



# Pre-proceedings: messages from research and policy

## Introduction

This briefing provides an overview of messages from research that are relevant for pre-proceedings work with children and families. The aim is to assist professionals – such as heads of service, principal social workers, case managers, social workers and legal professionals – in the development of strategies and practice to ensure that best use is made of the formal pre-proceedings period.

In order to set current statutory and practice guidance in context, the briefing recaps briefly on the development of the Public Law Outline and the formal pre-proceedings period. It includes research messages relevant to effective ways of working with children and families as well as specific messages from research about the formal process of pre-proceedings.

## What do we mean by pre-proceedings?

In its widest sense pre-proceedings work is any activity to support children and families and prevent harm prior to issuing care proceedings. This is recognised in statutory guidance, Court orders and pre-proceedings for local authorities (DfE, 2014), which devotes much of the chapter on pre-proceedings to the importance of early intervention through the provision of early help services and of continuing support to children and families, if necessary, under a child in need or a child protection plan.

A small proportion of this work will move into the formal pre-proceedings process, the development of which, as we outline below, arises from judiciary-led approaches to addressing longstanding concerns about delay, duration and volume of cases in Family Court proceedings. It is vital that what we know about positive social work practice with children, young people and families informs family engagement in pre-proceedings.

### Legal advice in the formal pre-proceedings period

The first Public Law Outline (PLO) was issued in 2008. This was focused on improving case management once cases were in proceedings. The statutory guidance issued alongside the PLO led to the development of the formal process of pre-proceedings because it required local authorities to send parents a letter before proceedings, making it clear that proceedings were likely and inviting the parents to a meeting to agree proposals for addressing the problems identified in the letter. Receiving this formal letter enables parents to receive a limited level of legal aid so they can obtain legal advice (paras 3.25-3.27, DCSF, 2008 and paras 30-35, DfE, 2014).

Once parents have received the letter before proceedings they will be entitled to non-means, non-merits tested legal advice. The legal aid agency guidance makes it clear that this is to cover advising parents and may also involve a legal representative attending a meeting with the local authority. There is a fixed fee for this work – Family Help Lower (level 2) – which in 2022 is £365 (Legal Aid Agency, 2021 and 2010).

## A brief history of the development of the PLO and formal pre-proceedings process

When the *Children Act 1989* was implemented in 1991, the impact of the new legislation was closely monitored by programmes of government-funded research and cross-government reports to Parliament on the impact of implementation, which drew on research and relevant data. Avoiding delay in decision-making relating to children was central to the principles underpinning the Act. Nevertheless, concerns began to emerge soon after implementation about the length of time it was taking to complete care proceedings and about the rising number of cases.

Below is a brief summary of initiatives over the last 20 years attempting to respond to this long history of concern about delay and case duration.

- > In 1996, a review of the causes of delay was published (Booth, 1996) which made recommendations mainly in relation to court processes and procedures.
- > In 2003, the first Protocol for Judicial Case Management was introduced which focused on improving the judicial management of cases once they had been issued. The protocol set a 40-week target for completion of care proceeding (at the time the average length of proceedings was 42 weeks).
- > In 2005-2006, a further government review of care proceedings (DfES and DCA, 2006) produced recommendations to address what had been identified as the factors contributing to the rise in number of cases and delay. As well as improved case management once in court, the recommendations were designed to improve families' understanding of the local authority concerns and engagement with them and to improve the quality and consistency of applications under section 31 of the *Children Act 1989*.
- > In 2008, the first Public Law Outline (PLO) was introduced (DCSF, 2008) in response to the above review. As with the earlier protocol, the focus was on the court process, but, as already noted, the statutory guidance issued with it included an expectation that the local authority would send the parents a formal 'letter before proceedings' (para 3.3, DCSF, 2008).
- > In 2009, additional practice guidance on the pre-proceedings process was published (MoJ, DCSF) with more detail on potential activity in the formal pre-proceedings period following the sending of the 'letter before proceedings'.



