



Pre-proceedings and Public Law Outline: Practice and Principles

North West ADCS Help and Protection Forum

Pre-proceedings and Public Law Outline: Practice and Principles

What is the problem we are trying to solve?

Much has been written in recent times about the increasing pressures across the safeguarding system with rising demand in every aspect of children's social care (*ADCS Safeguarding Pressures Phase 6 November 2018; Care Crisis Review: options for change (2018) London Family Rights Group; Born into Care: Newborns in care proceedings (2018) Nuffield Family Justice Observatory for England and Wales*).

The North West region had the second highest rate per 10,000 of care applications in England for 2016/17 (Source: CAF/CASS). Whilst the number and rate of care applications fell in 2017/18, 21 of 23 North West local authorities had a higher rate of applications than was the case nationally and 9 had rates of care applications in the highest quartile nationally. In some North West local authorities in 2017/18, the proportion of Looked After Children (LAC) who were placed at home with their parents was as high as 18%. The latest available published comparative data suggests that all areas had a higher proportion of LAC placed with parents than the average across England.



Against this backdrop of rising demand and intervention it is critical that children's social care are able to develop practice systems that keep children and families together wherever safe to do so and develop creative and innovative ways to ensure that support and help is given at the earliest opportunity to prevent escalation into legal proceedings and entry into care.

In 2017, the North West ADCS undertook a programme of work to understand the picture in relation to those children living at home under Care Orders and commissioned an in-depth audit and analysis of cases. The audit summary report made a number of recommendations based on the findings and a North West event took place to bring together local authorities (LAs) with CAFCASS to consider these and share examples of best practice across the region.

The audit identified that Public Law Outline (PLO) and planning before proceedings had a critical part to play in the outcomes for children where they became subject to a Care Order in the care of their parent/s.

“There was considerable evidence presented that despite previous periods of assessment, planning and PLO; parents only demonstrated capacity to change once proceedings had been initiated. This ultimately meant risk had reduced at the time of the final order. There was evidence that PLO largely (with exception of pre-birth cases), did occur, but it was largely ineffective. PLO and pre-proceedings appeared somewhat process driven rather than being used as a real tool”.

Some of the themes were:

- PLO and pre-proceedings by and large occurred but had not had any impact
- Evidence that multi-agency pre-birth assessment and planning was not as robust as it could be and use of PLO was not always considered in pre-birth cases

(Executive Summary, Placement at home with parents, North West Audit Summary Report, 2017).

As the Chief Social Worker Isabelle Trowler identifies:

“The pre-proceedings period should be resurrected as the key point of hope at which local authorities can work with (extended) families to develop long term, sustainable plans for the children of concern. Particularly in circumstances where the decision to go to Court would be crossing the thin red line, every effort should be made to avoid the truly burdensome and costly action of initiating court proceedings”.

(Isabelle Trowler: Care Proceedings in England: The case for clear blue water. The University of Sheffield and Crook public service fellowships, 2018).

A cross-North West regional task and finish group have prepared this document. The aim was to consider the use of PLO and pre-proceedings; when and how it can be used more effectively, and to identify examples of good practice to assist social workers, practice supervisors, and practice leaders in making the pre-proceedings period a key point of hope.

What contributes to PLO and pre-proceedings being ineffective?

