Public law

working group

Recommendations to achieve best practice in the child protection and family justice systems

FINAL REPORT (MARCH 2021)

[blank page]

Acknowledgements

In preparing this final report, we have been greatly assisted by many working in or with experience of the child protection and family justice systems.

We are indebted to Ruth Henke QC for her invaluable assistance in respect of Welsh law. We extend our warm thanks to the Family Justice Young People's Board. We wish to thank the members of the Private Office of the President of the Family Division for the administrative support and assistance; and to Francesca Paveley, clerk to The Hon. Mr Justice Keehan, for all her hard work in supporting the working group. Finally, to HHJ Moradifar, a member of the working group, for permission to reproduce and update the case summary and position statement templates he drafted for use in his court, appendix H1 – H3.

Table of contents

Glossary

ADCS	Association of Directors of Children's Services
ADSS	Association of Directors of Social Services Cymru
ASF	Adoption Support Fund
ASGLB	Adoption and Special Guardianship Leadership Board
ASP	assessment and support phase
BPG	best practice guidance
CA 1989	Children Act 1989
Cafcass	Child and Family Court Advisory and Support Service and Child and Family Court Advisory and Support Service Cymru
CG	children's guardian
CMH	case management hearing
CMO	case management order
DfE	Department for Education
DFC	designated family centre
DFJ	designated family judge
EPO	emergency protection order
FCMH	further case management hearing
FGC	family group conference
FJB	family justice board
FJYPB	Family Justice Young People's Board
FPR 2010	Family Procedure Rules 2010
FRG	Family Rights Group
HMCTS	Her Majesty's Courts and Tribunals Service
ICO	interim care order
IRH	issues resolution hearing
IRO	independent reviewing officer

ISW	independent social worker
LAA	Legal Aid Agency
LiP	litigant-in-person
LoI	letter of instruction
MoJ	Ministry of Justice
NFJO	Nuffield Family Justice Observatory
PLO	public law outline
S 20	section 20 of the Children Act 1989
S 76	section 76 of the Social Services and Well-being (Wales) Act 2014
SDO	standard directions on issue
SG	special guardian
SGO	special guardianship order
SGSP	special guardianship support plan
SSW-b(W)A 2014	Social Services and Well-being (Wales) Act 2014
SWET	social work evidence template

Introduction

1. The President of the Family Division asked me to chair this working group to address the operation of the child protection and family justice systems as a result of the themes he addressed in his speech to the Association of Lawyers for Children in October 2018.

2. In his address the President said,

> *"This additional caseload, alongside the similar rise in private law cases, falls to be dealt with by the same limited number of judges, magistrates, court staff, Cafcass officers, social workers, local authority lawyers, and family lawyers in private practice. These professional human resources are finite. They were just about coping with the workload in the system as it was until two years ago, and were largely meeting the need to complete the cases within reasonable time limits.*
>
> *My view now is that the system, that is each of the professional human beings that I have just listed, is attempting to work at, and often well beyond, capacity.*
>
> *As one designated family judge said to me recently, the workload and the pressure are "remorseless and relentless". I am genuinely concerned about the long-term wellbeing of all those who are over-working at this high and unsustainable level. Some have predicted that, if the current situation continues, the family justice system will "collapse" or "fall over", but, as I have said before, I do not think systems collapse in these circumstances. Systems simply grind on; it is people who may "collapse" or "fall over". Indeed, that is already happening and I could give you real examples of this happening now.*
>
> *It is because of the high level of concern that I have for all of those working in the system that I have made addressing the rise in numbers, as I have said, my*

Number One priority. Other issues that come, important though they may be, must take second place.

Returning to the rise in public law case numbers, and speaking now for myself, it seems to me obvious that if there has been a very significant and sudden rise in the number of cases coming to court, these "new" cases must, almost by definition, be drawn from the cohort of cases which, in earlier times, would simply have been held by the social services with the families being supported in the community without a court order. The courts have always seen the serious cases of child abuse, where, for example, a baby arrives close to death at an A and E unit following a serious assault, or cases of sexual abuse or cases of serious and obvious neglect. No one suggests that there has been a sudden rise of 25% in the number of children who are being abused in this most serious manner.

Further round the spectrum of abuse lie those cases which, whilst nonetheless serious, do not necessarily justify protecting the child by his or her immediate removal from home. These are more likely to be cases of child neglect and will frequently involve parents whose ability to cope and provide adequate and safe parenting is compromised by drugs, alcohol, learning disability, domestic abuse or, more probably, a combination of each of these. Such families are likely to have been known to social services for months or, more often, years.

The need for the social services to protect the children will have been properly met by non-court intervention somewhere on the ascending scale from simple monitoring, through categorizing the child as "a child in need", on to the higher level of a formal child protection plan and up to looking after the child with the agreement of the parents under s 20 [or s 76]."

3. The steep rise in the issue of public law proceedings seen in 2016/17 and 2017/18 has to some degree eased more recently. But there are still a greater number of

cases being issued than in earlier years. The far greater volume of cases is, as the President observed, dealt with by the same number of social workers, care professionals, CGs, lawyers and judges, if not fewer, given those who have decided to leave their chosen careers because of the incessant and overwhelming demands of the family justice system.

4. The reasons for this recent steep rise in the issue of public law (care) proceedings are complex and multiple, as suggested by the recent work of the FRG's *Care Crisis Review: Options for Change* (June 2018)[1] and joint work done by the MoJ and DfE.

5. The various reasons for the increase in the number of public law proceedings issued are outside the remit of this working group. We are charged with considering how children and young people may:

   i. safely be diverted from becoming the subject of public law proceedings;

   ii. once they are subject to court proceedings, best have a fully informed decision about their future lives fairly and swiftly made.

6. The terms of reference of the working group are set out on page 25. In broad terms our objectives are to:

   i. recommend changes to current practice and procedure that may be implemented reasonably swiftly, without the need for primary or secondary legislation;

   ii. make recommendations to provide BPG. In doing so we are not suggesting that one size fits all. As a result of demographics, poverty and population sizes, to name just three matters, different priorities and practices will suit some local authorities and courts better than others. We suggest, however, that there are

[1] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

certain core changes which need to be made to social work practice and the approach of the courts which will enable fairer and speedier decisions to be made for the children and young people who are the subject of public law proceedings;

iii. make recommendations that may require primary or secondary legislation (including revisions to statutory guidance) to effect change. These constitute our longer-term goals.

7. The PLATO tool[2] developed by the MoJ, on the basis of data provided by HMCTS, Cafcass and the DfE, analyses the applications made by local authorities in public law proceedings and the orders made at the conclusion of proceedings in the Family Court (and its precursor) between 2010 and 2016. It provides an illustration of the wide variation of applications made per 100,000 children by each local authority in England and Wales, as well as of the orders made on those applications by each DFJ area in England and Wales.

8. The variations made can be illustrated by the following examples:

i. in the Cleveland and South Durham DFJ area the local authorities issued 304.4 applications for care orders per 100,000 children whereas, over the same period, in the Swindon DFJ area there were 44.7 applications per 100,000 children;

ii. in the North Wales DFJ area 77.8% of all care applications resulted in the making of a care order whereas in the West London DFJ area only 39.8% of cases resulted in a care order;

[2] To read about the PLATO tool: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696108/children-in-family-justice-data-share.pdf

iii. in the Bristol DFJ area 1.8% of all care applications resulted in a SGO with a supervision order whereas in the Wolverhampton DFJ area only 0.3% of cases resulted in a SGO with a supervision order;

iv. in the West London DFJ area 36.1% of all care applications resulted in a supervision order being made and in the Derby DFJ area the figure was 31.6%, whereas in North Wales 6.5% of applications for care orders resulted in a supervision order being made and in the Kingston-upon-Hull DFJ area the figure was 10.1%.

9. A further illustration of regional variation is provided by the research paper, Harwin, Alrouh et al, *The Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice* (March 2019).[3] In the North 70% of SGOs had a supervision order attached whereas in the South the figure was only 30%. It led the authors to suggest that "*court and local authority cultures are more important than the perceived riskiness of the placement*". The paper provides evidence of the poor experience of proposed and approved SGs during the assessment process, during the court proceedings and after the court has appointed them as SGs. We had close regard to the findings of that paper in making our recommendations in respect of special guardianship.

10. The reasons for these regional variations are undoubtedly multifactorial. It is the suggestion or inference from the research and statistics that differences in culture and approach by the courts and local authorities are significant drivers in the variation in orders and outcomes for children. That leads us to conclude that steps should be taken to achieve a greater uniformity of approach and a stricter adherence to best practice.

[3] P 145, available online: https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN%20main%20report%20SO%20and%20SGOs%20_%204Mar2019.pdf

11. Where in this report statements, recommendations or guidance are based on published statistics or empirical research, the reference is given in the text or a footnote.

12. In all other instances, statements, recommendations or guidance are based on the combined and extensive professional experience of those on the working group. It is important to note that the proposed recommendations and BPG are, of course, subject to the legislative provisions and statutory guidance.

13. A version of this final report was delivered to the President in February 2020. It has been intended to publish the report in March 2020. We then had to cope with the start of the COVID-19 pandemic. The President decided to postpone the plans for publication. In May 2020, he considered that there was a pressing need for guidance in respect of SGOs. A standalone report on special guardianship orders, with accompanying BPG, was published on 15 June 2020.

14. The support for and work with families prior to court proceedings sub-group had wanted to take further time to consult with major stakeholders and groups involved in and concerned with these areas of practice. We wished to ensure that the BPG, once finalised and issued, was practical, effective and would be widely implemented. The pause in the publication of this final report has enabled that work to be undertaken and for the BPG to be drafted. The BPG is set out in appendix E1 – E3 to this report.

15. All those involved in the child protection and family justice systems worked under considerable pressure before COVID-19. The recommendations and BPG set out in this report were in large part formulated in a time before the pandemic. COVID-19 has required everyone to adapt to new ways of working and it has increased the workload and pressure upon us all. It was agreed that the time was right to recommend to the President that in early March 2021 he publish this report. The implementation of the reforms and BPG set out in this report should result in an

easing of the burden and pressures on all those involved, to the inestimable advantage of all children who are involved in the child protection and family justice systems.

16. We make recommendations for change and to advise on elements of best practice which will permit social workers, senior managers, the legal professions and the judiciary to promote the welfare and protection of children by working in partnership with families to achieve the best outcomes, in a fair and timely manner, for the children and young people with whom we are concerned. Our aim is to assist families to be able to make decisions that, wherever possible, enable children to be safely raised within their family network and avert the need for more intrusive state intervention, including court proceedings.

17. The simple message which has guided our work, and which must guide all those who work in the child protection and family justice systems, is that the welfare of the children and young people with whom we are concerned must come first and above every other consideration.

The Honourable Mr. Justice Keehan

March 2021

Executive summary

18. The Public Law Working Group has been set up by the President of the Family Division to address the operation of the child protection and family justice systems as result of the themes he addressed in his speech to the Association of Lawyers for Children in October 2018.

19. A particular concern is the steep rise in the issue of public law proceedings seen in 2016/17 and 2017/18. That eased off a little in 2018/19, but there are still a greater number of cases being issued than in earlier years. The far greater volume of cases is, as the President observed, dealt with by the same number of social workers, care professionals, CGs, lawyers and judges, if not fewer, given those who have decided to leave their chosen careers because of the incessant and overwhelming demands of the family justice system.

20. The membership of the working group is drawn from a variety of professionals with considerable experience in the child protection and family justice systems. Our members include directors of children's services or senior managers, the CEO and directors of Cafcass, the CEO and a director of Cafcass Cymru, a family silk, a junior member of the Family Bar, child care solicitors, local authority solicitors, representatives of the MoJ, DfE[4] and HMCTS dealing with family justice, a member of the President's Office, four judges, a magistrate, a legal adviser and academics specialising in this field.

21. To complete out work, we formed six sub-groups, addressing, in turn, support for and work with families prior to court proceedings; the application; case management; supervision orders; special guardianship; and s 20 / s 76

[4] MoJ and DfE participation in this working group should not be taken as government endorsement of all the recommendations in this report or the BPG.

accommodation. The membership of the full working group is set out in appendix A and the membership of the sub-groups in appendix B.

22. A standalone report on special guardianship orders, with accompanying BPG, was published on 15 June 2020.

23. In this report, we make 47 core recommendations, across the five remaining areas that the sub-groups have examined. We have provided a full explanation for and analysis of these in this report. In broad terms, the recommendations are as follows:

Support for and work with families prior to court proceedings

i. for local FJBs to use the BPG to work on shared respect charters for how professionals work positively together and how they work with families to provide support;

ii. ensure the voice of the child is at the centre of collective thinking;

iii. clarity on the purpose and timing of initiating work under the PLO and using the pre-proceedings phase of the PLO at an early enough stage to be effective in addressing the harm identified;

iv. tracking and review;

v. consider and share understanding of the importance of triggering the entitlement to legal advice for parents;

vi. ensure communication with parents is clear and avoids jargon;

vii. record-keeping in relation to assessment and support to the family in the pre-proceedings phase of the PLO and anticipating assessment as evidence if required;

viii. identifying, utilising and assessing friends and family;

ix. planning for newborns and support for babies;

The application

x. revision of the Form C110A;

xi. greater emphasis on pleading "the grounds for the application" in the Form C110A;

xii. revision of the Form C110A for urgent cases / use of an "information form" for urgent cases pending completion of the rollout of the online form;

xiii. early notification of Cafcass;

xiv. good practice guidance for courts listing urgent applications and CMHs;

xv. working with health services in relation to newborn babies;

xvi. including the child's birth certificate in the bundle;

xvii. focussed social work evidence / the SWET for urgent applications;

xviii. use of the revised SWET;

xix. a revised template for standard directions on issue;

xx. introduction of checklists for advocates' meetings and CMHs for practitioners and the court;

xxi. circulation of case summary templates;

xxii. early and active case management;

xxiii. DFJ focus on wellbeing;

Case management

xxiv. use of short-form orders;

xxv. consideration of any immigration and international issues at an early stage of the proceedings

xxvi. advocates' meetings: using an agenda and providing a summary;

xxvii. use of new template for case summaries and position statements;

xxviii. renewed emphasis on judicial continuity;

xxix. renewed emphasis on effective IRHs;

xxx. the misuse of care orders;

xxxi. case management of cases in relation to newborn babies and infants;

xxxii. experts: a reduction in their use and a renewed focus on "necessity";

xxxiii. experts: a shift in culture and a renewed focus on social workers and CGs;

xxxiv. excusing CGs from attending fact-finding hearings and permitting CGs to file and serve position statements, rather than an analysis, for the purposes of case management hearings;

xxxv. judicial extensions of the 26-week time limit;

xxxvi. a shift in focus on bundles: identifying what is necessary;

xxxvii. fact-finding hearings: only focus on what is necessary to be determined;

xxxviii. additional hearings: only where necessary;

xxxix. the promotion nationally of consistency of outcomes;

Supervision orders

xl. an additional sub-group to be set up to examine supervision orders;

S 20 / s 76 accommodation

xli. circulation and use of the working group's: (a) guide on s 20 / s 76; (b) simplified explanatory note for older children; and (c) template s 20 / s 76 agreement;

xlii. no time limits on s 20 / s 76 – but agreement at the start of the offer of accommodation on how long it will last;

xliii. focus on independent legal advice for those with parental responsibility "signing up" to s 20 / s 76;

xliv. local authority implementation of the working group's BPG and review of its functioning;

xlv. on-going training and education on the proper use of s 20 / s 76;

xlvi. a process of feedback and review on the proper use of s 20 / s 76;

xlvii. further consideration of and guidance on s 20 / s 76 and significant restrictions on a child's liberty.

24. In addition, in this report we make 15 proposes for longer-term change. These recommendations will require (a) legislative changes to be implemented and/or (b) the approval of additional public spending by the Government. Those are:

Support for and work with families prior to court proceedings

i. develop consideration factors to support decision-making prior to legal gateway meetings;

ii. development of protocols which provide clarity of expectations and principles under the pre-proceedings phase of the PLO;

iii. refocusing the role of IROs and conference chairs to offer additional oversight outside of proceedings;

iv. public funding for parents during pre-proceedings;

v. refocusing the role of local authority legal advisers and decision-making outside of proceedings;

The application

vi. research into the regional variation in the proportion of urgent applications;

vii. compilation of reliable data about urgent applications;

viii. reconsidering planning for newborn babies, including the role of Cafcass pre-proceedings;

ix. a new IT system;

x. improvement in the range and quality of data collection and analysis by HMCTS / MoJ;

xi. a review of the funding of the family justice system;

Case management

xii. a review of recruitment and resourcing of the family justice system;

Supervision orders

xiii. a review of supervision orders;

S 20 / s 76 accommodation

xiv. a review of public funding for those with parental responsibility "signing up" to s 20 / s 76 accommodation;

xv. investment in the use by local authorities of a multi-disciplinary approach.

25. Finally, we recommend that the BPG in appendices E, F and G is issued by the President of the Family Division. The BPG is made on the basis that every case turns and must be decided on its own particular facts.

The consultation

26. The consultation on our interim report was launched in July 2019 and closed on 30 September 2019. We received 420 responses via SurveyMonkey, of which 186 respondents completed the entire questionnaire and we received 47 narrative responses from key stakeholders in the child protection and family justice systems (including the ADCS, Cafcass, Cafcass Cymru, the Official Solicitor, Ofsted, FLBA, Resolution, the FRG and family judges across England & Wales). A list of the organisations who submitted narrative responses is set out in appendix C. We were particularly pleased to receive a significant number of responses from parents and carers.

27. The overwhelming majority of respondents agreed with and supported all of the (then) 57 core recommendations and the (then) 16 longer-term recommendations. The percentage of respondents who agreed with the recommendations fell in the range of 60% to 92% (a median of 76%). The percentage of those who disagreed with a recommendation was of the order of 1% to 10% (a median of 5%). In respect of then-recommendations 4, 8,12,13, 30, 34, 35, 40, 41, 52 & LT6, the range of disagreement was between 11% and 15% (a median of 13%). The percentage of respondents who disagreed with then-core recommendation 5 (the role of the local authority legal adviser) was 16% and the percentage of those who disagreed with then-long-term recommendation 2 (reconsidering the role of Cafcass pre-proceedings) was 21 percent. A more detailed analysis of the responses is set out in appendix D. The degree of agreement and disagreement in the 47 narrative responses broadly reflected the SurveyMonkey responses.

28. A number of respondents, especially those organisations who submitted narrative responses (listed in appendix C), made a significant number of observations and comments on the recommendations which we have considered carefully in

preparing this final report. We give two examples. First, a number of organisations were concerned that if our recommendations in respect of support for and work with families prior to court proceedings were introduced without an increase in the amount of public funding provided by the LAA, it was unlikely that parents and carers would secure adequate legal advice and representation to ensure the process was balanced and fair. Moreover, there was a high risk that a lack of adequate public funding would result in our recommendations on this issue not being implemented, either at all or effectively. In consequence of this observation we (a) invited the LAA to consider increasing the sums made available to parents and carers to meet the costs of legal advice and representation to the PLO process, taking account of the saving of significant sums in public funding if a family if successfully diverted from public law proceedings, and (b) deferred, for a period, the issuing of the BPG in respect of support for and work with families prior to court proceedings.

29. Second, some organisations, principally those representing the legal professions, took issue with the recommendations that pro forma templates should be adopted for case summaries, respondents' position statements and position statements for CGs. The criticisms were that the templates were unnecessary, time-consuming to complete and sought to micromanage the advocates in public law proceedings. We considered these matters carefully. We concluded to maintain these recommendations for three principal reasons: (a) our recommendation in respect of the preparation of court bundles is intended to reduce time and cost for the legal professions – in order to reduce the preparation time on the judiciary and to provide them with a clear route map to the issues and essential reading, it is essential that short, focussed case summaries and position statements are provided to the court; (b) currently, the anecdotal evidence is that too many case summaries and position statements are not short and focussed; and (c) those care centres which have introduced pro forma templates initially

faced the same criticisms which have been made of our recommendations, but once the new schemes had become embedded as part of normal practice, these criticisms evaporated. Accordingly, we are of the clear view that the best means of achieving the objectives of enabling the judiciary to identify the relevant issues to be determined at the hearing speedily and to identify the essential reading material is the use of pro forma templates.

30. In the interim report we made 57 core recommendations for immediate change and 16 recommendations for longer-term change. In light of some of the responses received to the consultation and contributions made by members of the working group we are making in this final report three fresh recommendations for immediate change (new recommendations 25, 34 and 40: immigration and international issues; excusing CGs from attending fact-finding hearings and permitting CGs to file position statements; and, a sub-group to review supervision orders) and a fresh recommendation for longer-term change (new recommendation 13: inviting the Government to review supervision orders to make them more robust and effective).

Best practice guidance

31. We recommend to the President that the BPG in respect of (a) support for and work with families prior to court proceedings, which is in appendix E, (b) the application and case management, which is in appendix F, and (c) s 20/ s 76 accommodation, which is in appendix G be rolled out in early March 2021.

32. The BPG is endorsed by the principal stakeholders in the child protection and family justice systems: most notably but not exclusively the ADCS, ADSS Cymru, Cafcass, Cafcass Cymru, and the Welsh Government. This endorsement will increase the prospects of the BPG effecting real and sustained improvements in the operation of the child protection and family justice systems. We acknowledge

that the implications of our recommendations and the ease with which implementation will be possible will be defined by local context and current operating practice which, we know, varies nationally.

33. A national Family Justice Reform Implementation Group has been established to drive implementation of reforms. It is hoped that local FJBs will play a key role in monitoring implementation of the BPG in each area and taking steps to ensure good practice is achieved by all those involved in the child protection and family justice systems. The local context is crucial in determining and influencing the drivers for change which will vary nationally in relation to need and current practice.

Terms of reference

34. The working group will aim to achieve the following:

i. to consider measures which may be taken to divert those public law applications made by local authorities to the Family Court which could be "stepped down" with a focus on: (a) the internal processes undertaken by local authorities to determine whether and when to issue an application to the court for public law orders; (b) the extent to which there is compliance with the pre-proceedings protocol; (c) the identification of "blue water cases" to be contrasted with the "grey cases", as considered by the chief social worker: including the increase in the number of children returning home to their parent(s) under care or supervision orders in some local authority areas;

ii. to address the issue of the increase in short-notice applications being made by local authorities when issuing applications for public law orders;

iii. to address the issue of ensuring timely compliance with case management orders;

iv. to consider whether guidance should be given on the appropriate use of s 20 / s 76 accommodation;

v. the voice of the child – when and how can engagement with children be made in the most effective way?

vi. to consider a restructuring of the case management order template;

vii. a real benefit to children – all proposals should be measured against whether they contribute to delivering enhanced benefits and outcomes for children;

viii. to communicate with (a) the Private Law Working Group and (b) the MoJ/HMCTS working group(s) on reform of public law proceedings.

35. The working group is encouraged to make recommendations which can be implemented relatively quickly in terms of making the current system more effective.

36. It will also be encouraged to make recommendations, including a radical re-structuring of the existing system, if this is what the working group considers necessary, which may take longer to implement, perhaps because it requires primary legislation or public expenditure which only ministers can approve.

Support for and work with families prior to court proceedings

Current issues

37. The focus of the majority of this report is the culture and the processes within the family justice system. For the vast majority of families, however, their support and care will rest with family and community support, sometimes alongside that of a variety of different agencies. Only a small minority require the support and intervention of local authority social workers. For every family involved in family court processes there are many more families who will successfully work and engage with local authority intervention. The work of local authority social work teams is key to supporting families. This is complex and difficult work which requires social workers with skill and expertise, working in a framework which understands and supports them and the families they serve. Across England and Wales local authorities have developed and adopted processes to reflect local needs and ensure effective deployment of scarce resources.
38. Focussing skills and resources in systems and processes which can safely support children within their families, divert children and families from court and identify support within the wider family is key to safely diverting many families away from court. An emphasis on building relationships, offering intensive support and sustaining resilience is evidenced repeatedly both in research and in the expressed views of children and adults.
39. Local authority decision-making and support for families moves from social work support, to pre-proceedings and the use of the PLO, finally into court proceedings. Local authority work areas have developed processes to meet needs locally, reflecting the makeup of communities and differing forms of support. Many of us appreciate the critical importance of completing work prior to going to court and the imperative of managing risk outside of the court process with the

potential to avoid issuing. To deliver pre-proceedings support effectively the multiagency partnership needs to understand its value to children and families.