- > The Family Justice Review final report (2011) stated that care proceedings were running at an average case duration of 60 weeks and made a series of recommendations for reform which informed a revised PLO piloted in 2013.
- > The *Children and Families Act 2014* introduced the 26-week timeline for care and supervision court cases.
- > In 2014, the revised PLO was published ([Family Procedure Rules, Practice Direction 12A](#)). Revised statutory guidance (DfE, 2014) which included a pre-proceedings flow chart, starting with the initial referral of the family to children's social care. This flow chart, for the first time, included a suggested time limit on the formal pre-proceedings process of 12-16 weeks (Annex A, DfE, 2014). No reference is made to a specific timescale in the body of the guidance, and it is not clear from the flowchart whether the 12-16 weeks is from the parents' receipt of the letter before proceedings, or from the subsequent meeting with the parents.
- > In 2018, in response to continuing concerns, the Care Crisis Review (FRG, 2018; Thomas, 2018) involved a detailed literature review of the research into the factors potentially contributing to the rise in the number of cases, and an extensive consultation with leaders and practitioners from children's social care and family justice, and young people and family members with experience of the system.
- > Following this, the President of the Family Division set up the Public Law Working Group (PLWG) to develop and act on recommendations from the review. In 2021, [the PLWG published a final report and a range of recommendations and guidance](#), including best practice guidance on support for, and work with, families prior to court proceedings (PLWG, 2021a) specifically focused on the formal pre-proceedings period.

The PLO is a case management Practice Direction and forms part of the rules of procedure for family law cases ([Practice Direction 12A - Care, Supervision and other Part 4 proceedings: guide to case management](#)). The only reference in the PLO to pre-proceedings is in the heading 'pre-proceedings checklist' which sets out the list of documents local authorities are expected to file when issuing a case. [Court orders and pre-proceedings for local authorities](#) (DfE, 2014) is statutory guidance issued under section 7 of the *Local Authority Social Services Act 1970* and as such needs to be complied with by local authorities. It is this guidance which introduces the notion of formal pre-proceedings. Practice guidance prepared by the PLWG (2021a) is for guidance only.

## Key features of current guidance

The statutory guidance (DfE, 2014) places the formal pre-proceedings process clearly within the wider activity of the local authority from the time of referral onwards and places emphasis on:

- > Duties in relation to early help: s.10 *Children Act 2004* and local authority duties under s.17 *Children Act 1989* to support children and families so that children can continue to live at home or within their family.
- > The importance of dynamic assessment processes which can reflect changes in family circumstances and relationships.
- > The importance of ensuring the child's views are heard.
- > The importance of engaging parents and a recognition of the potential need for independent advocacy for parents.
- > The importance of engaging the wider family as early as possible, including through family meetings such as family group conferences.
- > A reminder of the duty on all local authorities to have a policy setting out their approach to providing support to wider family members who are providing care for their young relatives.
- > The importance of clarity in the expression of the local authorities concerns in the letter before proceedings and in the plan of action.
- > Timescales of 12-16 weeks for the formal pre-proceedings period, including a review at 6-8 weeks.

The practice guidance on pre-proceedings (PLWG, 2021a) focuses in more detail on the formal pre-proceedings period. It sets out the factors that should be considered at the legal planning meeting to inform the decision about whether to issue proceedings immediately, move the case into formal pre-proceedings or continue working with the family under a child in need or child protection plan. The guidance is set within some core principles which include the importance of:

- > working in partnership with children and families
- > hearing the child's voice and keeping the child safe
- > a multi-disciplinary approach
- > avoiding delay
- > taking cases to court only when it is necessary and proportionate to do so.

The guidance notes that the formal pre-proceedings period has a dual focus of 'narrowing the issues' that are causing concern and providing a 'final chance' to reduce risk and thus divert the case from proceedings (paras 21-22, PLWG, 2021a). The importance of early engagement of family members, by a family group conference or similar model, is stressed, as is the need for clarity over any assessment needed and the importance of ensuring that parents understand what is expected of them.

## Messages from research

There are relatively few studies that have looked at the formal pre-proceedings process itself. In the appendix at p. 23 are summary descriptions of the key studies referenced in this section. Messages from these studies are set alongside findings from research on working with parents who have experience of recurrent care proceedings, evidence from linked studies on care proceedings in relation to newborn babies, and research into effective ways of working with children and families, potentially reducing the need to issue care proceedings at all. It is worth noting that research which captures the views of children and family members about pre-proceedings is particularly limited.

### Effective working with children and their families

Ongoing concerns about the number and duration of cases in care proceedings (outlined above) inform a focus on research messages about effective and promising ways of supporting children and their families and preventing harm in order to prevent the need for issuing proceedings. The Care Crisis Review (Family Rights Group, 2018; Thomas, 2018) noted important sources on effective practice, including evaluations of projects funded through the DfE's Children's Social Care Innovation Programme and the overview and thematic reports arising from those evaluations (McNeish et al., 2017; Sebba et al., 2017). Subsequently, What Works for Children's Social Care (WWCSC) commissioned a series of reports mapping evidence on safely reducing the number of children coming into care (WWCSC, 2018; Nurmatov et al., 2020; Bezeczky et al., 2019). Evaluations of services working with parents who have experienced recurrent care proceedings provide messages about effective working to enable parents to parent safely in the future, or to come to terms with the loss of children through care proceedings. Key messages from this literature include the importance of:

- > A 'whole family' approach, addressing the needs of both parents – not just mothers – and other adults in the family as well as children. Doing this using multi-disciplinary teams, with social workers working closely with specialist adult workers, including those with skills and knowledge about substance use, mental health and domestic abuse.
- > Early attention to harnessing the support of the wider family. This might be to provide support for children remaining at home or as potential short- or long-term carers for children. Family group conferences, or other forms of family meetings, need to happen within an organisational culture of family involvement and participation.
- > Intensive work with families and children, similar to Intensive Family Preservation Services, which involve highly skilled professionals, low caseloads and providing a service within 24 hours of a referral.



- > Building, strengthening and repairing relationships as the key to long-term stability and security for children. This is about nurturing relationships at different levels: between children and parents, between different adults in the family, between families and others in their community and between families and professionals. Building relationships between families and professionals requires consistency of staff and honesty and transparency in communications.
- > The importance of a trauma-informed approach, with staff developing practical understanding of how complex trauma impacts on the ability of parents to engage with services.
- > An understanding of the impact on parents of the loss of children through care proceedings and the need for early support and intervention in the pre-birth period where parents are at risk of losing further children.

## Reflections

- > Thinking of your local practice system, specific services within it and the underpinning practice approaches in your area, are you satisfied that your multi-agency working arrangements, the workforce development offer and proactive family engagement activities support all the above elements?

## Tension in relation to the purpose of pre-proceedings

The dual function of formal pre-proceedings – both to ensure the social work evidence is well prepared before proceedings are issued and potentially to divert cases from coming into proceedings at all – can create tensions in terms of strategic focus and practice. Attention to this tension is key to strategic leadership and reflective supervision of pre-proceedings practice.

There are examples from the research of limited attention to parental engagement and support, a lack of belief that change is possible and a primary focus on developing the evidence for a care order. In contrast, there are examples of clear planning and intensive support to families that can lead to diversion. Researchers note that these differences in approach relate to both organisational culture and individual professional values and that pressure of work combined with tight timescales can reduce the effectiveness of the pre-proceedings process in achieving change in families (Masson et al., 2013; Holt and Kelly, 2016; Bowyer et al., 2015 and 2016; Thomas, 2018; & Trowler, 2018).

Some researchers commented on the lack of any clear connection in guidance between the formal pre-proceedings process and social work activities in relation to child protection plans or reviews of children in care voluntarily under section 20 *Children Act 1989* or section 76 *Social Services and Well-Being (Wales) Act 1970* (Masson et al., 2013). This arises from the focus on court proceedings as the origin of the formal pre-proceedings process. It creates a complex interface between social work processes and Family Court proceedings that can potentially lead to delay in decision-making.

## Reflections

- > How do you support practitioners to balance priorities between preparing well for proceedings and supporting family change in the formal pre-proceedings period?
- > How do you ensure clarity about the link between ongoing work under a child protection plan or work with a child in voluntary care with activity in relation to formal pre-proceedings?
- > What impact is the tension between diverting cases and preparing well for proceedings likely to have on parents' and families' engagement with services during formal pre-proceedings?

## Engaging parents during formal pre-proceedings

Families involved in the pre-proceedings process have frequently had long involvement with children's social care. In some cases their children are already in care voluntarily, or they have had other children removed through proceedings. They may have experienced social work involvement in their family life or been in care themselves when growing up and may be experiencing complex trauma as a result of their life experiences (Taggart et al., 2020). They are often facing a range of challenges and problems including poverty, housing issues, domestic abuse, substance use, or mental health difficulties. There is frequently more than one child in the family (Jessiman et al., 2009; Masson et al., 2013; Trowler, 2018; Dyke, 2020; Broadhurst et al., 2017).

Statutory and practice guidance rightly places emphasis on the importance of engaging families during the pre-proceedings process but there is a risk that if parents are seen as un-cooperative during the formal pre-proceedings period, then that is likely to increase the chance that the case will go into proceedings (Holt and Kelly, 2016). This is in line with findings in relation to recurrent care proceedings that 'non-engagement' was one of the main factors for proceedings being issued (Broadhurst et al., 2017).