- Poor assessment of the needs of the whole family and analysis of risk to inform outcome based planning.
- Lack of a concise chronology and evidence from multi-agency partners about the impact of events on the child's development and well-being.
- Failure to explore the family networks and relationships to understand and maximise the available support for the child/ren.
- Delay in identifying all those within the family or extended networks who are willing and able to care for the children if alternative carers and permanence plans are needed.
- Poor or ineffective partnership working and plans which are not SMART or strengths-based can accentuate the barriers to forming positive relationships which could provide support to families to achieve positive change.
- Families escalate from child in need, to child protection, and then into PLO when decision making for the family is driven by processes and thresholds rather than thinking clearly about what the plan needs to be, or understanding and addressing why the plan is not achieving what is needed for the whole family.
- Drift and delay in reviewing the plan and holding PLO meetings in a timely fashion to ensure the plan is effective in reducing risks and improving outcomes for children.
- Children living in families where there is long-standing neglect, particularly in large sibling groups, where poverty and deprivation further impact on the ability of parents to meet their children's needs present particular challenges within the child protection and PLO systems. It is important to understand that for some families there will be a need for long term, sustained support to keep the family together. The role of the multi-agency partnership is important here - particularly practitioner's experience, knowledge and confidence in distinguishing between risk and vulnerability for children living at home and balance these against the disadvantages of being in care.
- Lack of consideration of the use of PLO in pre-birth cases at the earliest opportunity can mean that parents have insufficient time to access appropriate support services to make needed changes. It may also prevent them from receiving legal advice during the pre-birth period.
- Lack of targeted specialist services, treatment and therapeutic interventions to affect change for families particularly around key areas of risk such as domestic abuse; substance misuse; complex emotional well-being and mental health difficulties.
- Lack of clarity and attention to the threshold test for removal and consideration of what the likely permanence plan is for children increases the likelihood that when entering PLO or issuing care proceedings children will remain within their families. This highlights the importance of social workers, and team leaders being clear about what they want to achieve by moving out of the CIN and CP processes into PLO and pre-proceedings focusing on the plan for permanence for the child/ren.

Ethical and Legal Considerations

The *Care Crisis Review (Family Rights Group, 2018)* highlighted the importance of “paying attention – and responding – to the realities of the lives of children and families, including the impact of poverty and economic hardship. Practice needs to be ‘poverty aware’, in the sense of being empathetic to the pressures and actively avoiding the reinforcement of family shame and suffering”.

The social work knowledge and skills statement (KSS; Department for Education 2018) for child and family practitioners highlights the need to:

“Hold an empathic position about difficult social circumstances experienced by children and families, taking account of the relationship between poverty and social deprivation, and the effect of stress on family functioning, providing help and support. Take into account individual child and family history and how this might affect the ability of adults and children to engage with services”.

Practice supervisors need to:

“Apply a proportionate and ethical approach to the exercise of authority, which develops and maintains relationships with families and professionals and ensures the protection of children....

“Take into account diversity, the experience of discrimination and the impact of poverty”,

and practice leaders should “Publicly acknowledge the enormity of separating a child from their parents. Participate and add rigour to decision making about children coming into public care, returning home or to the wider family or moving to permanent families”.

In relation to the legal perspective on families subject to care proceedings, the standard of care and protection parents give to a child has to be substantially lower than the standard of care and protection tolerated within society in general. It is helpful to reflect and consider the following legal views:

“The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature”. (*Lord Templeman; Re KD (A Minor: Ward) (Termination of Access) [1988] 1 AC 806, [1988] 2 FLR 139, at 812 and 141*).

“Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate, and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done”. (*Judge Hedley; Re L 2007*).

Good Practice in working with children and parents

A [strength-based approach](#) is vital when working 'with' families, – being honest and clear with parents, and respectfully challenging them, so that they understand what the concerns of professionals are; what needs to happen for things to improve; and what support is on offer to help them get to where they need to be.

It is important for social workers and other professionals to consider the role they have in gaining the trust of parents and children to assist them gaining access to sources of support and help. Building a relationship with parents requires an understanding of their experiences of working with services including children's social care, also having sensitivity, empathy and spending time with them. Where it has not been possible to overcome barriers to working in partnership with parents, the focus should be on how to address the barriers and identifying what social workers and other professionals can do to build better relationships with them. An understanding of trauma and experiences of the adults is important in considering what might be the most helpful way to approach working more productively with the family.

Some local authorities have made good use of clinical psychologists to provide consultation, formulation and suggestions about the most helpful way to provide interventions to the family, which can then assist the multi-agency professionals delivering the plan.