40. The potential delay in proceeding to court when pre-proceedings support has not reduced risk needs to be acknowledged by courts with an understanding that where there is timely, intensive work underway criticism of the local authority is unwarranted. Unfortunately, those children's lives which are presented to court are where pre-proceedings work has failed to secure change and grave concerns persist. Where issuing is the only safe option, the court process will benefit from careful and focussed pre-proceedings work having been undertaken.
41. In line with the current debate on the rising number of children involved in proceedings, this report seeks to approach local authority decision-making (including pre-proceedings work) expansively. In so doing, there is an emphasis on the value of professional knowledge, skill and maturity in the decision-making process and the management of risk.
42. There is a sense of an increase in risk-averse practice in all parts of the family justice system. The drivers are widely accepted to be multifactorial and include high-profile cases, criticism of professionals, societal change and shifts in toleration of risk. These drivers were fully explored within the FRG's *Care Crisis Review: Options for Change* (June 2018).[5]
43. Bringing positive change to the shared cultures of social work, managers, lawyers and the judiciary will require a shift away from the current, often-adversarial milieu and towards a more cooperative environment. It is vital to ensure that change is felt through all organisations and strong and positive messages are heard from "leaders" across the family justice system.
44. The reluctance and confusion over the use of s 20 / s 76 detracts from local authorities using it as an effective support mechanism. Clarity and confidence in

[5] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

the effective use of s 20 / s 76 would reduce the number of children and families coming before the Family Court.

45. As well as concern about the total number of cases being issued, there is a challenge in relation to the number of urgent applications. Increased confidence in the safe management of risk by local authorities needs to be accompanied by an acceptance by the wider system. Whilst there will be some children for whom court intervention is at a later stage required, this does not and should not detract from the need for carefully managed pre-proceedings work. The subsequent requirement for care proceedings should not attract criticism of the local authority.

46. Where work with families under the pre-proceedings element of the PLO is a tick-box exercise undertaken late in the day and viewed as a procedural necessity before proceedings are issued, families will receive insufficient help to avoid court. The PLO has a dual function. First, assessments conducted under the PLO during the pre-proceedings phase (multi-disciplinary if needed, informing intensive, relationship-based social work support to the family, which itself builds on earlier support, accompanied by independent legal advice to the parents) are more likely to prevent issues from escalating and to divert families from proceedings. Secondly, they serve more clearly to identify those for whom care proceedings are required. Where it is clear that a child may require removal from her parents' care, the earlier approach of the local authority enables decisions to be made in a timely manner, with plans based on a real understanding of the needs of the child and the capacity of the family to meet those needs.

Recommendations

47. **Recommendation 1: For local FJBs to use the BPG to work on shared respect charters for how professionals work positively together and how they work with families to provide support.** Social workers have a significant and invaluable range

of skills and expertise. Of all the skills they have perhaps the most important is that of building a strong relationship with the families with whom they work. Despite being under significant pressure with onerous workloads, skilled and dedicated social work is a meaningful agent for change.

48. The DfE launched *Rethinking Children's Social Work* in 2014. This recognised that *"whilst the level of social complexity that social workers are expected to manage and master is huge, the way that social work is organised and delivered can reduce the time that social workers have to work directly with families, reflect on their work and develop their skills and knowledge of the evidence."*[6] FRG's *Care Crisis Review: Options for Change* (June 2018)[7] identified the importance of intensive relationship-based practice, specifically with regard to pre-proceedings work. It emphasised the importance of creating the conditions within the family justice and child protection systems to allow good relationships to flourish.

49. The value of relationship-based social work is recognised within the sector. It is crucial that, even in the face of managing significant risk, empathic social work is maintained. It is vital that local authorities are clear with families about the expectations of how their staff will work with them.

50. Local authorities around the country are finding ways of learning from families with experience of the child protection and family justice systems in order to inform their thinking at strategic, service-design and individual-case levels. Many will have set this out within their existing frameworks but adopting the FRG Mutual Expectations Charter may be helpful in providing a degree of consistency across the sector.

51. **Recommendation 2: Ensure the voice of the child is at the centre of collective thinking.** As part of the work to enhance the presence of the child and better hear

[6] Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/342053/Rethinking_children_s_social_work.pdf

[7] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

her voice, local authorities and local FJBs should consider promoting the use of the FJYPB materials, appendices I1 – I5 (including that on sibling relationships, appendix I5) to all professionals working with young people.

52. The voice and lived experience of the child should underpin the thinking, decision-making and actions of all involved

53. **Recommendation 3: Clarity on the purpose and timing of initiating work under the PLO and using the pre-proceedings phase of the PLO at an early enough stage to be effective in addressing the harm identified.** The phase of the PLO outside of proceedings should have two parallel aims: the first is successfully to divert families away from the need for proceedings; the second is to identify whether proceedings are required, and to do so in such a way that if proceedings are necessary the case can be presented effectively.

54. Many of the public law cases before the courts involve families who have been known to their local services for years. Families should be given the earliest opportunity to benefit from the support and intervention that is put in place. Ideally, the use of the PLO process should not be a response to a crisis.

55. Where it is clear that families are at real risk of care proceedings to address an identified risk or actual significant harm experienced by the child, local authorities should, where this does not compromise the safety of the child, initiate the PLO early enough to give families the opportunity to be supported to address the harm identified and access legal advice. A review of the current statutory guidance to make this trigger point clearer would be welcome.

56. **Recommendation 4: Tracking and review.** Local authority legal departments routinely monitor the progress of a case in proceedings against the requirements of the PLO, including a requirement that cases should conclude within 26 weeks. Legal departments should also ensure that the progress of a case in the pre-proceedings phase of the PLO is subject to ongoing monitoring and review, and that there are clear expectations of timeliness and legal department responses.

To this end local authority legal departments, together with their social work departments, should develop a system to track cases outside of proceedings.

57. There should be an agreed and defined timetable for regular reviews. Ultimately the responsibility for escalating through the steps which take cases towards the courts lies with experienced local authority social work managers. Standing back once a case has been escalated becomes increasingly difficult and requires professional knowledge, skill and confidence. Senior and experienced social work managers should be at the forefront of local authority decision-making.

58. **Recommendation 5: Consider and share understanding of the importance of triggering the entitlement to legal advice for parents.** Currently there is considerable regional variation as to when local authorities initiate the PLO. An important consideration is that, when local authorities conclude that the case has reached a threshold to initiate the pre-proceedings stage of the PLO, parents are entitled to receive non-means- and non-merits-tested (free) legal advice. Parents will not often have had access to independent legal advice prior to the letter before proceedings. Wider family often do not have access to free legal advice even at that point, so may not understand the concerns of the local authority or their rights or options.

59. The letter before proceedings provides families with an opportunity to access independent, specialist, legal advice and advocacy which can help more effective participation in local authority planning processes from an informed position.

60. The opportunity for parents to be legally represented at the meeting before action can assist their understanding of the seriousness of the position and the need to work with the authority to address concerns. Meetings before action (i.e. before issuing proceedings) should have a standard agenda which ensures that core elements are not overlooked. The meeting needs to offer a degree of reassurance about the support on offer for the family to address the changes needed, as well as realism about the need for them to achieve changes. It can also be helpful for

the local authority that the development of plans for assessment and support comes under a degree of scrutiny.

61. It will typically be appropriate to have a further review meeting with parents and their legal representatives after the outcome of assessments are known, i.e. at the stage at which the local authority is likely to be clear about whether court proceedings are necessary. These further meetings can be helpful in diverting cases from proceedings and are particularly important when discussing plans for newborn babies.

62. It is recognised that the current legal aid regime would appear to place a burden on parents and legal professionals in terms of the overall lack of funding pre-proceedings. This report recommends that the Legal Aid Agency review the remuneration available for this important work, which may ultimately save the taxpayer the cost of care proceedings.

63. **Recommendation 6: Ensure communication with parents is clear and avoids jargon.** The template routinely used to send letters before proceedings can be too legalistic and complicated for parents and young people to understand. The format and layout have been described by some parents as feeling like you are being "shouted at". There is a balance to be struck between ensuring the letter is recognised as a crossroads and acted on, and doing so in a manner which is fair, easy to understand and does not create undue fear. It should always be clear what the concerns of the local authority are, what children and families can expect of children's services, what is expected of the family and why. But this should be written in a way that encourages participation moving forward. Appendix I6 provides comment from a parent about how these letters might be better phrased, and what it feels like to receive them.[8]

[8] With thanks to Annie, of Surviving Safeguarding.

64. It is recommended that local FJBs should work with local authorities, practitioners and other stakeholders, including parents with experience of care proceedings, to develop models of good correspondence.

65. **Recommendation 7: Record-keeping in relation to assessment and support to the family in the pre-proceedings phase of the PLO and anticipating assessments as evidence if required.** It is important that families have clarity about the assessments they are being asked to undertake and that there are clear records of what is proposed, what has happened and what will happen next. It is important that timescales are identified for each element. It is essential that there is a clear record of:

    i. what assessments have taken place and the scope of them;
    ii. the information that was available to the assessor and on which the assessment was based (including all documents and records shared);
    iii. the outcome of the assessment;
    iv. support and interventions offered to the family.

66. It is recommended that a template is developed to record basic information about the history, scope and outcome of assessments, support and interventions offered to the family is developed. It is recommend that such a template is utilised in every case as a running record.

67. This record can be produced by way of record of the work done with a family if proceedings become necessary, and as importantly be used to ensure that in regular reviews (including any meetings before action or review meetings under the PLO) there is clarity over what has already been done, what is outstanding, and what might be needed as the case progresses over time. This will provide the parents with a clear "road map" of what lies ahead and, when completed, it will offer the court and other professionals (such as managers, conference chairs and IROs) a clear record of the work that has been undertaken and may negate the need for that work to be repeated during proceedings.

68. A proper understanding that the work done at this stage of the PLO may later be required for the purpose of court proceedings requires professionals to replicate the standards of evidence that apply during the court process. All assessments should be recorded in formal reports and be conducted to the same standard as if they were conducted within court proceedings, with letters of instruction and a clear record of the information shared and analysis arising. This approach should mean that there is no disconnect between the quality of material generated during the pre-proceedings support and assessment phase, and that which may in due course be needed in court.
69. Social workers have limited time. Local authorities should consider if there is scope to avoid duplication of material in different formats: some authorities have developed templates for assessments which are designed to be capable of use in the SWET and can be transferred with ease into a child placement report (or placement plan) if ultimately needed.
70. **Recommendation 8: Identifying, utilising and assessing friends and family.** Family and friends are potential sources of support for the parents as well as potential alternative carers for the child. The identification of family and friends for support and assessment is a key task, which should be considered as early as possible in the work with the family. Establishing the network of family and friends available to the parents and child is an essential task and drawing up a genogram is a routine element of any parenting assessment.
71. Using a strengths-based approach, such as a FGC, which enables the family network to set out a plan to address the local authority's identified concerns enables the family to be in the driving seat in coming up with tailored solutions, whilst not minimising the local authority's concerns. Family support with the support of the whole family can be critical in diverting a case from court.
72. Whilst it can be the case that prior to proceedings being issued some family members struggle fully to appreciate the seriousness of the situation, and others

may find their loyalties torn, exploring family care can ensure a child remains in her family, even if proceedings do become necessary.

73. **Recommendation 9: Planning for newborns and support for babies.** As with all aspects of work with families, the group acknowledges that there are very particular issues pertaining to decision-making immediately prior to birth and with infants. A significant proportion of the cases currently presenting for urgent applications involve newborns and infants. These cases come with a very high degree of distress. They pose significant challenge to all involved in the decision-making. The need to issue in such cases may well be evidenced but a measured and planned approach could be achieved pre-birth which may have the potential to avoid the need for proceedings. We would look to the work of the Nuffield Family Justice Observatory report, *Born into Care* (October 2018),[9] and the current development of the infant protocol to consider support for families and to work in partnership earlier to avoid proceedings.

Best practice guidance

74. We recommend that the BPG set out in appendix E1 – E3 be issued by the President.

Longer-term changes

75. **Recommendation 1: Develop consideration factors to support decision-making prior to legal gateway meetings**. Clarity and confidence in relation to the considerations and factors in order to support families effectively pre-proceedings would ensure consistency of decision-making and potentially create greater confidence in the efficacy of these processes, thus mitigating risk-averse practice across all sectors. We recognise that setting fixed trigger points may increase the

[9] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

number of legal meetings and could increase proceedings if the practice continues unchecked. Hence our emphasis on support for families, social work reflection and informed deliberation within a local context.

76. **Recommendation 2: Development of protocols which provide clarity of expectations and principles under the pre-proceedings phase of the PLO.** Shared expectations between professionals about their role in pre-proceeding can lack clarity, with minimal shared accountability by agencies. Whilst statutory guidance provides the bedrock of what local authorities must do at this stage of the PLO, local authorities should strive to have a clear vision of expectations and an understanding of good practice and promote a consistent approach to cases outside of proceedings. Some authorities and FJBs have already developed clear guidance or protocols on performance at this stage. These capture, in a single document, expectations and principles of assessment, performance, review and monitoring.

77. Co-production of protocols by involving families who have lived experience of the PLO and care proceedings will add to the richness and effectiveness of any protocol produced.

78. Local FJBs can have an important role to play in developing expectations of practice and assisting local authorities across a region to produce protocols which should mean that families in their area can expect more consistency in the approach to the pre-proceedings phase of the PLO. That protocol should take into account the BPG.

79. **Recommendation 3: Refocusing the role of IROs and conference chairs to offer additional oversight outside of proceedings.** The child has no separate voice by way of Cafcass representation outside of care proceedings. There is the potential to develop the role and practice of IROs and conference chairs to assist in informed, proactive and timely planning, and the promotion of good practice, in order to achieve more consistent and effective decision-making where the voice

of the child and the needs of the family are recognised. Re-emphasising the importance and nature of their roles could be an effective tool in ensuring the prevention of drift for children.

80. **Recommendation 4: Public funding for parents during pre-proceedings.** For the recommendations in this report to be effective with parents having the benefit of the levels of legal advice they need, the available legal aid funding for parents requires urgent review. The funding needs to be at a level that ensures the parents are properly represented by a suitably qualified and experienced legal representative through this dynamic process. If provided, this may contribute to a reduction in the number of cases that result in court proceedings; and where proceedings are issued, by reducing the cost of those proceedings through making available to the court high-quality evidence from the pre-proceedings process.

81. Where needs and difficulties are addressed at an early stage, the wider socio-economic benefits include parents not being subject to statutory intervention, as well as children not being subject to further state intervention when they become adults. That "breaks the cycle" at multiple points.

82. **Recommendation 5: Refocusing the role of local authority legal advisers and decision-making outside of proceedings.** It is important to consider role of the local authority legal advisers and how to best use the legal resources available in local authorities, as discussed in the BPG.

The application

Current issues

The increase in urgent / short notice applications

83. The decision whether to remove a child at the start of proceedings is crucial and can play a significant role in determining the ultimate outcome. It is vital that parents and children are afforded the best opportunity for representation at such hearings in the light of the urgency of the application.

84. The PLO provides for urgent ICO hearings or urgent preliminary CMHs before the prescribed first CMH (between day 12 and day 18 following issue). PLO para 2.4 provides the procedure by which an urgent hearing is requested and considered by the court. Cafcass defines short-notice hearings as those which take place less than seven days from the application issue date, which includes emergency hearings (defined as taking place less than three working days from the application issue date) and no-notice hearings (defined as taking place on the day of issue). In the 12-month period December 2019 – November 2020, Cafcass data records:

    i. 55% of all public law cases had short-notice hearings (an increase of 3% on the same period 2018/19);

    ii. 66% of all care applications had short-notice hearings (an increase of 2% on the same period 2018/19);

    iii. a 1% rise nationally in short-notice care applications for the last full quarter (July – September 2020);

    iv. the increase in short-notice applications over the last five years is 6% for all public law cases, and 9% for care applications.

85. Some emergency/urgent hearings cannot be avoided (where there is an unexpected precipitating event), but many such applications do not fall into this category. This may reflect a lack of effective pre-proceedings work, as well as the pressure of work on local authority social workers and/or lawyers so that non-urgent cases become more urgent. These hearings give limited opportunity for parents to participate fully in the hearing with legal advice and representation. The child is "behind the curve" as the CG/ children's solicitor is likely to have had little, if any, opportunity to make the necessary enquiries before the hearing. It also puts pressure on the court to find a suitable tribunal to hear the case at short notice. Cafcass data further indicates that short-notice cases generally have an increased duration, more hearings and involve younger children.

The variation in the incidence of short-notice applications between DFCs

86. Cafcass data indicates significant variations in this, ranging from around 37% of care applications (Northumbria and North Durham) to over 86% (Truro). The reason for this difference (if accurately recorded) is not clear. There is the potential to learn from good practice to reduce the proportion of emergency/short-notice applications.

The different approach nationally to use of police protection, EPOs and urgent ICOs

87. Anecdotally, different areas rely to very varied extents on the use of police protection (s 46, CA 1989), applications for EPOs (s 44, CA 1989) and for urgent ICOs (s 38, CA 1989) to manage emergency situations.

88. The MoJ reports on a quarterly basis on the volume of EPOs made. HMCTS holds internal data on the orders made by DFC area and further work will be undertaken to analyse the data. Cafcass does not record EPO orders.

89. Police protection permits the removal and accommodation of a child by police in cases of emergency where there is reasonable cause to believe a child would

otherwise be likely to suffer significant harm. This permits a child's removal without proceedings and, therefore, without any court scrutiny. Police protection powers are a vital part of the framework for protecting and safeguarding children, but it is important to understand whether and, if so, why the exercise of police protection powers varies nationally. There is also a need for clarity about the circumstances in which police protection powers should (and should not) be relied upon. There is no national data recording the use of police protection overall or in different force areas.

90. EPOs and ICOs both necessitate a court application, but require the application of different legal provisions and have different consequences (including, importantly, the absence of any appeal against the grant/refusal to grant an EPO). While individual cases may lend themselves to one application rather than the other, there are differing judicial and professional views as to which is the more appropriate form of application more generally in urgent/emergency situations.

91. Anecdotally, there are cases in which EPOs are made but care proceedings do not follow (and where police protection powers are exercised but no proceedings follow). Bearing in mind the draconian nature of removal of a child using police powers or an EPO, it is important to understand:

i. whether/how often this is happening and the reasons;

ii. any correlation between the use of police protection and applications for EPOs/urgent ICOs.

Managing urgent applications

92. On issue, the application and statement in support frequently provide insufficient evidence of the urgency, together with the steps taken by the local authority to avoid the need for the application being made on an urgent basis. This has been addressed in various areas by the formulation of an information sheet which

should be completed and accompany every application where an urgent hearing is sought. This sheet is designed to provide the necessary information to enable the gatekeeper to assess the urgency and list the case appropriately. It includes: information relating to the child's status (subject to police protection or s 20/ s 76 accommodation); the circumstances if the child is in hospital; when this information became known to the local authority; the notice given/proposed to those with parental responsibility and the arrangements for them to attend a hearing; the reason an urgent hearing is required; if appropriate, why the child's safety requires removal; the likely duration of the hearing. The HMCTS Family Public Law and Adoption Reform Project has introduced a revised online C110A application, which includes changes to how urgent information is provided. This report recommends that the project continues with this testing to ensure the right information is provided in cases where an urgent hearing is sought. Pending completion of the national rollout of the online application, a template information sheet is proposed.

93. In most areas, Cafcass only learns about an application (urgent or otherwise) at the time of issue. Local arrangements in some areas, however, provide for the local authority to inform Cafcass in advance when it is known an application is to be made, whether the decision to issue is made in a planned way (days before issue) or in an emergency (hours before issue). It is particularly valuable for Cafcass to be informed of any previous proceedings, including the name of a previously allocated CG and the children's solicitor. This allows Cafcass to manage its resources more effectively and set in train arrangements for representation of the child (where practicable, with continuity). This report recommends a protocol to establish this good practice nationally.

94. In some cases, courts list interim care applications sooner than requested to fill available time in court lists. Although this may maximise the court's resources, it

reduces the opportunity for the parents and children to participate fully in the hearing with any/sufficiently prepared representation.

The documentation in support of applications

95. Completion of the application, statement in support and interim care plan is time-consuming for local authority solicitors and social workers. This working group provides an opportunity to revisit the form and content of these documents to avoid repetition, and to focus on the information required by the court to determine the issues at each stage. The intention is to make the documents more relevant and focused and not to require social workers and lawyers to duplicate or increase the work presently required of them.

Form C110A

96. The paper-based form is unwieldy and fails to prioritise the most relevant information. Since January 2019 the HMCTS Family Public Law and Adoption Reform Project piloted an online C110A in four areas (Portsmouth, Stoke, Swansea and West London). The initial feedback was positive, with the opportunity for further adjustment/revision of the online C110A application following feedback from the pilot users and others (specifically including the working group). At the end of January 2020, the pilot opened up to all professional users in the pilot sites and is now being rolled out nationally.

97. The basic details of the child are not consistently recorded accurately (names, date of birth and who has parental responsibility). Apart from the importance of this to the family, the court needs to know at the earliest opportunity who has parental responsibility for the child. The starting point for these details is the child's birth certificate. The local authority should make every effort to obtain it in advance of the issue of proceedings (or as soon as possible thereafter, where there has been no local authority involvement pre-proceedings). Where a foreign national child

does not have a (reliable) birth certificate, a copy of the biometric page of the child's passport(s) or identity documents should be obtained by the local authority.

98. The "grounds for the application" are not completed consistently in providing an initial statement of threshold findings which allows the respondents and the court to understand the local authority's case at the start of the proceedings. Generalised or discursive "grounds" (ranging from scant to prolix) are common. The grounds should identify the basis of threshold at issue, together with such other matters relied upon for the issue of proceedings.

The social work evidence in support

99. The SWET is now widely but not universally used. It has been amended locally in some areas. It is recognised that there has been considerable work done in many local authorities to improve the overall quality of the evidence provided to the court and that statements in many cases are of a high standard. The areas in which shortcomings are identified in the paragraphs that follow highlight gaps which are seen in practice.

100. The SWET/other initial social work statement in support of an urgent application seeking removal frequently contains little or insufficient evidence of the urgency and why/how the legal test for removal is met. Where an urgent application is made, the focus should be on these issues. We recommend a separate short SWET for completion in support of an urgent application, addressing these crucial issues. This would not replace or obviate the need for the full SWET to be completed for the CMH. Where an urgent application is supported by a full SWET, the issues relevant to the urgent application should be addressed in detail.

101. Information is often repeated as between the SWET, assessment reports and a separate chronology. Common gaps in the SWET/initial social work statement include evidence of:

i. the pre-proceedings assessments undertaken, with analysis of the local authority's position in consequence (rather than repetition of the content of the assessment);

ii. the support provided to the family and why it has not achieved the intended goal;

iii. where the case has previously been closed, an analysis of the work undertaken during the local authority involvement and the reasons for closing the case;

iv. whether a FGC or equivalent has taken place (including the plan arising from the meeting), with the reason if not;

v. previous proceedings concerning the child;

vi. where a child has been the subject of s 20/ s 76 accommodation, an explanation of the circumstances (including the duration, how agreement was given and the actions taken by the local authority during the period of accommodation);

vii. the view of the IRO (which has tended to be reported by the social worker rather than provided directly by the IRO);

viii. in respect of newborn babies: (a) the work done with the family pre-birth; (b) the basis upon which any other children have been removed and why the circumstances remain relevant; (c) the placement options considered to keep mother and/or father and baby together; and (d) why separation of mother and/or father and baby is necessary.

102. The working group recommended revisions to the SWET to address the shortcomings identified above. A sector-led review of the SWET has subsequently been undertaken by ADCS and Cafcass in advance of the publication of this report. An updated version of the SWET has been developed alongside a new, focussed version of the SWET for use in urgent applications. Both templates are now available for use.

The care plan/interim care plan

103. Section 31A, CA 1989 places a statutory duty on a local authority to prepare a care plan in every case in which it seeks a care order. In England, the contents of a final care plan are prescribed by regulation; in Wales, the contents are not regulated, but the Code to Part 6 of the SSW-b(W)A 2014 provides statutory guidance.

