Practice presentation 3: 'The point of hope'	Deborah Woodcock and Rebecca Key, Stockport Council
1.20	Practice presentation 4: SWIFT; A multidisciplinary approach to pre-proceedings work	Anna Wilson and Katie Smee-Giles, SWIFT East Sussex
1.40	Q & A	
2.00	Coffee	
2.20	Group discussions: reflections on the presentations, key learning and challenges	
3.00	Feedback from groups	
3.30	Expert panel comments and questions	Noel Arnold (Co-Chair, ALC), Cathy Ashley (CEO, FRG), Jeremy Gleadon (Senior HMI, Ofsted), Melanie Carew (Head of Legal, Cafcass), Rachel Dickinson (Chair, ADCS), Angela Frazer-Wicks (Your Family Your Voice), Sally-Ann Jenkins (Chair, AWHOCS)
4.15	Closing remarks	Lisa Harker, Director of the Nuffield Family Justice Observatory
4.30	End	

The Nuffield Foundation is an independent charitable trust with a mission to advance educational opportunity and social well-being across the UK. We aim to improve people's lives, and their ability to participate in society, by understanding the social and economic factors that affect their chances in life.

We fund research that aims to improve the design and operation of social policy, particularly in Education, Welfare, and Justice. Our student programmes provide opportunities for young people to develop skills and confidence in quantitative and scientific methods.

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