Parents need to know when concerns are escalating and have it clearly explained to them that if things do not get better for their children there is a potential for the local authority to initiate care proceedings and this could result in their children being placed outside of their care.

A well written '[letter before proceedings](#)' will clearly set out for parents that the local authority is considering the possibility of care proceedings if a plan cannot be developed to address the concerns identified about their parenting and the safety of the child/ren. The letter should be honest and respectful, written in plain English; be jargon-free and set out clearly what the concerns are, in line with the Child Protection Plan. Research in Practice have a number of online resources, which provide guidance through each step of the formal pre-proceedings process including the 'letter before proceedings'.

Within pre-proceedings, social work [assessments](#) must be prepared which are thorough, holistic and consider the parenting capacity and individual circumstances of each parent. Assessments must reflect the experiences of children and their individual needs so that the voice of the child is heard. This enables a rich understanding of what life is like for them, the nature of their relationship with their parents and family members and how any issues for the parent's impact on their well-being and development. Assessments should be robust and triangulated with information from all relevant services involved with the family.

Where appropriate social workers should prepare assessments to address particular significant issues such as domestic abuse risk assessments, sibling assessments, and use evidence based tools such as the Graded Care Profile when considering neglect.

A child impact [chronology](#), which is clear, concise and enables the identification of patterns of behaviour and risk factors is critical to understanding a family's history and the significance of these events to a child's development and safety. A chronology must be completed by the social worker at the start of their involvement with a family if one does not already exist and should be available in all cases being considered at legal gateway. Chronologies from other agencies can be particularly valuable when understanding the impact of parenting capacity on children's education, health and social development and well-being.

[Direct work](#) is completed with children to understand their wishes and feelings; and to make sure there are clear [safety plans](#) for them, which they can understand and follow, particularly where domestic abuse is a concern; and that they understand what we are worried about. A range of direct work tools and approaches can be used, but the key is to make sure that these are age appropriate and child-centred. Consideration should always be given to children having access to an independent visitor/advocate or participation worker who can develop a trusted relationship with the child, facilitate their involvement and understanding of pre-proceedings processes, and ensure that their voice is heard and held at the centre of care planning for them.

- Plans should be drawn up with families, and be SMART and focused on outcomes, so that all parties are able to understand who will do what, and why - with clear multi-agency contributions.
- The crossover between Child Protection and PLO processes can be confusing for parents and professionals and lead to two plans, which do not match. It is helpful to consider how these can be streamlined to reduce duplication of resources and ensure that the plan and messages to the parents are clear about what needs to change to avoid entering care proceedings. The PLO plan should, in the main, be a continuation of any existing Child Protection Plan.



- It is important to consider commissioning independent expert reports to enable professionals to have the best understanding of any individual areas of need or consideration for the family – this includes psychological and psychiatric assessments, cognitive assessments, parenting assessments or PAMS assessments for parents with learning difficulties or additional needs, hair strand testing for alcohol or substance misuse, and DNA testing. This can help to prevent delay if proceedings are later issued.
- Use of specialist, and intensive intervention programmes and services, which use innovative approaches to working with parents, should be considered. Some examples include:
 - Strengthening families approach (Salford) and/or PAUSE model for parents who have had previous children removed during recurrent care proceedings.
 - MCR Families First (Manchester) – intensive 6 week intensive capacity to change programme
 - New Beginnings (Stockport Family) – intensive trauma informed programme enabling parents to understand the impact of their own trauma on their capacity to parent, alongside counselling and holistic therapies
 - Domestic abuse interventions for both victims and perpetrators