104. There are differing views about the value of a separate interim care plan. Care plans (interim and final) are rarely completed in a focussed and informative way. At an interim stage, the crucial issues for the court are:

i. where and with whom the child is to live;

ii. the proposed contact arrangements;

iii. whether the interim plan will involve a change in school/nursery etc.;

iv. the services to be provided to the child/family;

105. Interim arrangements may change during the course of proceedings. A separate interim care plan has the advantage of providing an easily located reference point in the court bundle for the current arrangements for the child. We recommend a short-form, template, interim care plan limited to the issues relevant to the interim planning.

106. The child's final care plan is an important document which confirms the court-approved plan and informs those implementing it. Improvements are required in social-work training and at a local level to ensure the quality of the plan presented to the court is sufficiently good to enable decision making.

Gatekeeping/ allocation

107. Gatekeeping and allocation arrangements vary according to local need. Some areas have formulated local guidance to supplement statutory guidance. It is not considered appropriate for this to be standardised because of the wide-ranging differences in resources in local areas. Such local guides may, however, provide consistency locally as well as additional support for less experienced judges / legal advisers.

Standard directions on issue

108. The SDO have been amended locally by some DFCs, a number of which have been considered. Inevitably, these reflect local practice. The working group provides an opportunity to draw together good practice of more general application to provide a revised template form for the SDO, to include a timetable for applications for special measures/participation directions, interpreters, production orders/video links and provision for details of previous proceedings to be provided by the local authority/other parties.

Case management at ICO hearings

109. In many cases, case management directions can be given at an interim care hearing to progress the proceedings at the earliest opportunity and without any prejudice to the respondents. This is not consistently done, meaning that time is lost in identifying issues, seeking disclosure and starting assessments. Consideration of early case management directions should be a standard part of urgent hearings (subject to the time available).

Ineffective first CMHs

110. There can be many different reasons for this, including the CMH being listed too early in the CMH window (with insufficient time for the CG and children's solicitor to make enquiries), the parents not having met their representatives before the hearing and the advocates' meeting failing to distil the issues before the CMH.

111. Legal representatives report that the current volume of work together with the circumstances/characteristics of many of the parents in care proceedings are such that they are commonly unable to take any/full instructions from the parent before the CMH. In such cases, the advocates' meeting will necessarily take place before the advocate has any/full instructions. In consequence, parental response documents are either not available or do not contain the prescribed information; reliable information relating to potential alternative kinship carers (their identity and willingness to be assessed) may well not be available for the CMH. Listing the CMH appropriately (and nearer to the end of the CMH window) is likely to improve the effectiveness of the CMH.

112. The SDO includes a direction for an advocates' meeting to be held in advance of the CMH. In some areas, an advocates' meeting agenda template is in use with a view to ensuring the relevant issues are addressed in each case and/or a minute of the advocates' meeting is filed as a matter of course/direction. An advocates' meeting agenda template provides a useful aid to ensuring the CMH is effective. An agreed minute of the meeting should be filed as a core document before the CMH (to inform the hearing and ensure there is no disconnect where the meeting is attended by a different representative to the advocate appearing at the hearing). The completed template may, with local approval, avoid the need for a separate case summary/position statements.

113. An advocates' meeting agenda template can usefully be replicated in a CMH checklist. While some judges (and legal advisers) are highly experienced in case management and find such a checklist otiose, others may well be assisted by this (particularly in light of the pressure on court lists).

114. There are wide-ranging differences in the content and usefulness of case summaries and position statements provided by advocates at hearings. We commend the template case summary documents, appendix H1 – H3, as models of good practice which merit adoption as approved national templates.

Applications in respect of newborn babies

115. We have already recorded the significance of interim care decisions for/against removal at the outset of proceedings. The impact of these decisions is all the starker in relation to newborn babies. Quite apart from the separation of a newborn baby from her mother, the court is frequently asked to decide the issue within hours or days of the baby's birth when the mother will be in a highly vulnerable state. The court is frequently faced with applications seeking removal of newborns from a maternity setting.

116. The NFJO report, *Born into Care* (October 2018),[10] provided the first estimate and profile of cases of what was in that report defined as "newborns" (aged less than seven days) subject to care proceedings in the context of proceedings concerning "infants" (aged less than one year). The findings included the following:

i. in 2007/08, 32% of all care proceedings issued for infants were for newborns, by 2016/17 the percentage increased to 42%;

[10] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

ii. an increase in the volume from 1,039 (2007/08) to 2,447 (2016/17);

iii. the likelihood (incidence) of newborns in the general population becoming subject to care proceedings more than doubled from 15 per 10,000 live births (2008) to 35 per 10,000 in 2016;

iv. marked differences in the rates of care proceedings issued for newborns between regions;

v. marked differences in the proportional increases in different areas with unexpected fluctuation in the percentage changes for all regions over time;

vi. 47% of newborns between 2012/13 and 2016/17 were "subsequent infants" (so 53% were not).

117. The report records the existence of limited statutory guidance and research in this area.

118. In all but a small number of cases (for example, where the mother gives birth in an area where she is not known or where there has been a concealed pregnancy), the local authority should have been involved with the family pre-proceedings. This is addressed further in the support for and work with families prior to proceedings section of the report, but it should include assessment of the parents and other alternative family placements, ensuring parents have had the opportunity to take legal advice prior to birth and, where possible, agreement about what will happen to the baby at birth and the timescale for the issue of proceedings. Where proceedings are planned in advance of birth, local authorities need to ensure the application and supporting documents are drafted in advance to prevent avoidable delay in the issue of proceedings.

119. Some local initiatives/protocols have led to better planning in advance of births where proceedings are anticipated, so there is a clear plan in place regarding the arrangements for the birth at hospital and an agreed period for the

baby to remain in hospital to allow the application to be made to court in a timelier way. In many cases, however, the court is faced with an application on the day of birth and informed the baby is ready for discharge from hospital and must be discharged that day. The ongoing work of the NFJO following the *Born into Care* report is expected to provide good practice guidance to maternity staff, social workers and lawyers to address this.

120. The *Born into Care* report includes reference to past initiatives undertaken by the NSPCC (developing a systematic approach to social work assessment during pregnancy) and Cafcass (through Cafcass Plus, with joint working between the CG and local authority pre-birth) and highlights the need for more to be done in this area. The current legal framework only permits an application to be made following the birth of the child. The incidence and impact of applications seeking removal of newborns is such that this issue merits further discussion. It is recognised that these are fundamental, difficult and potentially contentious areas, but that should not prevent the debate.

Inadequate resources to manage current caseloads

121. The last five years have been an astonishing story of absorption of pressure through the skill, commitment and goodwill of the tens of thousands of professionals who work in the family justice system. The increasing strategic threat is systemic insufficiency – shortages of just about everything: of court time, leading to delays in listing; the late production and distribution of court orders; shortages of judges, social workers and experts; and a shortage of positive options for children. The significant increase in care applications over recent years has not been matched by an increase in resources for local authorities, Cafcass or the Family Court. In many areas, there are insufficient experienced legal representatives to meet demand, which is exacerbated by the restrictions on legal aid funding for advocates' travel. Recruiting and retaining practitioners into this

area of law is an increasing challenge for the reasons outlined. A comprehensive review by the Government is required of the funding needed by all parts of the family justice system and this should form a key part of planning for the next spending review.

122. Many local authorities are working under extreme pressure. While budgets have reduced significantly over the last ten years, initial referrals to children's social care have increased by 22% and children subject to a child protection plan have increased by 87%. There are now 24% more looked-after children than there were ten years ago. As well as adequate resources, shared learning is required from authorities that have been able to develop successful services for children on the edge of care, to prevent family breakdown and reduce care applications.

123. The demand generated by care applications has a consequent impact on the resources of Cafcass and the court. This is further exacerbated by the 23% increase in private law demand since 2014. While the focus of this report is public law, Cafcass research has shown that at least a quarter of private law cases has no child protection or welfare concerns. These cases could be safely diverted from court to free up capacity in the system to manage care demand. The report of the Private Law Working Group makes recommendations to address this.

124. If decisions are to be taken for each child in an appropriate timescale, there must be capacity for cases to be listed with sufficient time allowed for effective case management and hearing, properly reflecting the workload in each area. Additional judicial resources (whether salaried or fee paid) and administrative staff should be resourced as required. Many courts have lost experienced HMCTS staff (a situation exacerbated by the significant disparity in incomes between government departments and the response of staff to the Reform Programme) which is having a very real impact on the ability to service the level of work that the Family Court is experiencing.

125. IT should be fit for purpose and reliable. The Family Court urgently needs a nationwide reliable system which equates to DCS (operating in the Crown Court). Family courts around the country are presently working digitally/electronically in different ways and to differing extents. The HMCTS Family Public Law and Adoption Reform Project has developed an end-to-end digital service, which is now being rolled out nationally.

Wellbeing

126. It is important to record the high level of stress currently being experienced by many of those involved in the family justice system as a result of the current working arrangements (which can, in turn, exacerbate the negative experience of family members involved in care proceedings). The pressures are severe and unsustainable, despite the commitment of the family judiciary, legal advisers, court staff, together with legal and social work family practitioners in all areas.

127. With the encouragement of the President of the Family Division, many areas have formulated or are in the process of formulating wellbeing guidance, addressing reasonable working practices in the light of the circumstances and pressures in that area. These typically include sitting hours, expectations relating to sending/replying to emails and lodging of draft orders, as well as arrangements for advocates' meeting and the attendance of social workers and CGs at court. We recognise the advantage of such protocols developing locally, to reflect the arrangements and issues in each area and to encourage local "ownership" of the working practices.

128. Advice designed to improve wellbeing will only be effective (particularly in the light of the commitment of those involved in the family justice system) if there are sufficient resources to meet the volume and complexity of the public law care work. This should be properly considered when funding decisions are taken and in formulating and implementing changes to current working arrangements.

Recommendations

129. **Recommendation 10: Revision of the Form C110A.** To be achieved through the current pilot, to include the views of the working group as part of the feedback for further revision.

130. **Recommendation 11: Greater emphasis on pleading "the grounds for the application" in the Form C110A.** The application to specify the need for this to be completed by way of findings in concise paragraph form, setting out the case against the respondents at the start of proceedings (the threshold findings and any other grounds). This can be incorporated in the revisions to the C110A. Pending completion of the national rollout of the online application, we propose it is included as part of the BPG which accompanies this report.

131. **Recommendation 12: Revision of the Form C110A for urgent cases/ use of an "information form" for urgent cases pending completion of the rollout of the online form**. The application requires revision to include the necessary information to inform listing arrangements wherever an application requests an urgent hearing. Pending the roll-out of the pilot nationally, the use of an "information form" template, appendix F3, is proposed as part of the BPG accompanying this report.

132. **Recommendation 13: Early notification of Cafcass.** A protocol issued by Cafcass and the ADCS (or the local FJB) providing for advance notification of all care/EPO applications, so Cafcass can make advance/preliminary arrangements for representation of the child. Until a protocol is agreed, this requirement is included as part of our BPG.

133. **Recommendation 14: Good practice guidance for courts listing urgent applications and CMHs.** Good practice guidance that (a) urgent applications are not listed before the date/time requested by the local authority to give the best

opportunity for representation of the other parties; and (b) CMHs are listed appropriately (and not necessarily on the earliest available date) within the CMH window to allow effective case management.

134. **Recommendation 15: Working with health services in relation to newborn babies.** Sharing of existing protocols/local agreements with health services to promote similar arrangements on a national basis pending guidance from the NFJO.

135. **Recommendation 16: Including the child's birth certificate in the bundle.** The child's birth certificate to be a core document in care proceedings and included as part of the bundle for the first CMH (or, where there is no birth certificate, other proof of identity). This is proposed as part of our BPG.

136. **Recommendation 17: Focussed social work evidence / the SWET for urgent applications.** The additional, focussed or short-form version of the SWET should be adopted and used locally in support of an urgent application to the court, addressing the reasons for the urgency and the legal test for removal (in advance of the full SWET, to be completed for the CMH), together with a short-form, template, interim care plan.

137. **Recommendation 18: Use of the revised SWET.** For the revised SWET to be adopted and used locally to support public law applications to the Family Court.

138. **Recommendation 19: A revised template for standard directions on issue.** A revised template order will be introduced by the HMCTS Family Public Law and Adoption Reform Project.

139. **Recommendation 20: Introduction of checklists for advocates' meetings and CMHs for practitioners and the court.** Advocates' meeting/CMH checklists for use by practitioners/courts with good practice guidance for a minute of the advocates' meeting to be provided to the court, appendix F4 – F6.

140. **Recommendation 21: Circulation of case summary templates.** A national rollout of the template case summary documents, appendix H1 – H3, with their adoption included as part of our BPG.

141. **Recommendation 22: Early and active case management.** Recommended good practice for early case management directions to be considered at all urgent hearings (assisted by a checklist of the most likely areas for early case management directions), appendix F7. Similar checklists – if considered of use more generally (and particularly for less experienced judges) – can be provided for CMH/IRH.

142. **Recommendation 23: DFJ focus on wellbeing.** Each DFJ should formulate a local wellbeing protocol in consultation with local court users. The impact of current working practices and pressures and of any changes on all those working in the family justice system should be considered as an integral part of our recommendations.

Best practice guidance

143. We recommend that the BPG set out in appendix F1 and F3 - F7 be issued by the President.

Longer-term changes

144. **Recommendation 6: Research into the regional variation in the proportion of urgent applications.** Updated research is required into the reasons for the differing incidence of urgent applications between different areas with a view to good practice guidance to reduce the frequency of urgent applications where appropriate. This is an important and urgent area for research which could form an early part of the work of the NFJO.

145. **Recommendation 7: Compilation of reliable data about urgent applications.** Compilation of reliable date is required about (a) the number and proportion of EPO applications / orders made in each DFC; and (b) the number and proportion of EPOs which do not result in care applications.

146. This data should be followed by (a) updated research into the reasons for difference in approach to the use of police powers/EPO applications in different areas and the circumstances in which police protection/EPOs are not followed by care proceedings, together with (b) good practice guidance on the circumstances in which police protection and EPO applications are appropriate. This is an area in which the evidence is presently limited and (at least some) is unverified. The importance of this issue and lack of other recent evidence/research also merits early consideration by the NFJO.

147. **Recommendation 8: Reconsidering planning for newborn babies, including the role of Cafcass pre-proceedings.** Consideration of the means by which planning for newborns can be improved, including the potential role of Cafcass pre-birth.

148. **Recommendation 9: New IT system.** Urgent development of the early work of the HMCTS Family Public Law and Adoption reform project is required to provide a unified system of digital/electronic working (with IT support) in the Family Court.

149. **Recommendation 10: An improvement in the range and quality of data collection/ analysis by HMCTS / MoJ.** The range and quality of data collection/ analysis by HMCTS and MoJ should be addressed to provide a reliable evidence base.

150. **Recommendation 11: A review of the funding of the family justice system.** To be undertaken by the Government and address the resourcing of all areas of the family justice system. Within the Family Court, there should be a realistic analysis

by MoJ/ HMCTS of caseloads to ensure the judicial/administrative resources reflect the comparative workloads in each area.

Case management

Current issues

Case management issues

151. The current CMO contains a great deal of useful information which needs to be included in the order for the first CMH. Thereafter, for all subsequent hearings, it is not fit for purpose and it is often difficult, even for the judge who made the order, to find the orders and directions which have been made. For all subsequent hearings, a short form of the CMO should be used. This will have at least three benefits:

i. it will enable the judge, the lawyers, the parties and the professionals more easily to identify the orders made and what a party is required to do or must not do;

ii. it will reduce the time taken by (a) the advocates to draft the order, (b) the judge to approve the same and (c) the court staff to process and produce a sealed order;

iii. it will assist litigants in person in understanding what they must do, or must not do, and enable them to receive a copy of the sealed order in a timelier fashion.

152. There is a lack of uniformity across England and Wales as to the judicial requirements and expectations of the form and content of case management orders. There is a need for standard approach to be adopted as to the contents of the orders and when they should be drafted.

153. There is a diversity of practice across England and Wales as to whether the final hearing is only listed at the IRH or it is listed at an earlier hearing. The experience of courts which have adopted both practices favours the former approach which enables a court to list a case when the issues to be determined are identified and are clear.

Immigration and international issues

154. Consideration of any immigration and international issues should be addressed at an early stage of the proceedings because they may have a significant impact on the progress or outcome of the proceedings. With grateful thanks to the contribution of Gwynneth Knowles J, Lane J, UT Judge Lane & UT Judge Coker, we emphasise the following matters.

155. It is important that there is some recognition of the interface between public law proceedings and the immigration status of children, parents and others who may be involved in those proceedings. The immigration status of children, their parents, guardians, stepparents and other relatives individually has a significant impact on whether any or all a family are able to remain in the UK. If unlawfully in the UK or without status (for example children born in the UK but not granted leave to remain) or if convicted of criminal behaviour, decisions by the Secretary of State for the Home Department to remove or deport individuals can be implemented even if other family members are British or have lived in the UK for a number of years. The impact on children and partners and other relatives are matters that are considered in this process, but the welfare of a child (whether British or not) is not of paramount importance; it is a primary consideration.

156. Immigration or status issues may impact on (family) public law proceedings commonly where there is a proposal to place a child with a carer (either a parent or other relative) in circumstances where that parent/carer is threatened with immigration action to remove or deport him from the UK. Equally, where a child is the subject of a care order, there can be insufficient attention paid to the need to resolve any uncertainty about that child's immigration status whilst she is under the age of 18. Failure to do so can have very serious consequences for a child who, at age 18, may be denied access to further education, benefits and the like. Thus, orders made by the Family Court can be of critical importance both in the

immigration decision-making process and in any appeal/ judicial review of the Secretary of State's decision.

157. It is also important to recognise that the immigration status of parents and children may not be the same. Some children may be British nationals but have a parent who is not and, moreover, have a parent who has entered the UK unlawfully or is otherwise without status, for example, because a visa has expired. Other children may not be British nationals but have a right to remain in the UK separate from that of their parents. Still others may be here without status or have entered unlawfully with either one or both of their parents.

Care order with child at home

158. There is an increase/significant regional variation in the number of children returning home under a full care order, which is of very real concern. There is as yet a lack of clarity as to why, in some areas, this practice is so common and elsewhere so rare. There is a risk that the making of a care order at home provides false assurances to partner agencies because the local authority is neither involved in, nor has a thorough oversight of, the child's day-to-day care.

159. The making of a care order should not be used as a vehicle to achieve the provision of support and services after the conclusion of proceedings. Unless a final care order is necessary for the protection of the child, an alternative means/route should be made available to provide this support and these services without the need to make a care order. This will include clarity as to the legal status of the child following the proceedings, in terms of whether they will be the subject of a child protection plan, or treated as a child in need, with accompanying reviews and services. In Wales, the current statutory guidance is set out in para 116 of the Code to Part 6 of the SSW-b(W)A 2014.

160. The making instead of a supervision order to support reunification of the family may be appropriate. However, there are many concerning issues regarding their

use. They have the highest (20%) risk of breakdown and return to court for further care proceedings within five years and there are widespread professional concerns that supervision orders "lack teeth" as well as significant regional variation in their use and variability in the provision of support services.[11]

161. A final care order should also not be used as a method prematurely to end proceedings within 26 weeks artificially to alleviate concerns that the children will be at continuing risk of harm. Any such order should only be made where the local authority can demonstrate that the assessment of any carer of a looked after child meets the criteria of the Care Planning Placement and Care Reviews (Wales) Regulations 2015 or the Care Planning, Placement and Case Review (England) Regulations 2010. This provides that any such placement has to be approved by a senior nominated officer, and can only be approved if, in all the circumstances, and taking into account the services to be provided by the responsible authority, the placement will safeguard and promote the child's welfare and meet their needs.

162. The making of a final care order must be a necessary and proportionate interference in the life of the family. A care order has a very intrusive effect of state intervention, with ongoing mandatory statutory interference not only in the lives of the parents, but in the life of the child, who will have the status in law as a looked-after child and all that goes with this. It can only be justified if it is necessary and proportionate to the risk of harm to the child. Where such an order is made there will be a real prospect of further litigation in the future, because the responsible local authority should regularly review whether the care of the child is such that the order is no longer necessary, and if so an application to discharge

[11] Harwin, Alrouh et al, *The Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice* (March 2019). Available online: https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN%20main%20report%20SO%20and%20SGOs%20_%204Mar2019.pdf

the order should be made. In an appropriate case, consideration should be given to the making of a supervision order.

Newborn babies

163. Applications for the removal into care of newborn babies are frequently made on an urgent basis and either without notice to the parents or, more usually, on very short notice. These applications account for a substantial number of urgent and short-notice hearings in the Family Court. Whilst there are some cases where an emergency application is unavoidable, an application made on short notice, often less than 24 hours, invariably causes unfairness to the parents (and indeed their wider family), particularly post-partum, who may have difficulties securing legal representation or do not have the opportunity to give full and informed instructions to their lawyers. Short-notice applications may also lead to the CG being placed in a disadvantageous position.

164. Proceedings where babies are unknown to authorities prior to birth are rare. Planning in advance of a birth where proceedings are determined as required is essential. Further detail of recommended good practice can be found in the support for and work with families prior to court proceedings section of this report, but should include ensuring parents have had the opportunity for legal advice prior to birth; the offer of a FGC; that where possible there is an agreement developed as to both what will happen to the baby upon birth prior to issue and timescales for issue; and that notification to Cafcass is made of the likelihood of proceedings.

165. In planned proceedings, except in extremis where it is unsafe to do so, parents should be made aware of the proposed care plan for the baby prior to the birth, so that this can be the subject of clarification and negotiation outside of the court process, and so that there is an early opportunity to consider family alternatives

to care, or family support, which might avert the need for emergency or short-notice proceedings.

166. In addition, where proceedings are planned in advance of the birth, local authorities need to make provision for the drafting of the application and supporting documents in advance, so that short notice is not required by default as a result of avoidable delay in lodging the documents for issue. Applications in respect of newborn babies and young infants should be the subject of strict case management directions and time limits. It is especially important that proceedings in respect of these children have the developmental timetable of the child in mind, and are concluded, whenever possible, within the 26-week limit. One of the recommendations of the Nuffield Family Justice Observatory report, *Born into Care* (October 2018),[12] was the need for practice guidance to be issued to maternity staff, social workers and legal professionals. This is currently being developed and once issued should be considered.

167. There will however be some cases, particularly relating to first-time parents, where parents are demonstrating their ability to respond in a sustainable manner to the advice and treatment provided to address concerns about their parenting, and where therefore proceedings may need to be extended. This may be particularly relevant in cases where parents are receiving and responding to treatment for drug and alcohol abuse, or young first-time parents who have been placed in parent and baby foster placements.

Experts

168. Once more there is an increase in the number of experts being approved by the courts in public law proceedings. The issue is most acute in relation to the instruction of ISWs and psychologists.

[12] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

169. The experience of Cafcass is that there are wide regional variations in (a) the numbers of applications made for the instruction of an expert; (b) the field of the expert sought to be instructed; (c) the party making or leading the application for the instruction of an exper;t and (d) the reason(s) for the application. It is vital that applications are not made unless the opinion of an expert is necessary, and it is vital that the court does not grant the application unless it is satisfied that there are cogent reasons to conclude that the instruction of an expert is necessary. The instruction of an expert to relieve workload pressures can lead to delays. Professionals who know the family and the child should feel confident about reporting to and advising the court.

170. In order to address the onerous workloads of CGs, we propose two recommendations. First, a CG, as opposed, perhaps, to the lawyers representing the child, has a limited role in fact-finding hearings. Accordingly, save for exceptional cases, CGs should be excused from attending these hearings in whole or in part (to hear the evidence of a particular witness which may be advantageous to the resolution of any welfare hearing). Secondly, for the purposes of standard CMHs we recommend that it should become usual practice for it to be sufficient for a CG to file a position statement rather than a case analysis.

The 26-week limit

171. In some areas of the country and in some family courts, an overly strict adherence to the 26-week statutory limit is resulting in final orders being made when insufficient evidence is available to the court which results in a conclusion to the proceedings which is neither just nor fair to the child, nor to the parents/carers.