Practice example: New Beginnings – Stockport Family

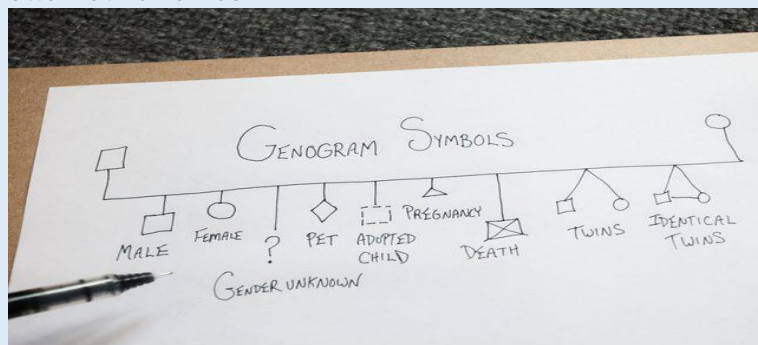
New Beginnings is based on the Flemish model “Stobbe” and has been developed in partnership with Dr Jadwiga Leigh – academic and lecturer in social work. The 24-week intensive group work programme is for women who have experienced significant trauma in their lives and who are struggling to parent their children and as a result are at risk of entering into legal proceedings. The programme involves exploration of the parents’ own experiences as children and adults and developing insight and understanding of how this affects their parenting capacity. Use of trauma-informed practice, holistic therapies and one-to-one counselling enable a process of self-exploration, reflection and repair.

The women are supported to develop skills as accredited peer mentors so that they can support other parents in similar circumstances and fulfil their potential in seeking employment and training opportunities. The New Beginnings website contains more information including a powerful [blog](#) with entries from women attending the programme, the facilitators and social workers.

It is important to remember that if the matter progresses to court proceedings the local authority will need to evidence both the gaps in the parents' capacity to care for their children and their lack of ability meet the children's needs, as well as how the local authority has provided support and services to bridge these gaps.

[Family group conference/meetings](#) (FGC) can enable families to problem solve together, using the resources within the family network and develop a contract/agreement to support change and improvements for children. Where it is possible that the child/ren will not remain in the care of their parent/s, an [FGC](#) enables the extended family to be aware of the concerns of professionals and to consider whether there are options for the child/ren to remain within the birth family, at the earliest opportunity and preventing delay further down the line.

Where it is not appropriate or possible to hold a FGC the social worker must explore with the parents the options for them to receive support, advice and guidance from family members, and whether family members might offer the children a home in the short or long term. This should include assessments of suitable alternative homes.



In all cases, a comprehensive [genogram](#) should be drawn up as part of the process for proactively considering with parents the need for early identification of sources of support and potential

The legal gateway process should not be used for cases where social workers feel stuck and the plan is not gaining enough traction or effecting change. In these circumstances, consideration of alternative approaches can be helpful:

- Partnership or group supervision can be used to draw on the wider range of professional skills involved with a family, to test hypotheses, and review evidence to establish risk and impact on child's development.
- It is helpful to consider carefully the risks to the child of remaining in the family home against the risks of coming into care – with clear reference to the child's wishes and feelings. It is important that this is explored explicitly with partners to enable decision making in the best interests of the family.
- Case discussions led by senior managers with input from the Independent Reviewing Officer (IRO) and other key agencies to look at creative approaches to engage with families, consideration of step down rather than escalation where there are long-term support needs.
- Reflective audit jointly with social worker and team leader/service manager/IRO.



Practice example: Halton Complex Case Discussions

Complex Case Discussions offer professional challenge and facilitate reflective discussions in Child Protection cases. The CP Conference Chair will consider at the 9-month review and will only be recommended for cases that appear “stuck” for partners to endorse. Chaired by a Divisional Manager, the CCD brings together Children’s Social Care staff and provides for virtual input from partners via written reports. The CCD challenges current planning and offers a forum to problem solve and focus upon solution. In addition to minutes of the CCD, a short overview report is considered by senior leaders to evaluate effectiveness and measure impact. A CCD can be repeated at 15 months where cases continue to demonstrate a lack of progress.



In order to prevent drift within pre-proceedings, timely review points should be agreed and where progress is not being made, decisions must be made through robust managerial oversight about how to proceed. If the PLO process is not effecting change within the family and achieving permanence for children within their timescales then the decision to initiate proceedings should not be delayed. At the point of issuing, except in cases where urgency does not permit, all evidence that the local authority relies on must be prepared in advance.

Legal gateway or permanence planning processes should include a range of professional contributions to ensure that permanency planning is considered at the earliest possibility including adoption and family placement and kinship care team leaders; family group conference co-ordinators or edge of care services. Social workers and team leaders need to have a clear focus on permanence planning and having the right plan to meet the child’s needs at the earliest opportunity at the forefront of their work with families in pre-proceedings.

Good Practice in working with partner agencies

Strong partnership relationships and joint working are essential in supporting change for families. Developing integrated services and effective multi-agency early help services can ensure that children's needs are identified at the earliest opportunity and that help is provided at the right time and in the right way for families.

Where partner agencies fully understand the circumstances for child/ren within a family and the support needs for parents they are better placed to contribute to multi-agency planning.

It is beneficial to consider how partner agencies can be included in PLO meetings and Legal Gateway meetings so that they can contribute fully to the process, sharing up to date information about how the parents are engaging with their services and the positive or negative impact on the child/ren.

Multi-agency partners should provide a chronology of their involvement and an overview of services or support offered to families. This ensures that there is a better evidence base to understand whether the threshold for significant harm for children is met, what services have been offered to the family, what has worked well and what has not. This evidence will be important if the local authority makes a decision to initiate care proceedings.



Strategic considerations for a system where good practice can flourish

- Are you confident that you know the quality of practitioners' practice with children and families?
- Do the senior leaders within the organisation have opportunities to observe practice and provide feedback to practitioners, which celebrates skills and strengths, but also identifies areas for development and change?
- The "Practice Week" model adopted now in several LAs enables senior leaders across children's services to spend time auditing cases and observing practitioners in practice across a range of activities – and then speaking directly to children, parents and carers to get their views about the quality of the services provided to them. Specific and immediate feedback can be given to practitioners. Excellent practice can be celebrated and areas for development and themes across services can be identified and addressed.
- There are examples within local authorities of different regular panels or meetings to track cases for consideration of permanence at the earliest possible opportunity and to ensure that there is no delay for achieving long-term care plans for children. The oversight and challenge provided by IROs is critical here in ensuring that all Child Protection and Looked After Children cases are subject to regular and robust review and any cases of delay or drift are escalated and resolved speedily.
- Senior leaders need to have a clear overview of the PLO and pre-proceedings activity within their service and be able to track those cases, which come to legal gateway and move into PLO. It is important to ensure that the threshold and decision making for children and families to move into PLO is robust, consistent and accurately recorded. Examples of good practice here include a dedicated role such as a Case Manager/Progression Manager to keep an overview of all cases going to legal gateway and into PLO. This role is able to quality assure, audit and oversee all cases for consistency and timeliness.

Practice example: Manchester Pre-proceedings Framework

Manchester has revised and re-modelled its approach to pre-proceedings, based on their 'policy to practice' approach. It is a key principle that all cases should be prepared for a period of Pre-Proceedings, unless immediate risk/harm identified. This is not an extension of Child Protection procedures, rather for cases considered 'threshold met' – same threshold for Court, but due to no imminent harm, carers are given one final opportunity. Threshold decisions supported by use of tools including Impact Chronology, Threshold Pyramid and identification of 'Deal Breakers' presented at Gateway Panel. The full process from decision at Gateway to decision to de-escalate or issue proceedings to take no longer than 16 weeks and is tracked by Case Progression Manager. The first pre-proceedings meeting booked and held within 15 days of Gateway. Following a 6-week internal review with social work team and allocated solicitor, cases return to Gateway with completed Review Application by week 12.

Decision-making needs to reflect that all efforts to work with parents to effect change have been made prior to consideration at legal gateway. Referral to legal gateway should not be made where professionals feel stuck in a case or parents are not engaging. Alternative processes can be considered in these cases as identified above. There needs to be a strategic oversight and understanding of where practice is below what is expected here, and steps taken to address any gaps in knowledge, skills, assessment of risk and delivery of interventions.