172. Whilst there is a statutory requirement to conclude care proceedings within 26 weeks, there may be a small, albeit significant, number of cases where it would be necessary to achieve a just outcome in the welfare best interests of the child that, as provided for in legislation, an extension be granted to the 26-week limit (e.g.

the way forward is clear, the parents have been excluded as carers but more time is needed for a robust assessment of, or support plan for, connected persons and/or potential SGs). The emphasis here should be on necessity with clear, well-reasoned applications for extension being presented (which in turn can be fully considered by the court) rather than an extension of time becoming or being seen as a norm.

173. If these changes are accepted, the cases which are subject to the judicial approval of an extension of the time limit should be recorded separately from the "usual" cases. A failure to do may lead to the judiciary being risk adverse to sanction the same out of fear of skewing their local performance statistics.

Increased number of hearings per case

174. An increase in the number of hearings per case is a prime reason cases exceed the 26-week time limit often without any good reason.

175. There are too many unnecessary hearings. This inevitably leads to a case concluding beyond the 26-week time limit.

176. There should be an increase in the number of consensual and court-approved applications dealt with by a judge on paper or, now more usually, by email application. Clear guidance will need to be given on how and when this is an appropriate way of proceeding and how this will be managed where one or more party to the proceedings is not legally represented.

177. The mere fact the parties agree to an extension of time for compliance with an order is not a basis, of itself, for a judge to acquiesce to the same or to deal with a consent application administratively.

178. Consideration should be given to the greater use of video or telephone hearings. Appropriate consideration of how unrepresented parties are to participate will be required.

Bundles

179. There must be compliance with the provisions of FPR 2010, PD 27A.

180. However, a considerable amount of time and expense is devoted to the production of and trimming of court bundles. This time and expense could be better focussed on (a) the identification of the issues/facts the court needs to determine the findings of fact sought; (b) the evidence required to prove or contest the same; (c) the extent to which, if at all, the findings made would establish the threshold criteria of s 31 (2), CA 1989; (d) the principal issues necessary to resolve the proceedings; (e) the relevant issues in dispute at the hearing; and (f) the reading list for the judge to determine these issues. A clear route to navigate the bundle is key – whether a paper or electronic bundle is used.

Public funding

181. The adverse impact of the LAA seeking to reduce the available funding on the efficient administration justice in care cases and on the fair disposal of proceedings in the welfare best interests of the child should and must be recognised.

182. The reversal of successive cuts in the funding available to those representing the parents/ carers in care cases would enable far more productive means to be established to avert the need for public law proceedings to be issued, at great public expense, in respect of a child and enable the proceedings to be conducted and concluded in a far more efficient and cost-effective manner. The goal should be to ensure that parents/carers who are the subject of proposed/actual state intervention in their family life have adequate means to be able to challenge the need for the same. Further there should be adequate advice (e.g., about the content of SGSPs) available to those who are considering assuming the long-term care of a child to enable them to make informed decisions.

Recommendations

183. **Recommendation 24: Use of short-form orders**. We recommend that after the CMO has been drawn and approved for the first hearing, thereafter a short form of order is used which in the main body of the order consists of:

i. the name of the judge, time and place of the hearing;

ii. who appeared for each party or that they were a LiP;

iii. if required, a penal notice (which must appear on the first page of the order);

iv. the basis of the court's jurisdiction;

v. the recitals relevant to the hearing;

vi. the directions and orders at the hearing.

184. These changes are especially important to enable LiPs to understand the orders made against and requiring action by them.

185. Further, whilst the direction for the instruction of an expert and the date for filing the report should appear in the order, the remainder of the directions for an expert (e.g. letters of instruction and division of cost etc.) should appear in the annexe/schedule.

186. The short-form orders, if not drafted before or after the hearing, should be drafted within 24 hours of the hearing with heads of agreement being noted at court.

187. The new short-form orders should be used all court centres.

188. **Recommendation 25: Immigration and international issues.** Consideration of any immigration and international issues should be at an early stage of the proceedings

189. **Recommendation 26: Advocates' meetings: using an agenda and providing a summary**. Advocates' meeting should take place no less than two working days before a listed hearing. Advocates should agree at the meetings the core reading list, the schedule of issues and list of agreed matters. One sheet of A4 containing

those matters should be produced following each advocates' meeting for the judge, and be provided to the judge by 4pm the working day before the hearing. Templates can be found at appendix F4 – F6.

190. The timetable for filing and serving should take account of the date fixed/proposed for the advocates' meeting.

191. **Recommendation 27: Use of new template for case summaries and position statements.** Case summaries and position statements need only be short documents, providing the judge with key issues, responses to the same, the draft proposed directions/orders and an essential reading list. The case summary, respondent's position statements and the CG's position statement should be in the form of the templates set out in appendix H1 – H3. Where an advocates' meeting has taken place before a hearing and the parties are agreed on the way forward and the orders that the court will be invited to make, a composite document setting out the core reading for the judge, the draft orders proposed, and a summary of the parties' positions and issues shall be provided to the court by the local authority by no later than 4pm on the working day before the hearing.

192. Local authority case summaries should not repeat all background information, in particular where earlier summaries are included in the core bundle and highlighted in the reading list. A short, updating position statement with issues clearly identified should be lodged by no later than 4pm on the working day before the hearing.

193. Cases should not be adjourned for want of position statements: it is rarely, if ever, in the child's welfare best interests.

194. **Recommendation 28: Renewed emphasis on judicial continuity**. It is vital for the effective case management of a matter that there is judicial continuity. The full-time judiciary and HMCTS should give a high priority to ensuring that a case is dealt with by one identified judge and, at most, two identified judges (for the avoidance of any doubt, this recommendation is not intended to apply to nor

affect the current practices for Tier 1 judges in the Family Court (namely, lay justices)).

195. **Recommendation 29: Renewed emphasis on effective IRHs.** The final hearing should not be listed before an effective IRH has taken place unless there are, unusually, cogent reasons in a particular case for departing from this practice.

196. An IRH needs to be allocated sufficient time. The timetabling for evidence in advance needs to provide for an advocates' meeting at least two days in advance, and the advocates need to be properly briefed with full instructions for that meeting.

197. For an IRH to be effective, the following is required:

i. final evidence from the local authority, respondents and CG (exceptionally, an IRH may be held with a position statement setting out the CG's recommendation before the final analysis is completed);

ii. the parents/other respondent(s) attend the hearing;

iii. the position in relation to threshold/welfare findings is crystallised so the court is aware of the extent to which findings are in issue and determines which outstanding findings/issues are to be determined;

iv. the court determines any application for an expert to give oral evidence at the final hearing;

v. the court determines and the CMO records which witnesses are to give evidence at the final hearing (all current witness availability should be known);

vi. the court determines the time estimate;

vii. a final hearing date is set;

viii. where there is a delay before the final hearing date, directions are given for updating evidence and a further IRH before the final hearing.

198. **Recommendation 30: The misuse of care orders.** A care order should not be made solely or principally as a vehicle for the provision of support and services. In Wales, the current statutory guidance is set out in para 116 of the Code to Part 6

of the SSW-b(W)A 2014. In an appropriate case, consideration should be given to the making of a supervision order which may be an appropriate order to support reunification of the family.

199. **Recommendation 31: Case management of cases in relation to newborn babies and infants.** Applications in respect of newborn babies and infants should be the subject of strict case management directions and time limits. It is especially important that proceedings in respect of these children are concluded, whenever possible, within the 26-week limit. There will however be some cases, particularly relating to first-time parents, where parents are demonstrating their ability to respond in a sustainable manner to the advice and treatment provided to address concerns about their parenting, and where therefore proceedings may need to be extended.

200. **Recommendation 32: Experts: a reduction in their use and a renewed emphasis on "necessity"**. The number of permissions to instruct an expert (especially an ISW and/or psychologist) are high and should be reduced when seeking an expert is not necessary to the case. The instruction of an expert is not a neutral exercise: it incurs expense and potentially causes delay.

201. The judiciary and members of the legal and social work professions need to be reminded of the provisions of FPR 2010, part 25 and the requirement that permission to seek an expert opinion should only be made and granted where it is necessary. The fact all parties consent to the instruction of an expert does not alleviate the duty of the court to be satisfied that it is necessary.

202. **Recommendation 33: Experts: a shift in culture and a renewed focus on social workers and CGs**. There should be shift in culture and practice away from early instruction within proceedings of experts. Social workers and CGs are expected to have the expertise to make professional judgments and assessments both generally and particularly in respect of the assessment of sibling and parental relationships/bonds, and commenting upon attachments.

203. **Recommendation 34: CGs' workload.** A CG as opposed, perhaps, to the lawyers representing the child, has a limited role in fact-finding hearings Accordingly, save for exceptional cases, CGs should be excused from attending these hearings in whole or in part. Further, for the purposes of standard CMHs we recommend that it should become usual practice for it to be sufficient for a CG to file a position statement rather than a case analysis.

204. **Recommendation 35: Judicial extensions of the 26-week limit**. Where the way forward for the child is clear (for example, a return to the care of the parents has been excluded by the court) but further time is required to determine the plan or placement which in the best welfare interests of the child, consideration should be given to permitting the case to exceed the 26-week statutory time limit.

205. If this recommendation is accepted, it is essential that the judicially approved extension and the consequential length of the proceedings are recorded separately from conventional proceedings.

206. **Recommendation 36: A shift in focus on bundles: identifying what is necessary**. There must be compliance with the provisions of FPR 2010, PD 27A, but we recommend, with the increasing availability of electronic bundles, that the focus should shift to the parties, the advocates and the judiciary concentrating on: (a) the principal issues necessary to resolve the proceedings; (b) the relevant issues in dispute at the hearing; and (c) the reading list for the judge to determine these issues. A clear route to navigate the bundle is key – whether a paper or electronic bundle.

207. **Recommendation 37: Fact-finding hearings: only focus on what is necessary to be determined.** There needs to be a culture shift in acknowledging that only those issues which inform the ultimate welfare outcome for the child need to be and should be the subject of a fact-finding hearing by the court. It should be rare for more than six issues to be relevant.

208. **Recommendation 38: Additional hearings: only where necessary**. The judiciary and practitioners need to be more acutely aware of whether (a) a further hearing is necessary and, if so, why; and (b) the directions proposed to be made are necessary for the fair conduct of the proceedings and are proportionate to the identified issues in the case. Mere inactivity, oversight or delay is never a just cause for a further hearing and a concomitant delay in concluding proceedings. Thus, it should be recognised by all, including the LAA, that advocates' meetings, which should include LIPs, play a vital role in ensuring a case is concluded expeditiously and fairly.

209. In order to reduce the number of hearings and to ensure compliance with the 26-week limit it is important that the following issues are addressed at the earliest possible stage of the proceedings:

i. the identity and whereabouts of the father and whether he has parental responsibility for the child;
ii. the potential need for DNA testing;
iii. whether a FGC has been held, and with what outcome;
iv. the need to identify at an early stage those family or friend carers who are a realistic option to care for the child (thus avoiding scenarios where significant resources are devoted to lengthy assessment of numerous individuals who are not a realistic option for the child); and,
v. the disclosure of a limited number of documents from the court bundle to family and friends who are to be the subject of viability assessments in order to ensure the same are undertaken on an informed basis.

210. **Recommendation 39**: **The promotion nationally of consistency of outcomes.** Whilst recognising the constitutional importance of judicial independence, consideration should be given to the means by which a greater degree of consistency can be achieved to the judicial approach to case management and the nature of the orders made at the conclusion of the proceedings.

Best practice guidance

211. We recommend that the BPG set out in Appendix F2 be issued by the President.

Longer-term changes

212. **Recommendation 12: A review of recruitment and resourcing of the family justice system.** To be undertaken by the Government. Within the Family Court there should be more effective systems for recruitment and long-term planning by MoJ/HMCTS to ensure the right level of juridical and administrative resources are in place to reflect the comparative workloads in each area.

Supervision orders

Current issues

213. This section focuses on the use of the supervision order as a standalone order that is used to return children to the *same* carers who were bringing up the child prior to care proceedings.[13] This focus is because of concerns about the contribution of supervision orders to help support safe reunification to the birth family and provide sustainable permanency to the child and promote positive wellbeing outcomes. The DfE includes reunification to birth parents in its permanency placement options[14] and it has an interest in the role of the supervision order to help promote stability, even though the order is short term. In the hierarchy of placement options, preserving families and promoting family reunification wherever possible is considered the first priority.

214. The CA 1989 aimed to stimulate the use of the standalone supervision order to support reunification to birth parents who were looking after the child prior to the start of proceedings as a viable alternative to a care order. Recommendations put forward in the 1985 Review of Child Care Law (RCCL) were accepted and a power for the supervisor to impose a small number of specific requirements upon parents was introduced, provided it had their consent.[15]

215. Views on the positive contribution of the supervision order to family justice and children's lives were mixed from early days after the implementation of the CA 1989. Arguments in their favour were on the grounds of proportionality, the duty

[13] The use of the supervision order to support placements with the extended family and friends was considered in the standalone report on special guardianship orders, with accompanying BPG, published on 15 June 2020: https://www.judiciary.uk/wp-content/uploads/2020/06/PLWG-SGO-Final-Report-1-1.pdf

[14] https://www.gov.uk/government/publications/children-in-care-research-priorities-and-questions

[15] Sch 3 (1)(c), CA 1989.

upon the local authority to provide support, and their capacity to enhance parental self-esteem. However, the supervision order was also seen as "a relatively feeble tool that needs to be made more robust and useful". Early case-law established that "...supervision should not in any sense be seen as a sort of watered-down version of care. It is wholly different". Case-law also made clear that "the contract drawn up between the parents and the local authority cannot be enforced without further court proceedings, whereas a care order places on the local authority a positive duty to ensure the welfare of the child and protect her from inadequate parenting. That is the framework and essence of the Act".

216. Many of these early concerns have persisted and are reflected in the current issues identified below. There has been no significant reinterpretation of supervision order legislation, policy or practice via case0law in recent years. The Family Justice Council proposed an amendment to the Family Justice Review of 2011, but it was not taken forward. Otherwise, the supervision order has been not been reviewed since its introduction in its present form in 1989.[16]

217. The use of the supervision order is included in the terms of reference to the present report, with a specific remit to consider opportunities for diverting these cases from court. It has been suggested that "clear blue water" needs to separate out those cases which do not need to come to court.

218. There are many reasons why a renewed focus on diversion is important, in particular the challenge to both local authorities and the Family Court in managing the year-on-year rise in care proceedings in recent years. However, there are some challenges to achieving diversion. Differentiating those cases which need to come to court from those which should be diverted is problematic. At present, research

[16] Harwin, J., Alrouh, B., Golding, L., McQuarrie, T., Broadhurst, K. and Cusworth, L (2019) The contribution of supervision orders and special guardianship to children's lives and family justice, Final Report, Lancaster University https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN_SO_SGO_FinalReport_V2.1_19Mar2019.pdf

evidence does not allow us to identify the significant features of cases pre-proceedings which result in a supervision order rather than a care order or care order at home. Case characteristics are very similar for example in terms of domestic violence, substance misuse and mental health problems. Without this knowledge, it is difficult to predict which cases could responsibly and safely be diverted altogether.

219. Moreover, national statistics based on Cafcass sources indicate that the standalone supervision order has only made a small contribution to the rise in care demand in recent years.[17] Over the period 2010/11-2016/17, children placed on supervision orders comprised annually between 14% -15% of five comparison order types.[18] Their real growth has been in their use to support SGOs. Moreover, despite the rise in care proceedings between 2007/08 and 2016/17, only 6% of children subject to care proceedings had an application for a supervision order. 88% of all supervision orders made to support family reunification resulted from a care application. These orders are very rarely sought by the local authority. Nevertheless, the number of children who receive a supervision order annually is substantial, very similar to those on placement orders and SGOs,[19] and this is one of the reasons why consideration of change options is important.

220. The outcomes of standalone supervision orders are of concern. Using Cafcass data, national research shows that children placed on supervision orders have a 20% likelihood of returning to court for further care proceedings within five years.[20] This is higher than for any of the other five comparison order types.[21] Children aged less than five years' old when placed on a supervision order are significantly

[17] Harwin et al (2019) https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/SO_SGO_Summary%20Report_vs1.2.pdf

[18] No order; CAO (lives with); SGO; care order; placement order.

[19] The numbers of standalone supervision orders rose from 1,921 in 2010/11 to 3,528 in 2016/17. In 2016/17 4,018 SGOs were made and 3,806 placement orders.

[20] Harwin et al 2019.

[21] See footnote 21.

more likely to return to court for new care proceedings than older children. Ten percent of all supervision order cases risk return to court within a year of the making of the supervision order. For these children, family reunification does not provide stability, exposes the child to the risk of further harm and makes them more difficult to place subsequently. Children who are the subject of repeated applications to the court (8%) also place an additional burden on children's services and the courts with resource and cost implications.

221. Child outcomes from case file studies in four authorities also paint a troubling picture. 24% experienced neglect or abuse during the supervision order. Neglect predominated and was most frequent amongst children aged one to four years. By the end of the follow-up, four years after the care proceedings concluded, 40% had experienced further neglect, 24% had experienced a permanent placement change and 28% had experienced further care proceedings. By this point, 56% of the children had been exposed to parental housing difficulties and 49% to their financial difficulties. A higher proportion of children were affected by housing and financial difficulties by the end of the follow-up than when the care proceedings were issued. These findings point to the need to consider ways of enhancing post-proceedings support when a supervision order is made.

222. There is considerable variation in the support provided to children and families during the supervision order and in the frequency of reviews. The views of children and their parents are difficult to establish and evidence of the service offer, its receipt and sustainability of engagement are often poorly recorded. This could create difficulties for courts in considering whether to extend a supervision order or consider new care proceedings.

223. There are marked regional variations in the use of supervision orders. In 2016/17, the North West circuit had the lowest use of supervision orders at 9%; the Midlands, North East and South West (12% to 14%), and London was highest at 25%. This means that in 2016/2017, children in care proceedings within the

London circuit were approximately three times more likely to be made subject to supervision orders than children in the North West circuit. According to MoJ figures, Wales makes the lowest use of supervision orders. Usually, regions that had a high percentage use of supervision orders make less use of care orders and vice versa. Although reasons for these variations are likely to be multifactorial, decision-making by children's services, Cafcass and the courts are an important driver and they have major consequences on the child's long-term future as well as on the budgets of children's services.

224. There are mixed professional views about the contribution of the supervision order. Focus groups held by researchers and by the MoJ have identified a number of concerns amongst social workers, local authority lawyers, Cafcass and the judiciary. There is a lack of clarity as to when to make a supervision order rather than a care order, including a care order at home. There are differences of opinion as to whether the supervision order provides any additional support and access to services over and above those available to other categories of children in need. Directions are rarely used because they are unenforceable. In some parts of the country distrust in the order has led to the use of care orders at home as an alternative. The inter-relationship between these two orders and their respective advantages and drawbacks are insufficiently understood and there are no largescale outcome studies on care orders at home. There is however a broad consensus that the supervision order needs strengthening and that the order should continue to be an option but within a more robust framework.

225. There are also data issues. The DfE Children in Need census data does not provide information on children on supervision orders as a distinct sub-category even though the court has determined that they have met the threshold criteria of significant harm. This means that it is not possible to track the medium and long-term outcomes of children who have been subject to a supervision order apart from through research. Whilst these children are not looked after, they are

nevertheless part of government permanency strategy.[22] As regards the Form C110A, it allows applicants to tick all four boxes simultaneously (for a care order, supervision order, ICO and interim supervision order) creating confusion as to the reasons and there is currently no guidance to assist applicants how to complete the forms.

226. Consideration of the supervision order cuts across the work of the various sub-groups and many of the recommendations in this report are directly relevant. However, there are many specific issues around the supervision order which need separate consideration to promote diversion and to help strengthen the order so that it might become a viable alternative to making a care order.

Recommendations

227. **Recommendation 40: An additional sub-group be set up to examine supervision orders.** We recommend that an additional sub-group of this working party is set up to review and make proposals relating to practice, statutory guidance, regulation and law to enhance the effectiveness of supervision orders as a public law order which have not been reviewed since the enactment of the CA 1989.

Longer-term changes

228. **Recommendation 13: A review of supervision orders.** The Government should review the components of a supervision order with the recommendation that they be revised to provide a more robust and effective form of a public law order. This

[22] Harwin, J., Alrouh, B., Golding, L., McQuarrie, T., Broadhurst, K. and Cusworth, L (2019) The contribution of supervision orders and special guardianship to children's lives and family justice, Final Report, Lancaster University https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN_SO_SGO_FinalReport_V2.1_19Mar2019.pdf

might best be considered as part of the wider Independent Review of Children's Social Care,[23] which is now underway.

[23] https://www.gov.uk/government/groups/independent-review-of-childrens-social-care

S 20/ s 76 accommodation

Current issues

229. It is widely perceived that the judgments in *In the matter of N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112, [2016] 2 WLR 713 significantly contributed to the decline in the (appropriate) use of s 20 / s 76[24] across England and Wales. Furthermore, guidance on the use of s 20 is spread across various sources. The varying interpretation and application of the current guidance has led to inconsistency in the approach to the use of these important statutory provisions. In some areas, these provisions are no longer used.

230. In recent work by the MoJ and the DfE, many social workers reported being unclear on when it was appropriate to use s 20 and were cautious of being criticised by managers and the judiciary. This was the case even when they believed that s 20 accommodation was the most appropriate option for the children. Some felt this was leading to a "disproportionate use" of court proceedings and subsequently to more children becoming looked after when it was not necessarily in their best interests.[25]

231. National published data shows the use of s 20 has fallen in recent years, while the number of care orders has risen. The total number of children looked after under s 20 in 2017/18 fell by 10% compared to the previous year (2016/17) with numbers declining from 2015/16 onwards. Conversely, the number of children looked after under a care order increased by 9% in 2017/18 compared with the previous year (2016/17). The proportion of all children looked after under a care

[24] Unless otherwise stated reference to s 20 shall include reference to s 76.

[25] Unpublished, qualitative fieldwork as part of joint work by the MoJ and the DfE with selected local family justice boards.

order increased from 58% in 2013/14 to 73% in 2017/18 while the proportion of all children accommodated by voluntary agreement (s 20 / s 76) fell from 27% in 2013/14 to 19% in 2017/18.[26]

232. In summary, s 20 contains important statutory provisions and the (appropriate) use of those provisions has sharply declined. This may have contributed to the increase in public law applications in circumstances where the use of s 20 may have better met the needs of the subject children and their families. There is an identified urgent need to reverse the trend in decline of the appropriate use of these provisions.

Recommendations

233. **Recommendation 41: Appended guides.** The working group has produced (a) a good practice guide, appendix G1; (b) a simplified explanatory note for older children, appendix G2; and (c) a template s 20 / s 76 agreement, appendix G3. Our primary recommendation is that this BPG be circulated and used.

234. **Recommendation 42: No time limits on s 20 / s 76 – but agreement at the start.** There should be no imposition of time limits for the use of s 20. There are no legal time limits in place. The imposition of time limits will be counterproductive. However, it is recommended that, where possible, the purpose and the duration of any s 20 accommodation is agreed at the outset and regularly reviewed.

235. **Recommendation 43: Focus on independent legal advice.** Where possible, those agreeing (or not objecting) to s 20 accommodation should do so after receiving independent legal advice. This is equally important for older children, i.e. 16 and older.

[26] Department for Education (2018) Statistical First Release: Looked after children including adoption (2017/18).

236. **Recommendation 43: Local authority implementation of the best practice guidance and a review of its functioning.** Each local authority is encouraged to put in place such measures as are necessary to implement the BPG and to ensure that social workers are supported in making the best use of s 20. It is further recommended that each local authority has in place such measures as are necessary to ensure that each s 20 accommodation is registered (save where the accommodation is within the family) and that senior managers (or persons nominated by the senior manager) access and regularly review the progress and compliance of each accommodation with the good practice guide.