“The ability to engage parents sufficiently and to build relationships of trust is a precursor for change; but so is the suitability, efficacy and availability of the services on offer. Without services sophisticated enough to support both children and parents within families close to the thin red line, the study suggests that more families eventually cross it....For this high need group of families, we need to urgently identify and test promising, or new, approaches to support families and secure lasting change”.

(Isabelle Trowler: Care Proceedings in England: The case for clear blue water. The University of Sheffield and Crook public service fellowships, 2018).

Consideration of how leaders can work in partnership to draw on the skills and capacity across agencies within children’s and adults services in order to meet the needs of the whole family is vital in a climate of reducing resources. The current scale and spread of innovation practice across Greater Manchester, in partnership with the Department for Education is a great opportunity to develop new ways of working with children and families to meet complex needs better and there are many examples of innovation nationally which can assist in considering new ways of working with families.

Examples of good practice here include:

Agreeing tight timescales for reviewing PLO cases to ensure that there is no drift, with reviews taking place at weeks 12-16 with a decision made as to whether a case steps down or care proceedings are issued. In situations where expert reports are commissioned this may extend timescales.

Permanence planning meeting chaired by Head of Service to replace legal gateway (Bolton)

Regular legal liaison meetings with senior managers and head of legal alongside CAFCASS to ensure that cases are being dealt with in a timely manner, practice is informed by case law and feedback from family court shared and acted on. Further that any barriers to achieving best outcomes for children and securing permanence are addressed.

Ensure there is a robust workforce development strategy so that newly qualified social workers in particular receive good quality training in pre-proceedings and court work and are sufficiently supported through these processes by more experienced colleagues to enable them to become confident and skilled social workers.

Reclaiming the use of voluntary accommodation and the "No Order " principle as a means of supporting children within their family, in line with the Children Act 1989 ,for example with the use of shared care, is worthy of further exploration. Clearly, this needs to be legally compliant with reference to recent case law about the appropriate use of section 20 accommodation.

Lastly, senior leaders need to support the workforce to think creatively and create the conditions and permissions in order for innovative ways of working to flourish.

Suggested Reading and Resources

Research in Practice Guidance on court orders and pre-proceedings: <https://coppguidance.rip.org.uk/>

ADCS Safeguarding Pressures Research <http://adcs.org.uk/safeguarding/article/safeguarding-pressures>

Care Crisis Review: Family Rights Group <https://frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review>

Born into Care Newborns in Care Proceedings in England 2018 Nuffield Family Justice Observatory
https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/Born%20into%20Care_Final%20Report_10%20Oct%202018.pdf

Care proceedings in England: The Case for Clear Blue Water Isabelle Trowler The University of Sheffield 2018
https://www.sheffield.ac.uk/polopoly_fs/1.812158!/file/Sheffield_Solutions_Clear_Blue_Water_Full_Report.pdf

[Social Care Commentary: using models of practice successfully Yvette Stanley, Ofsted February 2019](#)

Direct work tools and resources for professionals

CAFCASS website: <https://www.cafcass.gov.uk/grown-ups/professionals/resources-for-professionals/>

Research in Practice Guidance on direct work with children under five

<https://coppguidance.rip.org.uk/wp-content/uploads/2014/07/Communicating-effectively-with-children-under-five.pdf>

All North West Local Authorities are partnered with Research in Practice. To create an online Research in Practice account at www.rip.org.uk Click on Create Account in the top right hand corner. Complete your details – using your work email address as your username.

Your username and temporary password will be sent to you via email. Log-in using your username and password to explore the website and resources.

Pre-Care and Care Proceedings Protocol for Greater Manchester Social Work Guidance Pack

http://www.proceduresonline.com/stockport/cs/client_supplied/regional_plo.doc