237. **Recommendation 45: On-going training / education on the proper use of s 20 / s 76.** After publication of the BPG, a programme of education is necessary to ensure that all of the relevant professionals understand and apply the guide correctly. It is recommended that:

i. each DFJ area distributes the BPG to the judges, local authorities and local practitioners;

ii. each local authority provides training, within a prescribed time frame, to senior staff, front-line staff, IROs and any relevant workers in the independent sector such as advocates;

iii. each local FJB provides and meets any further identified need for training;

iv. training and the material for training has national oversight and coordination to ensure consistency. This may be achieved through or in consultation with the FJB.

238. **Recommendation 46: A process of feedback and review on the proper use of s 20 / s 76.** A structure should be set up through which a subgroup of the working group (or of another body, such as the FJB) can receive feedback on the operation of the BPG in practice. It is recommended that feedback be given by the judiciary,

practitioners, front-line social workers, families (including feedback through advocates for those requiring such services) and children who are involved in the process. Also, the BPG should be reviewed in 24 months to identify any need for revision or further guidance. Further consideration can be given to a national assessment and accreditation system to include training for the use of s 20 and to consider expanding any proposed training on permanence to include s 20.

239. **Recommendation 47: Further consideration of and guidance on s 20 / s 76 and significant restrictions on a child's liberty.** There is a need for clear guidance in relation to placements that place significant restrictions on a child's liberty. That needs to address, in particular, s 20 accommodation. That should build on the President's 12 November 2019 *Practice Guidance: Placements in Unregistered Children's Homes in England or Unregistered Care Home Services in Wales*[27] and the judgments of the UK Supreme Court, once handed down, in *In the matter of T (A Child)* 2019/0188 (the appeal in *T (A Child)* [2018] EWCA Civ 2136).

Best practice guidance

240. We recommend that the BPG set out in appendix G1 – G3 be issued by the President.

Longer-term changes

241. **Recommendation 14: A review of public funding for those with parental responsibility "signing up" to s 20 / s 76.** Review of the availability of legal aid for parents who are considering s 20 accommodation is strongly recommended. The decision to agree (or not to object) to the accommodation of a child is a significant

[27] Available online: https://www.judiciary.uk/wp-content/uploads/2019/11/PG-Placements-in-unregistered-childrens-homes-in-Eng-or-unregistered-care-home-services-in-Wales-NOV-2019.pdf

step. The leading case-law in this area demonstrates the real issues that can arise from such agreements. The proper use of these provisions can be very important in achieving the best outcome for the relevant child that may continue to benefit her into adulthood and beyond.

242. The provision of legal advice on this limited issue will be a highly cost-effective investment: it is likely to contribute to a reduction in the number of proceedings that are issued.

243. This should be considered in the context of the varied application of these important statutory provisions. The provision of legal advice will help to ensure compliance with the relevant rules and avoid primary and possible satellite litigation (for example, judicial review or claims for compensation).

244. Looking ahead, in the longer term achieving more favourable outcomes for children outside proceedings can help "break the cycle" of care when those children are adults. Not only will this bring enormous social benefits, but it will also assist in saving on the expense of litigation.

245. It is recommended that a review considers necessary amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations (2013)) to enable parents and older children to access independent legal advice when asked to sign an agreement to accommodate under s 20.

246. **Recommendation 15: Investment in the use by local authorities of a multidisciplinary approach.** Investment in a multidisciplinary approach is essential to the success of these recommendations and those made in other parts of this report. That requires better coordination between local authorities, health authorities and education. Such investment would assist in diverting cases from court proceedings and, where court proceedings are necessary, it will ensure that

the appropriate evidence is readily available to the court to progress the matter to conclusion.

Conclusion

247. The working group commends these recommendations and proposed BPG to the President of the Family Division.

248. We are of the view that the implementation of the recommendations and the BPG will lead to better outcomes for the children and young people who are involved with local authority children's services departments and are the subject of care proceedings. Our focus throughout has been on seeking to put the welfare best interests of these children and young people at the forefront of all considerations.

249. The recommendations and the BPG will be shared at a national level with the Family Justice Reform Implementation Group. The practical arrangements for overseeing implementation at circuit and local level will be published in early- to mid- 2021, along with proposals for the training of all professionals in the child protection and family justice systems in respect of our recommendations and the BPG.

250. In this report we have addressed the issue of the robustness and effectiveness of supervision orders as currently provided for in part IV and schedule 3, CA 1989. We have invited the Government to undertake a review of these orders. These proposals were not the subject of the public consultation exercise undertaken in respect of the interim report. Therefore, in order to assist with what changes could be made to make supervision orders a more practical alternative to care orders and to make them robust and effective, we have created a separate sub-group to address these issues. This sub-group will include representatives of local authorities, Cafcass, parents, kinship carers and children and young people. We propose, in due course, to send an addendum to this final report to the President in respect of supervision orders.

251. We wish to acknowledge the meaningful contributions made to the drafting of this report and to the formulation of our recommendations by the ADCS. In addition, we thank ADSS Cymru, which fully endorses the report and its recommendations.

252. We wish to thank the FRG and the members of its focus groups for the invaluable assistance they have given to this working group in preparing this report.

253. We wish to pay tribute to the invaluable contribution made to this working group by Anthony Douglas, formerly the CEO of Cafcass, who retired in April 2019 and was succeeded by Jacky Tiotto.

254. The Government has launched the Independent Review of Children's Social Care. We would invite the independent reviewer to consider including within this review those matters set out in our 15 recommendations for longer-term change to the child protection and family justice systems.

Appendix A: membership of the working group

The Hon. Mr. Justice Keehan (Chair of the Public Law Working Group) (Sub-chair, Case management; Sub-chair, Special guardianship; Sub-co-chair, Supervision orders) (High Court judge)

Alexander Laing (Secretary to the Public Law Working Group) (Barrister)

Sarah Alexander (Assistant Director, Bolton Council)

Fatima Ali (DfE)

Iram Anwar (Legal Adviser, Nottingham)

Cathy Ashley (Chief Executive, Family Rights Group)

Natalie Avery (Head of Family Justice and Looked after Children, Welsh Government)

Neal Barcoe (Deputy Director, Family Justice Policy, MoJ)[28]

Kate Berry (Department for Education)[29]

Helen Blackman (Director of Children's Integrated Services, Nottingham City Council; ADCS)

Kate Block (Policy Officer, ADCS)

Professor Karen Broadhurst (Co-Director, Centre for Child and Family Justice Research)

Nigel Brown (CEO, Cafcass Cymru), subsequently replaced by Jane Smith (Head of Operations, Gwent, Cafcass Cymru) and Laura Scale (Senior Practice Development Officer, Cafcass Cymru)

Melanie Carew (Head of Legal, Cafcass)

Steven Chandler JP (Magistrates Association, Family Courts Committee)

Alistair Davey (Enabling People Director, Social Services and Integration Directorate, Welsh Government)

Anthony Douglas (CEO, Cafcass), subsequently replaced by Christine Banim (Cafcass National Service Director) and Jacky Tiotto (CEO, Cafcass)

[28] MoJ participation in this working group should not be taken as government endorsement of all the recommendations in this report.

[29] DfE participation in this working group should not be taken as government endorsement of all the recommendations in this report.

Rob Edwards (Legal Adviser, Cafcass Cymru)

Cath Farrugia (Department for Education)

Shona Gallagher (Head of Children and Families Social Care, South Tyneside Council)

Professor Judith Harwin (Professor in Socio-Legal Studies, Lancaster University) (Sub-co-chair, Supervision orders)

HHJ Rachel Hudson (Sub-chair, The application) (DFJ, Northumbria and North Durham)

Rupal Jayawasal (Practice Development & Court Work Lead Quality Assurance, Practice Improvement Team, London Borough of Waltham Forest)

Gareth Jenkins (Assistant Director – Head of Children's Services, Caerphilly County Borough Council)

Sally Ann Jenkins (Sub-co-chair, Support for and work with families prior

to court proceedings) (Head of Children's Services, Newport City Council;

ADSS Cymru)

Helen Johnston (Assistant Director for Policy, Cafcass)

Andrew Jones (Head of Public Family Justice Policy, MoJ), subsequently replaced by Helen Evans (Head of Public Family Justice Policy, MoJ)

DJ Martin Leech (District Judge, Plymouth)

Oliver Lendrum (Family Justice Policy – Public Law, MoJ)

Helen Lincoln (Executive Director for Children and Families, and Education, Essex County Council)

Caroline Lynch (Principal Legal Adviser, Family Rights Group), subsequently replaced by Jessica Johnston (Legal Adviser, Family Rights Group)

Simon Manseri (Principal Social Worker, Bolton Council)

Hannah Markham QC (Barrister)

Jo McGuinness (Child Solicitor, Stoke)

Lucy Moore (Local Authority Solicitor, Swansea Council)

HHJ Kambiz Moradifar (Sub-co-chair, Support for and work with families

prior to court proceedings; Sub-chair, S 20/ s 76 accommodation; DFJ,

Thames Valley)

Richard Morris, MBE (Assistant Director, Cafcass)

Ifeyinwa Okoye (Department for Education)

Emma Petty (Family Public Law Reform Project, HMCTS)

Matthew Pinnell (Deputy Chief Executive, Cafcass Cymru)

Dr John Simmonds, OBE (Director of Policy, Research and Development at CoramBAAF)

Natasha Watson (Local Authority Solicitor, Brighton and Hove Council)

Teresa Williams (Director of Strategy, Cafcass)

Kevin Woods (Department for Education)

Hannah Yates (Department for Education)

Additional members who joined as part of the **Supervision orders** sub-group appear in appendix B

Appendix B: membership of the working group's sub-groups

Support for and work with families prior to court proceedings

Sally Ann Jenkins (sub-co-chair)

Kambiz Moradifar (sub-co-chair)

Sarah Alexander

Christine Banim

Kate Berry

Helen Blackman

Nigel Brown

Rob Edwards

Shona Gallagher

Michael Keehan

Caroline Lynch (replaced by Jessica Johnston)

Simon Manseri

Lucy Moore

Ifeyinwa Okoye

Natasha Watson

Hannah Yates

The application

Rachel Hudson (sub-chair)

Iram Anwar

Helen Johnston

Martin Leech

Jo McGuinness

Lucy Moore

Emma Petty

Case management

Michael Keehan (sub-chair)

Helen Blackman

Steven Chandler

Shona Gallagher

Rachel Hudson

Caroline Lynch (replaced by Jessica Johnston)

Hannah Markham

Richard Morris

Natasha Watson

Supervision orders

Michael Keehan (sub-co-chair)

Judith Harwin (sub-co-chair)

Bachar Alrouh

Cathy Ashley

Nengi Ayika

Jenny Coles

Kate Devonport

Claire Evans

Denise Gilling

Jeremy Gleaden

Sheila Harvey JP

Isobel Howlett

Kate Hughes

Alan Inglis

Martin Kelly

Alexander Laing

Helen Lincoln

Caroline Lynch

Hannah Markham

Lauren McCrum

Kambiz Moradifar

Richard Morris

Peter Nathan

Ifeyinwa Okoye

Jamie Paul

Sarah Richardson

Laura Scale

Sharon Segal

Claire Simmonds

John Simmonds

Alisdair Smith

Jane Smith

Jacky Tiotto

Isabelle Trowler

Natasha Watson

Liz Wilson

S 20/ s 76 accommodation

Kambiz Moradifar (sub-chair)

Helen Blackman

Cath Farrugia

Shona Gallagher

Kevin Woods

Alexander Laing

Lucy Moore

Teresa Williams

Appendix C: the organisations and groups who submitted narrative responses to the consultation

1. Association of Directors of Children's Services
2. Association of Directors of Children's Services - NW
3. Association of Lawyers for Children
4. British Association of Social Workers
5. Cafcass
6. Cafcass Cymru
7. Centre for Justice Innovation
8. CFAB
9. Cheshire & Merseyside Local Authorities (9)
10. CoramBAAF
11. Family Justice Council
12. Family Law Bar Association
13. Family Rights Group
14. Gateshead Council
15. HHJ de Haas QC
16. HM Council of Circuit Judges
17. Judges of the Family Court at Birmingham
18. Judges of the Family Court in Essex & Suffolk
19. Judges of the Family Court at Stoke on Trent

20. Justices' Clerks Society
21. Kinship Care Alliance
22. Kinship Carers UK
23. Leeds Children's Social Care Legal Team
24. Mary Ryan & Jo Tunnard (Independent Consultants)
25. Mrs Justice Gwynneth Knowles and Mr Justice Lane
26. NALGRO
27. National IRO Managers' Partnership
28. North East Local Authorities (12)
29. NSPCC - awaited
30. Northumberland County Council
31. Northumbria & North Durham LFJB
32. OFSTED
33. Pause
34. Professor Judith Masson
35. Resolution
36. Shropshire Council
37. South London Care Proceedings Project
38. South Wales LFJB
39. The Cambridgeshire Family Panel
40. The Law Society

41. The Magistrates' Leadership Executive
42. The Official Solicitor
43. The Transparency Project
44. The Welsh Government
45. Together for Children
46. West Yorkshire LFJB
47. Working Together with Parents Network

Appendix D: analysis of responses to the SurveyMonkey consultation

Recommendation		Agree (%)[30]	Not know (%)	Disagree (%)
Core recommendations				
1	Share good practice	73	16	10
2	Shift in culture	79	10	9
3	Focus pre-proceedings	77	13	8
4	Legal gateway meetings	64	24	12
5	Role of legal advisers	62	20	16
6	Challenge IRO	73	18	8
7	Focus PLO	79	13	6
8	LA charters	64	21	14
9	FJYPB's Top Tips	71	24	4
10	Letters to parents	87	7	6
11	Early use of PLO	84	10	5
12	Standard agenda	74	14	11
13	Re-focus role of legal advisers	68	16	15
14	Use of assessments	81	10	7
15	Tracking progress	86	11	3
16	Family and friends	75	17	6

[30] All % are rounded to the nearest whole number.

17	Pre-birth preparation	84	10	5
18	Change in culture	84	12	3
19	Revision of Form C110A	67	30	1
20	Pleading grounds	68	26	5
21	Urgent cases	66	27	6
22	Early notice to Cafcass	75	16	9
23	Court listing	78	17	4
24	Health services	78	16	5
25	Birth certificate	70	21	8
26	SWET and urgent applications	76	18	4
27	Revise SWET	75	23	1
28	Template for directions	60	34	4
29	Checklists	72	18	9
30	Case summary templates	67	21	11
31	Early case management	77	18	4
32	Wellbeing	80	16	2
33	Short form orders	72	17	8
34	Advocates' meetings	71	17	11
35	Template position statements	65	18	15
36	Judicial continuity	84	12	4
37	Effective IRHs	78	12	9

38	Misuse of care orders	73	20	7
39	Newborn babies	77	17	5
40	Experts	78	10	11
41	Shift in culture re: experts	76	10	13
42	26-week extensions	84	6	9
43	Bundles	79	16	3
44	Fact-finding hearings	87	9	3
45	Hearings	82	10	7
46	Consistency	73	21	5
47	SGO assessments	79	14	5
48	Training	92	4	3
49	SOs and SGOs	75	18	6
50	Parental contact	75	13	10
51	Guides	67	26	6
52	No time limits to s 20/ s 76	68	19	12
53	Independent legal advice	84	12	2
54	Good practice	75	19	5
55	Training	88	6	5
56	Feedback	78	15	6
57	Further guidance	84	12	3
Longer-term changes				
1	Pre-birth support	88	8	3
2	Role of Cafcass	60	18	21

3	Public funding	86	9	4
4	Research – urgent applications	75	19	5
5	Research – EPOs & PPOs	78	19	2
6	New-borns & Cafcass	68	18	13
7	IT	70	25	3
8	Data collection	69	28	2
9	Review funding – family justice	86	12	1
10	Review funding - parents	86	10	4
11	Review statutory framework	80	18	2
12	Further analysis	81	16	2
13	Review funding – proposed SGs	88	7	4
14	FGCs	79	14	6
15	Review funding – s 20/ s 76	81	14	5
16	Multidisciplinary approach	79	17	4
BPG				
Local authority decision-making		63	27	9
Pre-proceedings and the PLO		71	23	5
Application		71	26	2
Case Management		70	26	4

SGO		74	21	5
S 20/ s 76		71	26	3

Role of those who responded

A child	1
Parent	49
Foster carer	3
Judiciary	8
Magistrate	4
Solicitor	27
Barrister	34
Local authority	31
Social worker	23
Cafcass	8
Court staff	1
Expert witness	3
Other	27

Appendix E: best practice guidance for support for and work with families prior to court proceedings

E1. BPG

1. Local authority decision-making should be underpinned by principles of partnership working and relationship-based practice at all times. The purpose of this BPG is to support social workers to make consistent and timely decisions. The ability to hold risk safely whilst building on family strengths is central to this.
2. Care proceedings are the option of last resort. The purpose of the PLO pre-proceedings process is not purely one of assessment where the local authority is thinking about making an application to the court. It represents a genuine opportunity to work closely with families by offering help and support to address their recognised needs in a bid to negate the need to issue care proceedings.
3. This BPG aims to achieve the best outcomes for children, young people and their families. It is supported and endorsed by the ADCS, ADSS Cymru, and the wider membership of this working group.[31]

Introduction

4. This document covers an essential part of the work that is undertaken by local authorities when concerns arise about the welfare of child(ren) and their family. It covers:
    a. the core principles
    b. local authority decision-making
    c. pre-proceedings and PLO assessments.

[31] Save that, as noted, MoJ and DfE participation in this working group should not be taken as government endorsement of all the recommendations in this report or the BPG.

5. This guidance is intended to provide a practical step-by-step guide to practitioners and relevant stakeholders in order to achieve a degree of consistency, but not the standardisation, of approaches across the jurisdiction. This guide should be read alongside the relevant legislation, statutory guidance and appropriate case-law.

Core principles

6. A set of core principles provide the common thread throughout this document, which can be summarised as follows:
    a. **Child's welfare is paramount:** this principle is applied consciously and intuitively by social work practitioners.
    b. **Child's views:** social work practices, and the law, rightly place importance on the views of child(ren). It is important that how, when and the circumstances in which their views were expressed are accurately documented. For the very young, and those with disabilities which may limit verbal communication, the use of creative approaches, observation and interpretation by social workers in their direct work, is crucial.
    c. **Managing and mitigating risks:** steps should be taken to ensure the child's safety is always maintained and not compromised during work with them and their family.
    d. **Partnership:** work with the child(ren) and the family, including other significant adults, should be undertaken with the consent of the family, and their support network. This requires a collaborative approach to identifying issues together and co-producing a plan to support change. The family should feel part of the process and particular care may be needed where meetings are held virtually, to ensure engagement is meaningful. It is important that social, cultural and health inequalities or differences are actively and thoughtfully considered here.

e. **Multidisciplinary approach:** wherever possible the existing skills, shared knowledge and resources of all partners and agencies involved with the child(ren) and their family, such as health and education, should be used to effect positive change, with anything external being a last resort.

f. **Record keeping:** accurate and timely recording is vital as is clear communication with the family. Social workers undertake a huge amount of work with children and their families. The detail of these interactions often inform - but may not always be visible in - future assessments. These records are also important to the work of other professionals involved with the family and to court proceedings, if that is the outcome.

g. **Court is an option of last resort:** court proceedings must be necessary and proportionate. Care proceedings should only be initiated where the safety and welfare of the child demands it and the legal threshold is met.

h. **No delay:** whilst it is recognised that purposeful delay can be a useful tool e.g., to accommodate assessments or gain confidence that positive behavioural changes are sustained, any unnecessary delay is to be avoided by close monitoring of the timeline of the assessment and support plan. Steps to minimise delay when children/families are transferred between teams or social workers should be taken. If proceedings are contemplated, the evidence that has been gathered through the PLO process should be complete, up-to-date, relevant and presented to the court.

Local authority decision-making

7. The aim is to support local authorities to make consistent, timely and balanced decisions as to whether to initiate pre-proceedings. Safely managing risk, while building on family strengths and energising wider family support, is critical. Encouraging families to embrace this opportunity as opposed to embarking on the steps towards proceedings should be the aim.

8. The fact that the legal threshold has been met does not always mean it is right, or proportionate, to arrange a legal gateway/planning meeting, proceed to pre-proceedings or instigate care proceedings. Progress with some families where the child is on a child protection plan can feel slow or absent or there may be a need for specialist assessments or tests. However, this should not be the driving factor in decision-making to escalate towards the PLO. Despite the threshold being met, thorough consideration should be given as to what can be done differently to achieve progress without escalating towards the PLO process.

Timing

9. An important balance should be struck between working supportively with the family to bring about change, the potentially damaging impact of delay for the child and the risk of the situation escalating to crisis point leaving no alternative to the issuing of care proceedings. It is also important that appropriate support is in place to facilitate the effective participation of the family. This may include non-legal advocacy services, intermediaries or interpreters, for example.
10. Here are some key points at which a family should be considered for presenting at legal gateway/planning meeting. This is not an exhaustive list and the points, below, are simply offered for the reflection and deliberation of social workers and senior managers:
    a. Where a pre-birth conference decides a child is to be made the subject of a child protection plan ahead of birth and there is no active involvement from the extended family.
    b. Where a child has a child protection plan and parental engagement with the process, and support services, has been persistently inconsistent and ineffective, limiting progress and putting the child at risk of significant harm.
    c. Where the child has a child protection plan and there has been no progress and/or the impact of the identified concerns has worsened at the point of the

second review conference. Every care should be taken to recognise change takes time, particularly where families are experiencing longstanding challenges.

d. Families that have previously been through the pre-proceeding process and similar concerns re-occur within a 12-month period.
e. Families where the mother or father have had child(ren) removed from their care in the past and there is concern that any presently identified risks cannot be managed with the children remaining in the parents' care.
f. Families where the risks and concerns are sufficiently significant that the matter is highly likely to proceed to court, but allowing time for the PLO pre-proceedings.

Decision to initiate pre-proceedings

11. This decision should be taken by a sufficiently senior manager, such as the line manager of the team manager responsible for the management of the family. It is the responsibility of the team manager to identify families who should be considered for pre-proceedings and that their suitability of remaining in the process is kept under review.
12. In addition to the team manager, the IRO and the child protection chair should also consider whether a family should be recommended for pre-proceedings at regular child in care reviews/child protection conferences, and discuss their views with a senior manager. Once the decision to enter pre-proceedings has been taken, it is important to note that families can step out of the PLO process if it becomes clear that this level of intervention is no longer in the child's best interests or that the threshold for entering the pre-proceedings is no longer met. Care should be taken to have confidence that the changes made are sustainable, to prevent further instability for the child and family down the line. A clear record

of the discussion with the family, including the rationale given for stepping down, should be made.

Factors to be considered

13. A senior manager should decide if it is appropriate to convene a legal gateway/planning meeting for a family, with a view to instigating pre-proceedings. In reaching that decision, the following points should be considered:
    a. What is the lived experience of the child(ren) and how is it impacting on their wellbeing?
    b. Is the legal threshold met to commence pre-proceedings or to issue immediate care proceedings?
    c. How long has social care been involved with the family? What are the concerns, and the history of such concerns, of the local authority and/or other agencies?
    d. Have any changes been made within the family to mitigate the risk factors?
    e. What support services have been offered to the family?
    f. How has the family engaged with these services and what is the impact on the children's wellbeing / outcome of this engagement?
    g. What needs to change/happen and what is the plan for the family moving forward?
    h. How have social and cultural differences and inequalities been addressed? Have interpreters been consistently used whilst working with the family?
14. Following consideration of the above points, the senior manager will then identify whether further work is required with the family or if a legal gateway/planning meeting is needed. At this point, the senior manager should make a written record, clearly setting out the reasons for their decision. This will inform the decisions that follow so clear and unambiguous reasoning is important.

Legal gateway meeting (LGM) / legal planning meeting (LPM)

15. Legal gateway is a decision-making forum that should include:
    - Chair: A suitably senior manager, in accordance with the local scheme of delegation
    - Local authority solicitor
    - Team manager
    - Social worker
    - Care proceedings manager (if appointed)
    - Representatives from other services, such as the placement team, SGO, adoption, parenting assessment team, etc
    - A minute taker.
16. To allow a full discussion to take place the following information should be on hand to assist the members of LGM/LPM with their deliberations:
    - The names of the child(ren), their parents and any other significant family members or friends who may be able to offer support, in either the short or longer term, plus the birth certificate to check father's parental responsibility
    - The key needs of the child(ren) and details of any direct work with them to date
    - Any relevant child and family assessments completed within the past six months
    - Genogram (three generational)
    - Chronology
    - The most recent child protection conference plan
    - The most recent child in care review plan
    - Details of any previous expert assessments (if there have been previous Care Proceedings)
    - An outline of the proposed plan for working with the family
    - An overview of the bundles from any previous proceedings.

17. As outlined above, the meeting will be chaired by a senior manager. Its purpose is to consider all the information available and decide if the legal threshold is met to commence pre-proceedings or to issue immediate care proceedings.
18. The chair's role is to consider all the information and advice available and decide the most effective course of action to promote the safety and wellbeing of the child(ren). The decision and reasoning will be minuted. It is essential that these minutes are accurate, concise and clear.
19. In coming to a decision, all members of the LGM/LPM will identify:
    a. The specific issues, risks and mitigating factors of relevance at this time, which will include known historical concerns.
    b. Continuing support or any additional direct work to be undertaken with the child(ren) during this period.
    c. Specify further support the local authority could offer the family to mitigate identified risks.
    d. How the local authority will continue to assess the risks and/or track positive changes in this period.
    e. Any expert assessments that are required – including who is being assessed, for what purpose, who will undertake this assessment plus the likely duration.
    f. Family members who are to be consulted to offer either support or be assessed as alternative carers. The early sharing of necessary information with extended family and the use of a FGC (or similar model developed and used locally) is essential, unless there is good reason why this is impracticable.
    g. Make a record that the duration of pre-proceedings process will commence from the date of the first PLO meeting at which the plan will be discussed with the parent(s); and agree the frequency of review meetings.
    h. When the pre-proceedings letter will be sent in order to communicate with the family and agree when the pre-proceedings meeting will take place.

i. If appropriate, timetable with the family a return date for LGM/LPM at the conclusion of the intervention to consider the assessments and interventions completed in pre-proceedings and make subsequent decisions.

Pre-proceedings and the PLO

20. The PLO brings together a series of steps that ensure the professionals working with children and their families can explore all of the realistic opportunities to achieve the best outcome for the relevant children. This includes the pre-proceedings process.
21. The fundamental purpose of pre-proceedings is a further opportunity to work closely with families to 'narrow the issues.' The main aim here is achieving the best outcome for the relevant child(ren). Although it should be recognised that the pre-proceedings stage does include the contemplation of court proceedings, this may not be the best route and should therefore be the option of last resort.
22. This guide will assist with clear communication with the family about identified concerns and the expectation of all of those who are involved in the process, including clear timescales to prevent drift. It is essential that practitioners both view and approach this phase not simply as a procedural step prior to issuing proceedings: pre-proceedings are an intervention and act as the final chance to reduce risk by supporting change. Every effort should be made to improve outcomes for children as safely as possible. Plus, it is essential to narrow the issues as far as possible before entering court.

Guide to best practice

23. Every step of the pre-proceedings process should be tailored to the particular needs of the child(ren) and their family. It should be overseen and regularly reviewed by a senior manager e.g., at six- eight weeks or at the half-way point.

Commencement

24. Making an application to remove the child(ren) from their parents should be the option of last resort and the child(ren)'s welfare must demand it. However, where there is agreement that issuing care proceedings is a realistic option, the pre-proceedings phase should be used, providing risks can be managed.
25. Having considered the work and assessments that have already been undertaken, assessors should be chosen in advance. Consideration should be given to how investing in specialist services at this stage may avert the need for care proceedings and/or serve to better understand whether care proceedings are still required.
26. A multidisciplinary approach will bring about better outcomes for the children. If adult social services, housing, education or health services are involved and hold relevant information about the family then this should be used as a basis for any necessary further assessments without starting again from scratch.
27. Parallel planning for all alternatives concurrently – aka 'twin-tracking' – alongside assessment planning reduces the likelihood of avoidable delay for the child(ren). It is important that alternative options are not discounted until it is absolutely clear that they are no longer relevant or required.
28. Social workers should discuss the draft document with their manager, and seek their approval.
29. The progress of this pre-proceedings stage should be reviewed regularly by the social worker and their manager. The frequency of such reviews will depend on the needs of each child and should be agreed when discussing the draft PLO plan.

Working and agreeing the plan with the family

30. Anyone who is being assessed/supported as part of the pre-proceedings process should be included in the pre-proceedings meeting. This may be best held individually, as a group, or both. A suggested template document to support

effective communication and record keeping here can be found at E2. The aim of this meeting is to:

a. Ensure the parents have understood the PLO letter and the reason for the meeting.
b. Ascertain the parents' understanding of the concerns the local authority holds about their children.
c. Review the current child protection plan to see if there are points on the plan that the parents agree will provide the most immediate change/safety for their children.
d. Describe what support the local authority will provide to the parents while they focus on the immediate change work.
e. Discuss and agree any additional assessment work and the timetable for this work.

31. It is crucial that the parents clearly understand this process and what is expected of them. It is important to consider learning disabilities and/or mental capacity here. Parents may require the support of an advocate or an intermediary or an interpreter if English is not their first language.
32. Older children will also need to be supported to understand this process and what it will involve. The Cafcass FJYPB has developed some principles of working with children during pre-proceedings, which can be read at appendix 13.
33. Ensure that all dates for appointments are agreed and parents are supported to keep them. Missed appointments can impact on the quality of the assessment, the effectiveness of support and leads to avoidable delay. Concerns about lack of engagement by parents should be addressed in a timely way and communicated through legal advocates too. Ensure missed appointments are re-booked, where appropriate.
34. Encourage an open and honest dialogue between the parents and anyone who is supporting them and/or who may be considered as alternative carers.

35. Ensure that letters of instructions to any experts are seen and agreed by parent's legal representatives, where they have such representation.

Duration

36. The duration of the pre-proceedings process is dependent on lots of different factors, from the child(ren)'s need to the number of professionals involved. There are no statutory time limits here, however, the duration should be agreed in advance of starting the process.
37. This process will also produce crucial evidence that may be used if any proceedings are issued. Therefore, it is important that the assessment is up-to-date, relevant and comprehensive.
38. Generally, this process should not continue for longer than 16 weeks. However, the needs and circumstances of each child and family differ. An extension should be discussed and agreed at LPMs, with the oversight and/or involvement of a senior manager.

Record keeping

39. Keeping an accurate record of the agreed PLO plan, the status of assessments in progress and/or outcomes is vital. This is a very important record that can inform future decision-making processes. A recommended template of such a plan can be found at E2. It is good practice to have regard to the principles set out in E3 when recording progress too.
40. All assessments should be recorded in formal reports. If court proceedings are contemplated, save in emergencies, a completed and signed assessment agreement should be served with the application to the court.

Outcome

41. The outcome of this pre-proceedings process should be clearly and succinctly summarised at the end of the PLO process. The social worker should discuss this

with their manager at the final meeting and seek their approval for their draft conclusions of the PLO process for consideration at a legal planning meeting. The options at this point are to escalate, extend or 'step out' of the pre-proceedings process – the deciding factor should always be the immediacy of harm. If the decision to issue proceedings is taken, then the parent(s) should be informed of this in writing.

42. Once a final draft has been agreed, the parents should be invited to a meeting to discuss the outcome and agree the next steps.
43. The letter of intent, which informs parents of the outcome of pre-proceedings process, should not be overly legalistic and should be easy to understand. The final, completed, signed assessment document will be attached to this letter so there is no need to repeat the summary outcome in the main letter. See E3 for key principles to keep in mind.

Special cases: pre-birth, newborns and infants

44. The timing for initiating the pre-proceedings process is critical here. If the local authority is already involved with the expectant mother and/or the father, this work should commence as early as possible. Depending on the specific circumstances of each parent, some of the PLO assessments and/or interventions may not be completed prior to birth. With some families, the assessment may not commence until after birth, however the agreement may be completed and agreed prior to the birth.
45. Pre-proceedings can be initiated for an unborn child and should be held as early as possible, with timescales monitored closely.
46. The identification of needs, and the provision of support, should happen as soon as possible. This may include, but is not limited to, support for the family, grants and housing.

47. Consider whether specialist advice is required about the timing of certain types of assessments, such as psychological assessments.
48. If the local authority comes to an early view that proceedings will be issued on birth, then draft documents should be ready to send to lawyers before the child's birth. The parents should be provided with the copies of the approved draft documents at the earliest opportunity.
49. Placement options should be considered prior to birth and discussed with parents e.g., parent-and-baby foster placements or fostering-to-adopt placements, so as to ensure that early permanence is achieved for babies, as appropriate.

E2. Sample assessment agreement

[Name of Local Authority] PLO Plan Dated ….

The family	
The children	
Name	Date of birth
Name	Date of birth
Name	Date of birth

The parents
Mother
Father

Other people who are important	Relationship to the child(ren)
1.	
2.	

The professionals
1. Children's social worker: `
2. Assistant/Team manager:
3. Health visitor:
4. School:
5. Support workers:
6. Advocates/intermediary:
7. CAMHS or mental health service:
8. Any other relevant professionals/agency:

Duration of the pre-proceedings process *The duration should be agreed and set at the first meeting. This is bespoke timeframe for the family and ideally should not last longer than 16 weeks*	
First PLO meeting	…….. 20XX
First PLO review meeting	…….. 20XX
Second PLO review meeting	…….. 20XX
Target finish date	…….. 20XX
Date of decision to extend (and reasons)	…….. 20XX

Expectations

These were discussed at the first PLO meeting and any changes are recorded below. 1. …

2. …
Family Group Conference (or similar)
At the first PLO meeting the child(ren)'s mother put forward the following people:
1.
2.
3.
At the first PLO meeting the child(ren)'s father put forward the following people:
1.
2.
3.

The social worker will make the referral for a FGC (or similar) by……. 20XX
Outcome of the FGC (or similar)
Reasons why a FGC has not been held:

Agreed Assessments		**Date**
Type of Assessment: Hair strand testing		
To be test for [*specify substances]* for three months on a month by month basis to include liver function testing if testing for alcohol		
To be completed by	……20XX	

Type of Assessment: Expert assessment is necessary/ not necessary		
Name and type of expert agreed		
Letter of Instruction by	…… 20XX	
To be completed by	……...20XX	

Type of Assessment: C&F Assessment (new or update)		
Name of Assessor		
The first session will take place on	…… 20XX	
To be completed by	……...20XX	

Type of Assessment: Sibling assessment is necessary/ not necessary. This will be completed by the child(ren)'s social worker		
To be completed by	……...20XX	

Type of Assessment: Viability assessments		
Names of family and friends put forward by the parent(s)		
To be completed by	……...20XX	
Outcome: Positive/negative Referred to connected persons team on [DATE]		

<u>Supports/ interventions</u> *e.g. therapy, domestic abuse work, drug and alcohol service*		Date
Type of support/ intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected completion date	…….. 20XX	
Who will provide the service	….	
Which parent will engage	….	

Type of support/ intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected completion date	…….. 20XX	
Who will provide the service	….	
Which parent will engage	….	

Type of support/ intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected completion date	…….. 20XX	
Who will provide the service	….	
Which parent will engage	….	

What may lead to proceedings being issued? *Please identify what may lead to the local authority issuing proceedings e.g. ineffective/unproductive engagement by a parent or persons being assessed causing issues of safety with the need to remove the child(ren) from the care of their parents.*
1. If the child(ren)'s safety demands it. 2. If the parents do not work with professionals to make positive changes and there is a need to remove the child(ren) from the care of their parents.

<u>Signatures</u>		
Signature	Print name	Date
Mother		
Father		
Social worker		
Team manager		
Advocate/intermediary on behalf of Mother/Father		

<u>Record of the outcome of the pre-proceedings process</u>	Date entry was created
Proceedings to be issued:	YES/NO

Record of the outcome of the pre-proceedings process *Please record detail of the outcome of PLO and the next steps that will be taken*

E3. Principles for letter before proceedings

When writing the letter before proceedings social workers should:

- Be honest and respectful
- Ensure the letter is written clearly and is jargon free
- Try to engage rather than alienate the parents
- Be clear about the seriousness of the matter
- Avoid delay but give reasonable notice of the meeting
- Provide sufficient detail to inform the parents' lawyer
- Do not delay the letter by writing more than necessary
- Make sure the letter links with the child protection plan
- Identify and locate both parents, where the child is not living with both of them
- Ensure that the parents understand the contents of the letter and have an opportunity to discuss it prior to the pre-proceedings meeting
- Where a parent may lack capacity, consideration should be given as to whether a discussion involving an advocate/and or legal representative should take place before sending out this letter
- Where English is not the first language of one or more parents then interpretation services may be required.

<u>The letter should set out:</u>

- A summary of the local authority's concerns, balancing it out with positives/strengths in the family in simple and respectful language
- The impact of the identified concerns on the child(ren) should be set out clearly
- A summary of what support has already been provided to the parents
- What needs to change and what the parents should do to bring about change
- What support will be provided by the local authority for them to avoid care proceedings including clear timescales of identified actions to be undertaken
- Information on how to obtain legal advice (and advocacy where required), highlighting the importance for the parent to get legal representation
- An invitation to pre-proceedings meeting, to be held within a maximum of 15 working days after the LGM/LPM.

Appendix F: best practice guidance for the application and case management

F1. The application

Issuing

1. Pending national rollout of the online C110A application:
   i. the "grounds for the application" should be completed by way of numbered paragraphs, setting out the threshold findings sought by the local authority and other grounds for making the application;
   ii. in every case in which the local authority seeks an emergency/urgent hearing, the template "urgent application information sheet", appendix F3, should be filed with the completed application.
2. The local authority shall provide Cafcass with advance notification of the proposed issue of proceedings at the time the decision to issue is taken.

Core documentation

3. The child's birth certificate (where available) shall be included as a core document in the court bundle at issue or, where it is not available at issue, in the court bundle for the first CMH. In the case of foreign national children without a birth certificate, a copy of the biometric page of their passport(s) or their identity documentation should be included.

Listing of urgent applications / CMHs

4. To avoid reducing the time available for the parties to obtain legal advice and representation, urgent applications are only to be listed for hearing by the court on shorter notice than requested in exceptional circumstances.

5. First CMHs are to be listed within the CMH window with sufficient time for effective preparation for the hearing in each case (and not, therefore, necessarily on the earliest available date).

Case management

6. Use of the advocates' meeting template agendas for urgent and non-urgent hearings is recommended, appendix F4 – F6.
7. An agreed minute of the advocates' meeting shall be filed as part of the case management documentation in advance of the CMH.
8. The template case summary/position statements are adopted as approved standard documents for use in all cases and at all hearings, unless otherwise directed, appendix H1 – H3.
9. Early case management directions are considered and, where appropriate, given at all urgent hearings, appendix F7.

Wellbeing

10. A continuing focus on the wellbeing of those involved in the family justice system is required. Every DFJ area is encouraged to formulate a protocol of the reasonable expectations of those operating in that area.

F2. Case management

Case management orders; advocates' meetings; case summaries and position statements

11. The CMO should be drawn and approved for the first hearing, thereafter a short-form order should be used which, in the main body of the order, consists of:
    i. the name of the judge, time and place of the hearing;
    ii. who appeared for each party or that they were a LiP;
    iii. if required, a penal notice (which must appear on the first page of the order);
    iv. the basis of the court's jurisdiction;
    v. the recitals relevant to the hearing;
    vi. the directions and orders at the hearing.
12. These changes are especially important to enable LiPs to understand the orders made against and requiring action by them.
13. Further, whilst the direction for the instruction of an expert and the date for filing the report should appear in the order, the remainder of the directions for an expert (for example, letters of instruction and division of cost etc.) should appear in an annexe/schedule.
14. The short-form orders, if not drafted before or after the hearing, should be drafted within 24 hours of the hearing with heads of agreement being noted at court.
15. The case summary, respondent's position statements and the CG's position statement should be in the form of the templates set out in appendix H1 – H3. Where an advocates' meeting has taken place before a hearing and the parties are agreed on the way forward and the orders the court will be invited to make, a composite document setting out the core reading for the judge, the draft orders proposed, and a summary of the parties' positions and issues shall be provided to the court by the local authority by no later than 4pm the working day before the hearing.

16. Local authority case summaries should not repeat all of the background information. A short updating position statement with issues clearly identified should be lodged by no later than 4pm on the working day before the hearing.
17. Cases should not be adjourned for want of position statements: it is rarely, if ever, in the child's welfare best interests.

Newborn babies

18. Planning in advance of a birth where proceedings are determined as required is essential. In addition, where proceedings are planned in advance of that birth, local authorities need to make provision for the drafting of the application and supporting documents in advance, so that short notice is not required by default as a result of avoidable delay in lodging the documents for issue.
19. Applications in respect of newborn babies and young infants should be the subject of strict case management directions and time limits. It is especially important that proceedings in respect of these children have the developmental timetable of the child in mind and are concluded, wherever possible, within the 26-week time limit.
20. One of the recommendations of the Nuffield Family Justice Observatory report, *Born into Care* (October 2018),[32] was the need for practice guidance to be issued to maternity staff, social workers and legal professionals. This is currently being developed and once issued should be considered.

The 26-week limit

21. Where the way forward for the child is clear (for example, a return to the care of the parents has been excluded by the court) but further time is required to determine the plan or placement which in the best welfare interests of the child,

[32] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

consideration should be given to extending the 26-week time limit, using the flexibility in the legislation.

Experts

22. The court may only grant permission for the instruction of an expert if it is determined to be necessary for a just and fair determination of the proceedings.
23. There are certain categories of expert evidence where the court may more readily find that expert evidence is necessary to ensure the just and fair conduct and determination of the proceedings:
    i. DNA tests and evidence to establish paternity;
    ii. hair-strand and blood tests and evidence to determine alcohol consumption and/or drug use;
    iii. cognitive assessments to advise on the capacity of a parent to (a) conduct litigation; and (b) participate effectively in the proceedings (i.e. the need to instruct an intermediary);
    iv. in a case of alleged non-accidental injury, forensic medical experts on causation.
24. In all other applications for permission to instruct any expert (for example, an ISW or a psychologist) the court should scrutinise the application with rigour to assess whether or not the expert assessment is necessary, including where the parties are agreed on the instruction of an expert.

Hearings; fact-finding hearings; attendance of CGs

25. A CG, as opposed, perhaps, to the lawyers representing the child, has a limited role in fact-finding hearings. Accordingly, save for exceptional cases, CGs should be excused from attending these hearings in whole or in part (to hear the evidence of a particular witness which may be advantageous to the resolution of any welfare hearing). Also, for the purposes of standard case management hearings it should be usual practice for a CG to file a position statement rather than a case analysis.

26. Only those issues which inform the ultimate welfare outcome for the child need to be and should be the subject of a fact-finding hearing by the court. It should be rare for more than six issues to be relevant.
27. The judiciary and practitioners need to be more acutely aware of: (a) whether a further hearing is necessary and, if so, why; and (b) if the directions proposed to be made are necessary for the fair conduct of the proceedings and are proportionate to the identified issues in the case. Mere inactivity, oversight or delay is never a just cause for a further hearing and a concomitant delay in concluding proceedings.
28. In order to reduce the number of hearings and to ensure compliance with the 26-week limit it is important that the following issues are addressed at the earliest possible stage of the proceedings:
29. the identity and whereabouts of the father and whether he has parental responsibility for the child, including the potential need for DNA testing;
30. the obtaining of DBS checks;
31. the disclosure of a limited number of documents from the court bundle to family and friends who are to be the subject of viability assessments in order to ensure the same are undertaken on an informed basis;
32. the need to identify at an early stage those family or friend carers who are a realistic option to care for the child (thus avoiding scenarios where significant resources are devoted to lengthy assessment of numerous individuals who are not a realistic option for the child).
29. It is vital for the effective case management of a matter that there is judicial continuity. The full-time judiciary and HMCTS should give a high priority to ensuring that a case is dealt with by one identified judge and, at most, by two identified judges (for the avoidance of any doubt, this recommendation is not intended to apply to nor affect the current practices for Tier 1 judges in the Family Court (namely, lay justices)).

30. The final hearing should not be listed before an effective IRH has taken place unless there are, unusually, cogent reasons in a particular case for departing from this practice.
31. An IRH needs to be allocated sufficient time. The timetabling for evidence in advance needs to provide for an advocates' meeting at least two days in advance, and the advocates need to be properly briefed with full instructions for that meeting.
32. For an IRH to be effective, the following is required:
    i. final evidence from the local authority, respondents and CG (exceptionally, an IRH may be held with a position statement setting out the CG's recommendation before the final analysis is completed);
    ii. the parents/other respondent(s) attend the hearing;
    iii. the position in relation to threshold/welfare findings is crystallised so the court is aware of the extent to which findings are in issue and determines which outstanding findings/issues are to be determined;
    iv. the court determines any application for an expert to give oral evidence at the final hearing;
    v. the court determines and the CMO records which witnesses are to give evidence at the final hearing (all current witness availability should be known);
    vi. the court determines the time estimate;
    vii. a final hearing date is set;
    viii. where there is a delay before the final hearing date, directions are given for updating evidence and a further IRH before the final hearing.

Care order on a care plan of the child remaining at home

33. There may be good reason at the inception of care proceedings for a child to remain in the care of her parents/carers/family members and subject to an ICO pending the completion of assessments.

34. The making of a care order on the basis of a plan for the child to remain in the care of her parents/carers is a different matter. There should be exceptional reasons for a court to make a care order on the basis of such a plan.
35. If the making of a care order is intended to be used a vehicle for the provision of support and services, that is wrong. A means/route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order, which may be an appropriate order to support the reunification of the family.
36. The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers or some lesser legal order and regime is required. Any placement with parents under an interim or final order should be evidenced to comply with the statutory regulations for placement at home.
37. It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of their respective ECHR, article 8 rights. This can only be justified if it is necessary and proportionate to the risks of harm of the child.

F3. Information sheet for emergency / urgent applications

This form should be completed by the local authority solicitor and sent to the court with any application in which the local authority seeks an emergency/urgent hearing.

1.	Name/DOB of the child/children	
2.	Order sought – EPO/ICO/other	
3	Suggested tier of judiciary	
4.	How urgently is a hearing sought? ○ Same day ○ Within 24 hours ○ Within 48 hours ○ Other	
5.	Time estimate for hearing	
6.	Notice to parents: ○ Have the parents been notified of the application? ○ If not, what attempts have been made to notify them? ○ Provide the reasons if a hearing without notice is sought	
6.	Have the police exercised police protection powers? If so, when does the PPO expire?	
7.	Has s.20/s.76 accommodation been agreed? If so: ○ Is there a signed agreement? ○ Has agreement been withdrawn (either with immediate effect or at a date/time in the future)?	
8.	Is the child in hospital? ○ If so, when is the child ready for discharge? ○ Is the hospital willing to keep the child beyond this date/time and, if so, for how long?	
9	Is the mother in hospital? If so, when is she expected to be fit for discharge?	
10.	Are there any known/likely capacity issues?	

11.	Why is an emergency/urgent hearing required in the timescale requested? *(set out the reasons in brief)*	

F4. Advocates' meeting minute: urgent / short-notice hearing

ADVOCATES' MEETING MINUTE
URGENT/SHORT NOTICE HEARING

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

LA
Mother
Father
Child(ren)

The agenda items appear in bold and are numbered.

1. Current placement(s) / contact arrangements

2. LA's interim plan

3. Position of the parents
   - Paternity
   - HMRC/DWP orders
   - Immigration issues
   - Capacity/cognitive functioning
   - Drug/alcohol testing
   - Assessments
   - Participation directions
   - Connected persons, current relationship with the child

4. Position of the CG
   - Separate representation required?

5. Contested interim hearing (if sought upon issue)
    i. All parties served as required/notice provided
    ii. Is contested hearing still required?
    iii. To be dealt with on submissions/witness requirements
    iv. Issues for the hearing
    v. Interim threshold

6. Allocation

7. Threshold

8. Timetable for the child

9. International elements – jurisdiction; assessments out of the jurisdiction

10. Part 25 applications

11. Additional disclosure sought by parties

12. Checklist documents to be filed within proceedings

13. Further case management directions

14. Required reading

Representation for the parties at the hearing will be:

F5. Advocates' meeting minute: CMH / FCMH

ADVOCATES' MEETING MINUTE
CMH/FCMH

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

LA
Mother
Father
Other parties
Child(ren)
Interveners

The agenda items appear in bold and are numbered.

1. **Confirmation from LA of interim care plan e.g placements/contact/child(ren)'s progress**

Issues in the case

Under each heading set out what is agreed and not agreed and the position of the party who is in disagreement.

If a party's position is unknown please state the reason why.

2. **Orders sought by the LA and Interim Care Plan**

3. Does any party raise issue with LA assessments and seek further assessment? If yes, state reason why.

4. Do the issues in the case deem an expert assessment necessary? If yes, state reason why.

5. What family assessments/connected persons are to be completed and by when?

6. Do any of the following issues feature in this case?
   - Paternity
   - HMRC/DWP orders
   - Immigration issues
   - Capacity/cognitive functioning
   - International elements
   - Separate representation for the child

<u>Case management Order</u>

7. Timetable of the case

8. Disclosure

9. Evidence

10. Assessments

11. Compliance with previous CMO orders

12. Required reading

Representation for the parties at the hearing will be:

F6. Advocates' meeting minute: IRH

ADVOCATES' MEETING MINUTE
IRH

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

LA
Mother
Father
Other parties
Child(ren)
Interveners

The agenda items appear in bold and are numbered.

Issues in the case

Under each heading set out what is agreed and not agreed and the position of the party who is in disagreement.

If a party's position is unknown please state the reason why.

1. **Threshold**

2. **LA's plan**

3. **Expert evidence**

4. Assessments of family members

Housekeeping for final hearing

5. Compliance with previous CMOs

6. Outstanding disclosure (medical/police/other)

7. Timing of any further evidence

8. Witness template

9. Time estimate for final hearing

10. Bundle content and size

11. Required reading

Representation for the parties at the hearing will be:

F7. ICO / case management checklist

THE INTERIM CARE DECISION	
JURISDICTION	
Is there any issue about jurisdiction (based on HR)? If so, the court can make emergency orders under Art 20 BIIA.	
URGENCY	
Is the ICO sought on the day of issue/short notice? If so, has the LA provided evidence of the urgency? Can the hearing safely be delayed to give the parties more time? If an ICO is made, should the order be short term (with a further hearing)?	
ISSUES RELATING TO PARTIES	
The parents: • Does the LA know who has PR for the child? • Have parents/others with PR been served with the proceedings? • Has a parent without PR been notified of the proceedings? • If not, is it appropriate to proceed without service/notice? • Are the respondents (parents/others with PR) present at court and represented?	

• If not, is it appropriate to proceed?	
Representation of the child: • Has a children's guardian/solicitor been allocated? • If a CG has not yet been appointed, does the child's solicitor have instructions from a duty CG/Cafcass management?	
FORM OF HEARING	
Can the hearing proceed on submissions or is oral evidence required? *NB: see CA in Re G (Children: Fair Hearing) [2019] EWCA Civ 126*	
THRESHOLD	
• Has the LA provided a schedule of threshold findings? • Do the respondents make any concessions? • If not, are there 'reasonable grounds' in accordance with s.38(1)? *NB – findings of fact should rarely be made at an ICO hearing (Re G above)*	
WELFARE DETERMINATION	
If interim threshold is established, applying s.1 (including s.1(3)): • What order, if any, is required?	

• Has the LA met the test for immediate removal of the child?	
INTERIM CARE PLAN	
Does this reflect the order made/arrangements approved – direct further CP if required.	
CASE MANAGEMENT DIRECTIONS TO CONSIDER AT ICO HEARING	
JURISDICTION	
If there is/may be an issue about jurisdiction: • Direct statements and skeleton arguments; • If the case is allocated to magistrates/DJ, refer the issue to the DFJ.	
ALLOCATION	
Cases should not be reallocated at the ICO hearing without good reason.	
PARENTAGE	
Is the birth certificate available? If not, direct it to be filed. Is the identity/whereabouts of the child's parents known? Make an HMRC order if required. If paternity is in issue, direct DNA testing (with Pt. 25 application to follow if necessary) before joining a putative father.	

APPOINTMENT OF CHILDREN'S GUARDIAN	
Can the name of the allocated CG be confirmed in the order?	
CAPACITY	
Consider whether a capacity assessment is required. If so, give directions ASAP (with Pt. 25 application to follow if required).	
INTERNATIONAL ISSUES	
Where any party is a foreign national: • Direct the LA to give notice of the proceedings/CMH date to the relevant Embassy (provided it is safe to do so); • Make an EX660 order where immigration status is unclear.	
NARRATIVE STATEMENTS	
Direct statements relating to significant factual issues (eg circumstances surrounding alleged NAI) ASAP – 7 days generally appropriate.	
VIABILITY ASSESSMENTS	
Can directions be given (whether for short term/long term carers)?	
PART 25 APPLICATIONS	
Direct date for filing in advance of CMH.	

POLICE DISCLOSURE	
Record whether the Protocol has been/will be invoked. Is a TPO required?	
MEDICAL RECORDS	
Ensure the relevant parent(s) have given written consent (and record that they have done so). Record who is to obtain the records. Consider whether a TPO is required.	
CASE MANAGEMENT HEARING	
Has a date been fixed in the standard directions? Is this the most appropriate date for the CMH (confirm/re-list accordingly); Confirm dates for filing of parental responses/CG initial analysis.	
PARTICIPATION DIRECTIONS	
Are any required?	

Appendix G: best practice guidance for s 20/ s 76 accommodation

G1. Guide to good practice: a guide for accommodation of children under s 20 / s 76

Introduction

1. The accommodation of children pursuant to s 20 of the Children Act 1989 and s 76 of the Social Service and Well-being (Wales) Act 2014 (unless otherwise stated reference to s 20 shall include reference to s 76) forms part of a social worker's essential toolkit. The use of these provisions can lead to favourable outcomes for children and their families. When deployed appropriately, s 20 can be very positive and can prevent the need to start court proceedings. The importance of s 20 was re-emphasised by the UK Supreme Court in *Williams v London Borough of Hackney* [2018] UKSC 37.
2. S 20 is extremely broad in its application, both in terms of the types of family by whom it is used and the wealth of placements to which it applies. Its range covers: orphans, abandoned or relinquished babies, unaccompanied refugee children, children with disabilities, adolescents with behavioural problems and homeless 16 and 17-year olds. Placements under s 20 can include: short-term respite or short-break care, therapeutic placements, residential and assessment units, secure units, homes of family members, mother-and-baby foster placements, foster care and fostering-for-adoption placements.
3. A period of accommodation under s 20 has a significant impact not only on a child's immediate life, but also on her future, including the potential that it has to weigh in the court's welfare balance thus (properly) influencing the outcome of any court proceedings.

4. For some time now, the use of s 20 has been the subject of much judicial guidance and observation. The varying interpretation and application of these provisions has led to an inconsistency in approach. In some areas, s 20 is little used; in other areas, it is much more common.
5. This guidance will help families, social workers, other child protection professionals and the courts to navigate these provisions with confidence. The guide seeks to bring about a uniform and consistent approach to the use of these important statutory provisions in England and Wales.
6. The first part of this guidance summarises the law. The second part is a guide to good practice. Appended to this document are (a) a s 20 / s 76 explanatory note for older children and their families; and (b) a draft s 20 / s 76 agreement.

Legal summary

Statutory provisions: s 20, CA 1989

7. The English statutory provisions are within Part III, CA 1989 which deals with support for children and families by local authorities. S 20 provides for two classes of duty on the local authority to accommodate children: a mandatory duty and a discretionary power. The Act places:
    i. a mandatory duty to provide accommodation for a child in circumstances where:
        i. there are no persons with parental responsibility for the child,
        ii. the child is lost or abandoned,
        iii. the person caring for the child is prevented from providing suitable accommodation for the child, or
        iv. a child in need who is within the local authority's area is at least sixteen years old and whose welfare is "*likely to be seriously prejudiced if they do not provide*" the child with accommodation;

ii. a discretionary duty to provide accommodation for a child in circumstances where:

i. it is considered that it will safeguard and promote the child's welfare even where a person with parental responsibility can accommodate the child, or

ii. a person who is sixteen years old but under twenty-one years old may be accommodated in a community home which takes children who have reached the age of sixteen if to do so is considered to safeguard and promotes the child's welfare.

8. A local authority is not permitted to accommodate a child under s 20 if a person with parental responsibility who is willing and able to provide or arrange for accommodation objects. A person with parental responsibility may at any time remove the child from local authority accommodation that is provided under this section. There is no requirement to give notice. The only exceptions to that person being able to remove the child from local authority accommodation are:

i. when a person with a "lives with" child arrangements order, a special guardian or a person in whose care the child is put under the High Court's inherent jurisdiction agrees to that accommodation;

ii. when a child who is 16 or over agrees to being accommodated.

9. The statute does not prescribe any time limits or maximum duration for any accommodation under s 20. Any such accommodation is the subject of the local authority's duties that are set out in s 22, CA 1989, as reinforced by the Care Planning and Case Review (England) Regulations 2010, SI 2010/959.

Statutory provisions: s 76 SSW-b(W)A 2014

10. The Welsh statutory provisions are set out in Part 6, SSW-b(W)A 2014. The relevant provisions are summarised as follows:

i. there is a general duty on the local authority to secure "sufficient accommodation" for a looked-after child and to meet the needs of those children within its area in so far as reasonably practicable;

ii. the local authority has a mandatory duty to provide accommodation for a child within its area who is lost, abandoned or the person who is looking after the child is prevented from providing the said child with suitable accommodation. Additionally, this duty extends to a child who is 16 years old and whose wellbeing is likely to be seriously prejudiced if not accommodated;

iii. "well-being" has a specific statutory definition, which includes but is not limited to "welfare" as defined in the CA 1989;

iv. however, the local authority may not provide accommodation if any person with parental responsibility who is willing and able to provide accommodation for the child objects. Note that any person with parental responsibility may at any time remove the child from accommodation that is provided under this section. However, this does not apply where a person who (a) has a child arrangements order, (b) is a special guardian or (c) otherwise has care of the child by an order from the High Court (under its inherent jurisdiction) agrees to the child being looked after in accommodation by the local authority;

v. the local authority also has "principal" duties to children that are looked after.

Statutory provisions: general

11. A local authority is not permitted under s 20 to prevent a person with parental responsibility from removing a child from local authority accommodation. Instead, a court order is required, either an emergency protection order or interim care order. Alternatively, the police can exercise their police protection powers.

Good practice

12. This good practice will assist in navigating through the relevant provisions of s 20 and to use it appropriately and effectively. It should be read alongside the statutory provisions set out above; it does not have the status of formal statutory guidance, but rather it promotes good practice.
13. Local authorities should promote this guide and compliance with it. Support should be given to front-line social workers to do so.
14. Within each local authority, the use of s 20 should be monitored by senior management, although this may be delegated.
15. Each case should be assessed on its own individual facts.
16. Working with parents and families collaboratively is an essential part of s 20. Partnership is key. This includes working with all relevant family members.
17. The following steps should be taken in every case where the use of s 20 accommodation is considered.

The family and s 20

18. Identify the context and purpose for which s 20 is being considered. This may be short-term accommodation during a period of assessment or respite; alternatively, it may be a longer period of accommodation, including the provision of education or medical treatment.
19. Have particular regard to the child's age. Different considerations, including the purpose and duration may be heavily influenced depending on the age group of the relevant child. Consider the groups as follows (a) newborn and very young babies, (b) toddlers up to five years of age, (c) six years' old to pre-teens, (d) teens but under sixteen years' old, and (e) sixteen years' old or older when the child can consent to accommodation. Ensure that the voice of the child is clearly recorded and stated.

20. Separation of a newborn or a young baby from their parents is scarcely appropriate under the provisions of s 20. The circumstances in which this is appropriate are very rare. The (limited) appropriate use of s 20 in this context may include circumstances where the parents need a very short period in a residential unit to prepare for the child to join them, or if a carer needs to undergo a short programme of detoxification or medical treatment.

Immigration

21. Identify and establish any immigration issues concerning the children, the family and any adults who may be caring for the children: see paras 154 – 157 of this report.

Consent and consulting with those who have parental responsibility

22. As far as it is reasonably practicable identify, locate and consult with every person who has parental responsibility for the relevant child.
23. When consulting with the person who holds parental responsibility, satisfy yourself that he has capacity to consent. Capacity can change and it should be reviewed as necessary. The issue of capacity must be decided by applying s.1-s.3 of the Mental Capacity Act (2005). If there are doubts about any relevant person's capacity, take no further steps until the question of capacity has been addressed. A person may have capacity to agree but have extra needs; consider if these needs can be met by engaging adult services, independent advocacy or an intermediary. Remember the issue of consent and capacity to consent is relevant to medical examination/treatment and obtaining a child's medical records.
24. In appropriate cases discussions about the use of s 20 can commence some time prior to birth so that those with parental responsibility have time to consider all the options and be assisted in making an informed decision. However, agreement to a child being accommodated can only be given once the child is born.

25. Special care should be taken with mothers who are close to or have recently given birth. The local authority should address the question of capacity very carefully, if appropriate, with medical advice. Put in place such support as is necessary to ensure that the mother in such circumstances can make an informed decision. This may include referral to adult or advocacy services, engaging the services of an intermediary or involving other reliable family members.
26. If the relevant person has capacity to consent, the local authority should ensure that he has all the relevant information available to him, in a form and language that can be understood. This also applies to a child who is capable of consenting to accommodation under the CA 1989 / SSW-b(W)A 2014. Consider if key documents such as the written agreement should first be translated into the appropriate first language.
27. The local authority should ensure that the relevant person who holds parental responsibility is aware of the consequences of giving consent and the full range of available options.
28. The relevant person should be informed that he can withdraw his consent at any time without notice to the local authority.
29. The local authority should ensure that consent is not given under duress or compulsion to agree (whether disguised or otherwise). Consent may not be valid if given in the face of a threat to issue court proceedings.
30. The giving of consent is a positive act. Do not treat silence, lack of objection or acquiescence as valid consent.
31. Consent to accommodation should be given prior to or at the same time as accommodation. Consent cannot be given retrospectively.
32. Where possible, the person with parental responsibility should have access to legal advice.

33. Where possible, the purpose and duration of any proposed accommodation should be agreed in advance of the child being accommodated. In case of emergencies, this should be addressed as soon as it is practicable to do so. The purpose and duration of accommodation may change and should be subject to review.

34. It is good practice to record the agreement in writing in a simple format. That document should clearly state that the persons consenting to accommodation may withdraw their consent and remove the child at any time without giving notice to the local authority. It should make the consenting persons aware that by agreeing to accommodation they are delegating the exercise of that aspect of their parental responsibility to the local authority. The document should be translated into the parents' first language if they are not fluent in English. This document should be signed on behalf of the relevant local authority and by the persons consenting to accommodation. Each local authority is encouraged to provide the parties to such agreement with a brief explanatory note or leaflet which is easily understandable and in an appropriate language.

Reviews of s 20 accommodation

35. The purpose and duration of any accommodation should be regularly reviewed whilst the child is accommodated. This may change with the changing circumstances of children. The frequency of such reviews should be agreed at the time that the agreement is signed and recorded in that document. The appropriate frequency will depend on the facts of each case. Generally longer-term provision of accommodation can be reviewed in line with looked-after child reviews; short-term provision of accommodation may require more frequent reviews. The accommodation should be reviewed as soon as it is practicable when there has been a material change in the circumstances. Make it clear that those agreeing to the accommodation may ask for a review at any time. The IRO should ensure that the accommodation

is reviewed at a frequency in line with the individual needs of the child. The review should involve all persons capable of continuing to give informed consent to accommodation. Make sure that each review has a clearly identifiable statement of the voice of the relevant child.

36. The IRO's duties and best practice are set out, in England, in primary legislation, accompanying regulations and statutory guidance, in particular: s 25B, CA 1989; regulations 36, 37, 45 and 46 of the Care Planning, Placement and Case Review Regulations 2010; and the IRO handbook. Each of those merits careful reading. In Wales, the position is again set out in primary legislation, accompanying regulations and codes, in particular: ss 99 – 102, SS(W)WA 2014; regulations 38 – 44 and 53-54 of the Care Planning, Placement and Case Review (Wales) Regulations 2015; and, the Code to Part 6 of the Social Services and Well-being (Wales) Act 2014. In addition, there is the Practice Standards and Good Practice Guide: Reviewing and Monitoring of a Child or Young Person's Part 6 Care and Support Plan. Each of those (as amended) should be read carefully and observed.
37. During the period of accommodation, the local authority should continually assess the needs of the accommodated child and provide for those identified needs. This includes educational, psychological and therapeutic needs.

Parental responsibility and s 20

38. During the period of accommodation those who have parental responsibility for the accommodated child retain parental responsibility for that child. The holder of parental responsibility who consents to accommodation delegates to the local authority the exercise of her parental responsibility for the day-to-day tasks. However, they should each be kept fully and promptly informed about the progress and any updated information concerning their child.

39. Under s 20, the local authority cannot interfere with the exercise of parental rights by those holding parental responsibility for the relevant child, even in circumstances that it deems the parental rights to be unreasonably exercised.
40. If consent is withdrawn, the local authority should immediately return the child.

S 20 accommodation that places significant restrictions on a child's liberty

41. Restrictions on a child's liberty that cross the article 5, ECHR threshold – i.e. "continuous supervision and control and lack of freedom to leave" – require specific court authorisation. The law on whether a parent can consent under s 20 continues to develop. Local authorities should consult with their legal teams if the s 20 placement is one in which a child, particularly an older child (for example, 11 +) is subject to significant restrictions. That is more commonly the case in a residential placement than in foster care but can apply to both.

Examples of appropriate use of s 20

42. The following are some examples of appropriate uses of s 20 and is not an exhaustive list:
    i. respite for parents/carers where (a) the child suffers a medical condition and/or disability, (b) the child has challenging behaviour or (c) there is an unexpected, domestic or family crisis;
    ii. parents/carers require a short time to (a) undertake an assessment (e.g. during the PLO), (b) participate in extensive therapy or (c) undergo a detoxification programme;
    iii. parents/carers require a short time to improve home conditions or move to more suitable accommodation;
    iv. parents/carers or a close family member who is reliant on the parents/carer require a short period of medical intervention such as surgery including time to recover from the same;

v. shared care arrangements between the parents/carer and the local authority where conditions of public law proceedings are not met or if met are deemed to be inappropriate. This may include placement in a residential school and provision of education;

vi. unaccompanied minors seeking asylum where no person can exercise parental responsibility for the child or if there is such a person available, he has consented in accordance with the above guidance.

G2. Explanatory note for older children: what it means to be a looked-after child under s 20 / s 76[33]

What does it mean when you are "looked after" by your local authority under s 20?[34]

- parental responsibility is the ability to make big decisions about your life. The local authority does not have parental responsibility for you;
- when you turn 16, you can ask to be accommodated (i.e. given a place to live and person to live with) by your local authority. If you are not 16 yet, everyone with parental responsibility (usually your parents) must first agree;
- you are given your own social worker. The social worker will come to visit you within the first week of you being accommodated (i.e. starting to live with a family member, foster carers or a residential home). The social worker will then meet up with you every six weeks. If you want to speak to the social worker more, just ask!
- your social worker decides who you live with and where you live. Your views are very important. You can talk with your social worker about what you want. Or you can write it down;
- your social worker is in charge of your support and care plan. This plan is important. It states where you are to live, contact with your family, education and any other support that you get. Your views are very important. Your social worker will listen to what you want. The plan will include your views. If you do not feel that people are listening, you can speak to an advocate (a special person to help you communicate) or an independent reviewing officer. The

[33] This has been developed by the working group and is a suggested template or point of reference that may assist older children to gain a better understanding of their circumstances and what it means to be a looked-after child.

[34] Whenever it says s 20, that means s 20 of the Children Act 1989 (England) or s 76 of the Social Services Well-being (Wales) Act 2014 (Wales).

independent reviewing officer is independent. His job is to make sure that everything is being done properly and fairly;

- you will have looked-after child reviews. They are meetings to discuss you and your plan. You can go along to make sure that people know what you want. You can ask your advocate to come too if you want. It is all up to you. Everyone who writes the plan comes along to the meetings. The independent reviewing officer is in charge. The first meeting will take place within the first 28 days. The second meeting is three months' later. After that, you have a meeting every six months. If you want more meetings, just ask! Your social worker will talk to you about what you want and how you want to explain to the meeting what you want. You could do it in writing first or tell people at the meeting;
- when you turn 16 your social worker will help you think about the future and about living independently. The social worker's job is to help you with housing, money, further education, applying for jobs, your health and wellbeing. The social worker wants to know what your dreams and hopes are and to help that happen.[35]

[35] Thank you to Jade (18), accommodated under section 20, CA 1989, who provided feedback on this explanatory note.

G3. Template s 20 / s 76 agreement

VOLUNTARY AGREEMENT BETWEEN [LOCAL AUTHORITY] AND [PERSONS WITH PARENTAL RESPONSIBILITY] FOR THE ACCOMMODATION UNDER SECTION 20 OF THE CHILDREN ACT 1989 / SECTION 76 OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014 OF [CHILDREN]

THE RELEVANT PERSONS

The children: [names]

The persons with parental responsibility: [names]

The local authority: [name]

Date: [date]

THE AGREEMENT

Agreement

- This is an agreement between [local authority] and [persons with parental responsibility].
- The agreement is that [children] will be placed in [say, foster care] by [local authority].
- In legal terms, that placement is happening under [sub-section … of section 20 of the 1989 Act/s 76 of the Social Service and Well-being (Wales) Act 2014].

The placement and the children's wishes

- The purpose of that placement is [purpose]. The current plan is that [current plan for children's return home] and that the [children] will remain accommodated by the local authority for a period of [X weeks / months].
- It [has / has not] been possible to find out the [children's] wishes and feelings. [The children's] wishes and feelings are [wishes and feelings].

Agreement of the persons with parental responsibility and right to remove

- [The persons with parental responsibility] do not at the moment object to [the children] being placed in [say, foster care].

- [The persons with parental responsibility] may at any time remove [the children] from the [say, foster care].
- [The persons with parental responsibility] [has / has not] had legal advice and has the right to continue to seek independent legal advice.

Reviews

- [This is / this is not] an agreement for the accommodation of a new-born baby or child under six months. / It is an agreement for the accommodation of a newborn baby or child under six months, and the exceptional circumstances requiring the use of s 20 / s 76 are [exceptional circumstances].
- [The local authority] intends to review this placement every [X weeks] and the persons with parental responsibility will, after each review, be updated by the local authority on its plan moving forward.
- Additional reviews may be requested in response to any changes.

SIGNATURES

Signature:

- Signed and dated:
    - [The persons with parental responsibility]
    - [Local authority]

Where required to be translated into a foreign language:

- This document has been written in English and translated into [foreign language]. The [persons with parental responsibility] have read it in [foreign language].
    - Signed and dated in [foreign language]: ["*I have read this document and agree to its terms"*].
    - Signed and dated by [named interpreter].

Where an advocate or intermediary has assisted

- The [person with parental responsibility] has been assisted by [name; advocate / intermediary].
- I [advocate / intermediary] confirm that I have read this document with and explained it to [person with parental responsibility] and I am satisfied that the [person with parental responsibility] understands its contents.
- [Signed and dated by advocate / intermediary].

Check list for local authorities

- ✓ Have you taken every person with parental responsibility carefully through this agreement?
- ✓ If the persons with parental responsibility are not native English speakers, has the agreement been translated into their native language?
- ✓ Are you satisfied that the persons with parental responsibility have capacity to consent?
- ✓ Are you satisfied that the persons with parental responsibility have consented?
- ✓ Have the relevant persons with parental responsibility signed a consent form for medical treatment/examination or disclosure of the child's medical records.

Appendix H: template case summaries and position statements

H1. Case summary on behalf of the local authority

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE APPLICANT LOCAL AUTHORITY

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

THE CHILD(REN)

Name	Age & DOB	Living arrangements	Orders/S20 including the date

THE RESPONDENTS AND INTERVENERS

Party	Name	Relationship to the children
1st Respondent		
2nd Respondent		

TIMETABLE

Please do not delete the columns below. The dates should be filled in when the event has occurred.

Event	Date of the event or date by which the event should be listed including any relevant summary
Application	
26 weeks from issue of application. Please include dates of any extension.	
EPO	
ICO	
PCMH (6 days from issue)	
CMH (12-18 days from issue)	
IRH (no later than week 20)	
Final hearing (completed by no later than week 26)	

PLO

Has PLO taken place	Yes/No
If so, please confirm; 1. The length of the PLO, and 2. The summary outcome of any assessments.	

FAMILY GROUP CONFERENCE

Has a FGC taken place	Yes/No
If so, please confirm; 1. The outcome(s) of the conference 2. Any agreed plan	

THRESHOLD & FINDINGS

Date of the threshold/findings document	1. Interim: 2. Final:
Date of responses by the relevant parties/interveners	1. 1st Respondent mother: 2. 2nd Respondent father: 3.
Please confirm that the Applicant has all the evidence it requires in support of the threshold findings sought. **(If there is any outstanding evidence please identify each outstanding evidence and the date by which it will be filed and served)**	
Are threshold/findings agreed?	
If not agreed, please set out a summary of the	

main areas of dispute.	

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

LINKED OR PAST PROCEEDINGS

Are there linked or past proceedings involving members of this family	Yes/No
If so, please confirm; 1. The identity of the same; and 2. The outcome of those proceedings.	

APPLICATIONS TO BE DETERMINED AT THIS HEARING (e.g. Part 25)

Application (identify the applicant)	Person(s) being assessed/subject to the application	Peron(s) undertaking the assessment	Proposed completion date

ISSUES TO BE DETERMINED AT THIS HEARING

Issue	Applicant's position	Mother's position	Father's position	Guardian's position	Other
1.					
2.					

SUMMARY OF THE PROPOSED DIRECTIONS/ORDERS

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

SUMMARY OF THE RELEVANT BACKGROUND

…

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

…

SUGGESTED READING LIST

Document	Date	Bundle ref
1.		
2.		
3.		
4.		

[Please insert advocate's or the author's details including the date]

H2. Case summary on behalf of the [1st / 2nd…] respondent

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE [1st, 2nd …] RESPONDENT [OR OTHER] [NAME]

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

THRESHOLD & FINDINGS

This part should be completed only in so far as it relates to the party on whose behalf this document is prepared.

Date of the threshold/findings document	1. Interim: 2. Final: 3. Not applicable to this party
Date of responses by the Respondent/Intervener	
Are threshold/findings agreed? (If part agreed please identify what is agreed)	
If not agreed, please set out a summary of the main areas of dispute.	

PROPOSED ALTERNATIVE CARERS TO BE ASSESSED

(THIS INFORMATION SHOULD BE PROVIDED PRIOR TO THE CMH)

Name	Identify which of the children is this person to be assessed for	Relationship to the child or parents	Assessed as carer, support for the parent(s) or both

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

APPLICATIONS (OR ISSUES RAISED) BY THE RESPONDENT/INTERVENER TO BE DETERMINED AT THIS HEARING

Application	Date	Identify other parties' position as agreed, opposed or neutral	Date the work will be completed
1.			
2.			

SUMMARY OF ANY PROPOSED DIRECTIONS/ORDERS SOUGHT BY THE RESPONDENT/INTERVENER

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

[Please insert advocate's or the author's details including the date]

H3. Case summary on behalf of the child

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE CHILD(REN)

THROUGH THE GUARDIAN [NAME]

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

IMPORTANT RELEVANT DATES FOR THE CHILDREN

Child	Date	Event

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

APPLICATIONS OR ISSUES IDENTIFIED BY THE GUARDIAN TO BE DETERMINED AT THIS HEARING

Application (include the date of the application)	Date it will be completed	Agreed by	Opposed by	Neutral
1.				
2.				

SUMMARY OF THE ORDERS SOUGHT BY THE GUARDIAN

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

SUMMARY OF THE GUARDIAN'S RECOMMENDATION FOR EACH CHILD

(this will only have to be updated at the IRH, final hearing or if there has been a change in the circumstances)

Child	Recommended placement and order	Recommended contact

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

…

[Please insert advocate's or the author's details including the date]

Appendix I: other relevant documents

I1. FJYPB TOP TIPS for working with children and young people

I2. FJYPB TOP TIPS for keeping children and young people informed and keeping them at the centre of their case

I3. FJYPB TOP TIPS for working with children and young people pre-proceedings

I4. FJYPB TOP TIPS for working with children and young people affected by domestic abuse

I5. FJYPB TOP TIPS for professionals when working with brothers and sisters

I6. A parent's perspective on the standard template for a letter before proceedings

I7. FRG Charter

Family Justice Young People's Board

fjypb

TOP TIPS

For working with Children and Young People

The FJYPB have devised 10 top tips for family court advisors working with children and young people in the family courts to encourage best practice.

1. The child or young person should be consulted about the timing and venue of any meetings held with them.
2. Every child or young person should have sufficient time to build a relationship with the Cafcass worker involved in their case.
3. The child or young person should feel that their needs, wishes and feelings have been listened to, valued and respected.
4. Children and young people should be offered the opportunity to express their wishes and feeling using effective and age appropriate tools and resources that best meet their needs.
5. Every child or young person should have clear contact details for their Cafcass worker including office address, telephone number and email address.
6. Every child or young person should have the opportunity through the Cafcass worker of submitting their views directly to the judge in writing.
7. Children and young people should be kept informed about the court proceedings in an age appropriate manner.
8. For Cafcass workers to give consideration to the sibling relationship (inclusive of step and half siblings whom the child may or may not reside with).
9. Do not use jargon – make language clear, understandable and age appropriate and use methods of communication that children and young people are used to.
10. Every child or young person should have the opportunity to give feedback on family justice services.

TOP TIPS

For keeping children and young people informed and keeping them at the centre of their case

By choosing the best method for keeping in touch with the children and young people you work with and by asking children and young people how they would like to be kept informed you are treating them with respect.

Keeping children and young people engaged and informed is a way of ensuring their voice is heard.

Dependent on the child or young person's age, circumstances and/or understanding this may be done directly or through a safe parent/carer. Consider whether the carer/parent's permission is required. At all times the impact on the child or young person should be considered.

1. •Ask children and young people directly how they would like to be kept informed. You can:
   - •Give the child or young person your email address;
   - •Share your telephone number to call or use text messages or Whats App to keep in touch;
   - •Write them a short letter and include a stamp addressed envelope to enable them to write back.
2. •Give all children and young people a clear timeline of your involvement. This can be via a letter or in person and should explain:
   - •Your role, when you will be seeing them and how long for;
   - •The role of other professionals who may be involved;
   - •When you will write your report and when the hearing date/s are.
3. •Speak to them after they have spent time with the other parent, rather than, or as well as, ringing the parent for feedback.
4. •If you are recommending something contrary to their wishes and feelings speak to them about why this is or write to them. Judges are increasingly doing this via letters or meetings which makes the child or young person feel more involved in their case.
5. •Send the child or young person a photo of yourself before you meet the child or young person– this can be really helpful for all children and young people, particularly children who on the Autistic spectrum.
6. •At the end of involvement or after your meeting write to say thank you, summarise what was said and wish them well and goodbye. Consider the use of a later life letter in public law cases.
7. •Sign post children and young people to relevant information and support services as appropriate, especially at the end of involvement
8. •Have a picture of the child in your mind – ask parents to show you a photo at the FHDRA or during the s.7 assessment .If the child or young person does not want to share a picture of themselves, find out something unique about the child or something that they like to remind practitioners of the child's individuality.
9. •Give all children and young people the opportunity to feedback. Ensure you share a copy of the children's feedback form during or at the end of their case.

TOP TIPS

For working with children and young people pre-proceedings.

The Family Justice Young People's Board (FJYPB) are a group of over 50 children and young people aged between seven and 25 years old who live across England and Wales. All of our members have either had direct experience of the family justice system or have an interest in children's rights and the family courts. You can find out more about the FJYPB at www.cafcass/fjypb

The FJYPB have devised these top tips for professional who work with and support children and young people in pre-proceedings work.

1. Communicate with me in ways it is easy for me to understand. Do not use jargon and check that I understand the language and words you are using. Be fun and creative.
2. Work with me in an open and honest way. Keep me informed and involved. Explain to me what is happening and about the process as it moves along. Tell me what the options are for what may happen to me and the timescales.
3. Ask me when and where I would like to meet with you. Please don't assume that my school is the best place. Also please let me know in advance about the meeting. Don't rush your time with me. Being nice and acting like you really care will make a big difference to me.
4. Be prepared when you meet with me. Make sure you read my file and understand what I have shared before. I don't want to repeat myself everytime, but do ask me if I want to share anything new or if anything has changed.
5. Involve me in meetings. If I am too young to attend all or be part of the meeting ask me to write or draw something that can be shared at the meeting. If I am not able to join a meeting explain to me why not.
6. Explain to me the role of everyone involved with me and how they can help me and my family.
7. My brothers and sisters are important to me, but it is important that you speak with all of us together and seperately as we may have different wishes and experiences and may need a different plan.
8. Give me a voice and listen to what I say. Value and respect my views, wishes and feelings. Don't judge me. Keep an open mind and try to understand me.
9. I want to be safe and 'feel' safe.

Family Justice Young People's Board

fjypb

TOP TIPS

For working with children and young people affected by Domestic Abuse

The FJYPB have devised some top tips for professionals working with children and young who have experience of and been affected domestic abuse.

1	•Make sure that the child knows that it is **not their fault** and they are **not responsible** for the protection of others.
2	•Focus on the child's experience, not just that of their parents.
3	•Ask the child if they feel safe and if not, what will make them feel safe.
4	•Children may not have seen a specific incident, but they may have heard it or have been exposed to the after effects. Remember this can be just as terrifying for a child.
5	•Recognise that many children and young people will be very worried and scared about the parent who is the victim of domestic violence and may want to protect them. This could mean putting themselves in harm's way.
6	•Realise that children may be able to recognise the warning signs before abuse happens and they may need advice as to how to assess support at this point rather than after an incident has taken place.
7	•Understand that some children may not recognise a parent's (perpetrator's) actions as abusive and they may want to protect them.
8	•Just because a child does not permanently live in the situation does not mean that they are not exposed to domestic abuse or affected by it. Understand that the impact on the child may have a long-term affect.
9	•Be aware that the way parents act in front of a professional is not always the same as how they are at home with the child.
10	•Be aware that some children and young people may be embarrassed about what is happening or what has happened.
11	•Understand that certain cultures may be less likely to speak out about domestic violence.
12	•Let the child fully express their emotions, including what they think, feel and want to happen.
13	•Explain to the child the different types of abuse and talk about what a healthy relationship should be like.
14	•Encourage the child or young person to get support, make them aware of the services available to them and help them access the support. Each child needs to know whom they can contact if they feel scared.
15	•Think about any other children and young people who are in a new relationship with the violent parent (e.g. step-children).
16	•Young people could be experiencing abuse within their own personal relationships, not just in their family.
17	•Do not assume that a child will fully understand what confidentially means, make sure they know what informtaion is confidential and what you will need to share and with whom. Also consider what is the impact likely to be on the child as a result of you sharing the information.

TOP TIPS

for professionals when working with brothers and sisters

A sibling or 'brother and/or sister' relationship is likely to last longer than any other relationship in our lives. This does not matter if the relationship is between full brother and/or sister, half brother and/or sister, step brother and/or sister, or foster brother and/or sister. When this relationship is disrupted, or not maintained, the impact on brother and/or sister groups can be considerable.

The FJYPB have developed some top tips for professionals when working with brothers and/or sister groups.

1. •Stop using the word 'sibling'. Use brother, sister or the word that the child is familiar with.
2. •Ask the child or young person whom they consider their brother(s) and/or sister(s) to be.
3. Listen to the voice of each child individually. Children within the same family may have a different view.
4. Make your decision based on what you think would be best for each individual child.
5. Professionals need to see brother and/or sister relationships as being as important as a parent or grandparent relationship, whether it be full brother and/or sister, half-brother and/or sister, step brother and/or sister or foster brother and/or sister.
6. Give children in the same family the choice to speak to you separately.
7. Not all brothers and sisters may want to be seen at the same place. If you have to see them all in one session find a place that is acceptable and comfortable for all.
8. If appropriate, it is important to keep brothers and/or sisters together or to maintain a good level of contact during family breakdown.
9. Encourage parents to give consideration to the brother and/or sister relationship when completing the Parenting Plan and encourage them to make provision for siblings to share contact.
10. Professionals should give consideration to the brother and/or sister relationship when preparing reports.
11. Remember that a child or young person may not always have a healthy or safe relationship with their brother or sister. Consider both individual and combined needs.
12. Consider the relationships for children and young people with brother(s) and/or sister(s) who are not involved in the court proceedings and the potential impact upon these relationships of the decisions made by the court.
13. Explain what the impact of the decision made will have not only on the children who are subject to the proceedings, but on all of their brothers and sisters too – what will happen going forward?

Dear [Parent and/or full name(s) of all people with parental responsibility]

Re: [Name of LA] Children's Services Concerns about [insert name(s) of child(ren)] – LETTER BEFORE PROCEEDINGS

HOW TO AVOID GOING TO COURT

I am writing to let you know how concerned Children's Services have become about your care of your Child/ren. I am writing to tell you that [name of the Local Authority] is thinking about starting Care Proceedings in respect of [name(s) of child(ren)]. This means that we may apply to Court and [name(s) of child(ren)] could, if the Court decides that this is best for him/her/them, be taken into care.

We are so worried about your child(ren) that we will go to Court unless you are able to improve things. There are things you can do which could stop this happening. We have set out in this letter the concerns that we have about [name(s) of child(ren)] and the things that have been done to try to help your family.

AN IMPORTANT MEETING ABOUT WHAT WILL HAPPEN NEXT

Please come to a meeting with us to talk about these concerns on [date and time] at the [insert name of office] . The address is [address] and there is a map with this letter to help you find it. Please contact your Social Worker on [tele no] to tell us if you will come to the meeting.

At the meeting we will discuss with you and tell you what you will need to do to make your child safe. We will also talk to you about how we will support you to do this. We will also make clear what steps we will take if we continue to be worried about [name(s) of child(ren)].

PLEASE BRING A SOLICITOR TO THE MEETING ON [insert date]

Take this letter to a Solicitor and ask him or her to come to the meeting with you. The Solicitor will advise you about getting legal aid (free legal advice). We have sent with this letter a list of local Solicitors who work with children and families. They are all separate from Children's Services. You do not have to bring a solicitor to the meeting, but it will be helpful if you do.

Commented [EP1]: I prefer this to be the parent(s) FIRST name, not first and surname, nor Mrs Smith. for example. Immediately makes the letter feel more personal. We should be on first name terms by now

Commented [EP2]: Capitals are unnecessary. This title needs removing. It's a bit like a bailiff's letter. There doesn't need to be a title like this!

Commented [EP3]: This should be written by the social worker ie
I'm writing to let you know how worried I am about the care of Jimmy and Jane. I've shared my worries with my manager, and they're also worried.

Commented [EP4]: Should ideally read:
I'm writing to see how we can work together to avoid Jimmy and Jane being taken into foster care. If things don't get better for Jimmy and Jane at home, I will have to think about applying to the Court so that a Judge can help decide what is best for the children.

Commented [EP5]: This bit is really "blaming" – "things that have been done to help your family". This whole paragraph needs reframing. It puts all the onus on the parents to demonstrate change, but help is needed to do that. It's not exactly "partnership working". The power feels all in the LAs favour here. It should read (following on from the previous paragraph):
These are some of our worries X X X – we want to help you to improve things.

Commented [EP6]: Should read:
I'd like to invite you to a meeting where we can talk about our worries for Jimmy and Jane and how we can work together to help your family. We always want children to stay with their families where it is safe to, and that's what we'd like to do here. To make it safe for Jimmy and Jane to stay with you, we need to help you to make some changes.

Commented [EP7]: "If you cannot attend the meeting on this time and date, please let me know and we'll try to work together to find a day and time that suits us all."

Commented [EP8]: DON'T USE CAPITALS YOU DON'T NEED TO SHOUT
Also, it's not a good idea to frighten parents like this. Just remove it altogether.

Commented [EP9]: Doesn't need to be in bold!

Commented [EP10]: This reads like an instruction "take this letter to a solicitor". Again, the power dynamic in play. Instead: "It will be really helpful for you to have some free legal advice. You can take this letter to a solicitor and they can attend the meeting with you…".

Commented [EP11]: Possibly also add in that the parents can also bring a member of their family, a close friend, or a support worker to the meeting. However, it needs to be clear that there will be some sensitive things talked about at the meeting so the parents need to be clear that the person they bring will hear that information too.

Information your Solicitor will need is:

Local Authority Legal Contact: insert name and e mail address

Address: Legal Services, ……..

Telephone: [insert extension number]

WHAT WILL HAPPEN IF YOU DO NOTHING

If you do nothing we will have to go to Court. If you do not answer this letter or come to the meeting, we will go to Court as soon as we can to make sure [name(s) of child(ren)] are safe.

YOUR WIDER FAMILY

Our concerns about [name(s) of child(ren)] are very serious. If we do have to go to Court and the Court decides you cannot care for your child(ren), we will first try to find a placement with one of your relatives, if it is best for your child to do this. At the meeting we will want to talk to you and your Solicitor about who might look after your child(ren) if the Court decides that it is no longer safe for you to do so.

We look forward to seeing you at the meeting with your Solicitor on [date]. If you do not understand any part of this letter, please contact your Social Worker [name] on [tele no:]. Please tell your Social Worker if you need any help with child care or transport arrangements in order to come to the meeting, and we will try to help.

Yours sincerely

NAME
Team Manager

CC: Social Worker [name]
Legal Services

Commented [EP12]: NO HEADER NEEDED ESPECIALLY IN CAPITALS

Commented [EP13]: People don't "answer letters" these days.
Instead: I'd really like you to come to the meeting, but if you don't, or you don't contact me, I will have to apply to court to help me to make sure that Jimmy and Jane are safe. Better nearer the end of the letter.

Commented [EP14]: ARGH these headings do not help anyone want to read the letter. .And this whole section would be better higher up in the letter

Commented [EP15]: This could be worded better. Yes, it's good forward planning, but it's not exactly going to help in the way it is put. I think the addition of "it would help Jimmy and Jane, if you could have a think about who might support you look after the children, or might be able to look after them if we get to the stage where the Court does decide they can't stay at home ,and we can discuss this at the meeting "

Commented [EP16]: "Look forward", is not convincing, it is professional language -who's going to look forward to a meeting like this?!
Instead: "I know this will be a difficult letter to read and I know that this meeting will feel frightening. I really would like to see you there and will support you to attend however I can. If you need some help with childcare, or transport to the meeting, do let me know and I'll try to help.

Commented [EP17]: From the social worker please – NOT the manager. I don't know the manager. Personalise it.

Commented [EP18]: No need to add in the CC when it's going to parents. It's just frightening.

Your Family, Your Voice
An Alliance Of Families And Practitioners Working Together To Transform The System

FAMILY RIGHTS GROUP
Keeping children safe in their families

Mutual Expectations

A Charter for parents and local authority children's services

This Charter[1] aims to promote effective, mutually respectful partnership working between practitioners and families when children are subject to statutory intervention. Such intervention can involve child welfare and family justice, mental health, education and youth justice systems.

This Charter is written for parents,[2] local authorities and their partner agencies and those working for them.

The Charter has been developed by parents and practitioners, as part of the work of Your Family, Your Voice Alliance: An Alliance of families and professionals working together to transform the system.[3] We would like to thank Lankelly Chase for funding this work and all involved for their time, expertise and goodwill in developing this Charter.[4]

The key themes of the Charter

1. Respect and honesty
2. Information sharing
3. Support
4. Participation
5. Communication

---

[1] The principles of the charter are in accordance with the Code of Ethics of Social Work BASW http://cdn.basw.co.uk/upload/basw_95243-9.pdf

[2] The word parents in this charter includes parents, any other people with parental responsibility for the child or who care for him or her. This includes kinship carers.

[3] http://www.frg.org.uk/involving-families/your-family,-your-voice

[4] We would particularly like to thank members of FRG's parents' panel and all those practitioners and family members of Your Family, Your Voice for their work in developing this Charter

THEME 1 RESPECT AND HONEST

What we, as parents, can expect from you

To be treated with respect, courtesy and honesty.

To be open to hearing our views.

To be treated fairly.

To have the opportunity to challenge judgements made.

To have our feelings and circumstances understood.

That you will tell us if you are unable to do something that you've said you will do.

To value our time.

To have our culture respected.

Not to be blamed for things that are beyond our control.

What you can expect from us, as parents

That we will work with you to keep our children safe.

To treat you with courtesy, respect and honesty.

To value your time.

To be open to hearing your views.

To tell you if we are unable to do something that we said we would do.

THEME 2 INFORMATION SHARING

What we, as parents, can expect from you

For information to be timely and presented in a way we can understand (in writing or another format).

To give us the information that we need to fully participate in decision making.

To check with us that the information and decisions recorded are accurate and to document our response.

To be given clear reasons for actions and decisions that are taken.

To be informed how any information that we share will be used.

To be informed about how we can access any information you have about us.

To ask for our consent if confidential information about us or our children is to be shared, unless it is to protect a child or adult.

To be notified about planned meetings in good time and be able to fully contribute our views to the meeting.

To explain to us the purpose of any meeting and which agencies will be there.

Whilst we understand that there may be times when you may need us to repeat our story, you recognise that this could be distressing and you keep this to a minimum.

What you can expect from us, as parents

To listen and respond to your views and any concerns you have raised.

To correct inaccuracies in information given.

To provide you with information necessary for you to help us meet our children's needs.

To agree with you how we can best be contacted.

THEME 3 SUPPORT

What we, as parents, can expect from you

To be asked about what support we need, when and for how long.

To offer advice about any available resources that will help to meet our children's needs.

To be able to put forward alternatives, if we feel that the support offered is not suitable.

To be given an explanation when support asked for is not provided.

To be given information about where we can get independent advice.

To be offered the opportunity to take a lead in planning for our child e.g. through a family group conferences or family mediation.

To be offered support to have our voice heard e.g. an advocate and/or an interpreter.

To discuss with us if you intend to change the plan or support arrangements already in place e.g. a change of worker.

To work collaboratively with other professionals and services involved in supporting our children's welfare and improving our situation.

What you can expect from us, as parents

To work with you in our children's interests.

To work with you to identify our children's and family's needs and let you know what is and is not working.

To be open to suggestions for support and promoting our children's welfare.

THEME 4 PARTICIPATION

What we, as parents, can expect from you

To be able to participate in all decisions affecting our children.

To be asked who from our family should be involved in meetings about our children.

To have our knowledge about our family, including our cultural identity, recognised and respected.

To know the key people making decisions about us and our children and that there is a proper handover when workers change.

To discuss our safety and that of our children in order to manage any risks.

To be offered an advocate to help us to have our voice heard, for example, in meetings.

To know ahead of time who will attend meetings and their role.

To have times and venues of meeting that we are invited to, agreed with us beforehand.

To have the opportunity to contribute to the agenda in advance of any meetings about us or our children and receive a copy of it ahead of the meeting.

To be able to say if we disagree with decisions and have the opportunity to offer alternative solutions.

To be able to say if we do not understand and to be offered ways so that we can.

To have the opportunity to give feedback and have our views respected.

To be offered ways to contribute to service developments and policy and practice changes.

What you can expect from us, as parents

To be open to suggestions about who should be involved in meetings.

To say when we don't understand and ask for things to be explained more clearly.

THEME 5 PARTICIPATION

What we, as parents, can expect from you

To know the law that is relevant to our situation and what this means in respect of your powers and duties when you work with us.

For there to be transparency in decision making and accountability when you work with us.

To let us know who makes decisions and their role and the likely timeframe for decisions to be made.

To ensure that everyone who is affected by decisions you make, fully understands the reasons and consequences, including what actions they can take.

To have questions answered clearly.

To be asked for our views routinely.

To be told how we can make a complaint or comment on the service.

What you can expect from us, as parents

To work with you and to engage with services.

To use opportunities to provide constructive feedback.

Public Law Working Group

Recommendations to achieve best practice in the child protection and family justice systems

Final Report (March 2021)

To contact us: pfd.office@judiciary.uk