Long involvement with children's social care can lead to a lack of trust, fear and sometimes hostility on the part of parents (Masson et al., 2013). Recognition of the potential roots of hostility and lack of trust can help professionals engage better with parents at this particularly stressful time (Taggart et al., 2020). Even if represented by a lawyer at pre-proceedings meetings, parents are commonly outnumbered by professionals, unfamiliar with jargon and acronyms and may be challenged by issues of literacy, language or digital access to online meeting and resources. Practitioners need to acknowledge such power imbalance between professionals and parents within the formal pre-proceedings process and how this may impact on engaging parents and working in partnership with them (Masson et al., 2013; Broadhurst and Holt, 2010). Research into effective working with parents emphasises the importance of relationship-based practice and a trauma-informed approach (FRG, 2018; Thomas, 2018; McNeish et al., 2017; Sebba et al., 2017).

Achieving engagement and supporting change in the relatively short time period of formal pre-proceedings requires clear planning and access to adequate and sufficiently intensive services that are appropriate for the high levels of need in families (Bowyer et al., 2015 and 2016; Trowler, 2018). Trowler (2018) noted a lack of services designed to meet complex and high level needs of family dysfunction, violence or addiction, or that are designed to support parents with long-standing mental health difficulties or learning disability. The nature of families' problems identified by all the researchers indicates a need for intensive, coordinated multi-agency and multi-disciplinary services and support. In many cases providing such services well before the formal pre-proceedings period starts would increase the likelihood of achieving the changes needed. Harwin and Golding's research (2022) into parental views of supervision orders found that all parents interviewed felt that they had not had sufficient help prior to proceedings being issued, and that their earlier requests for help had often been ignored. They identified the need for greater support, understanding and empathy alongside access to appropriate services.

Masson et al. (2013) found that fathers were less likely to receive a letter before action from the local authority and were less likely to be invited to attend the pre-proceedings meeting, or to attend or to be represented. This is despite the fact that fathers are identified as parties in 80% of care proceedings (Phillip et al., 2021). Research has also established that fathers experience recurrent care proceedings, often with the same partner, and are likely to have backgrounds characterised by trauma, hardship and loss (Phillip et al., 2021a).

The research by Masson et al. (2013) included cases where parents had a learning disability or mental health difficulties and the researchers noted comments from the parents' legal representatives querying the ability of their clients to take on board concerns set out in letters or meetings. None of the research looked at issues of cultural competence or anti-racist practice and this needs attention as a matter of priority. Practice guidance (PLWG, 2021a) recognises the need to take account of social, cultural and health inequalities in order to support working in partnership with families (pp.10 & 14) and notes that where parents have a learning disability or mental health needs, they may require an advocate, and where English is their second language, an interpreter (pp. 19).

Further reading can be found under [Ensuring equality, diversity and inclusion in the family court](#) and this Research in Practice Strategic Briefing: [Working with parents who have a learning disability \(2018\)](#)

## Reflections

- > Are you satisfied that enough is done to engage parents in the formal pre-proceedings process?
- > What are the key ways of helping parents to engage with local authority concerns at this point?
- > How does your service draw on existing relationships of trust between practitioners and parents, children, young people and wider family networks to support engagement with parents at this late stage in service involvement with the family?
- > How well do you engage fathers? In what proportion of your pre-proceedings meetings are fathers directly invited to attend? What proportion do attend the meetings?
- > Do you have sufficiently intensive services available in your area to work with families in the formal pre-proceedings period and before this begins?

## Letter before proceedings

The receipt of the letter before proceedings by the parents effectively marks the start of the formal pre-proceedings process and statutory, best practice and local guidance set out examples of what should be contained in the letter. As any parent can imagine, research with parents suggest that, despite prior involvement with children's social care, they find the receipt of the letter shocking and upsetting (Masson et al., 2013; Harwin and Golding, 2022). There is evidence of over-long letters, or examples cut and pasted from a standardised template, which angered parents when issues covered in the letter were not relevant to them (Masson et al., 2013). Other evidence suggests that professionals saw the letter as an important mechanism for clarifying concerns with families and that letters could be clear and helpful (Masson et al., 2013; Bowyer et al., 2015). A key message from the research by Masson et al. (2013) was the importance of ensuring the letter was prepared and delivered to parents as quickly as possible after the date of the legal planning meeting.

Further guidance and principles for writing the letter before proceedings are available in the Family Justice Hub under [Toolkit: templates to support pre-proceedings practice](#).

## Reflections

- > How do you quality assure and improve letters to parents to ensure they 'narrow and focus the issues of concern' in language that will make sense to parents?

## Legal advice and advocacy for parents and children

Legal advice and representation for parents at formal pre-proceedings meetings is seen by professionals as an important part of engaging parents and addressing issues of power imbalance (Masson et al., 2013; Bowyer et al., 2015). Masson et al. (2013) noted that parents did not always receive legal support during the formal pre-proceedings period but when they did, they valued the advice of their lawyer. Researchers have raised concerns about the difficulties of ensuring adequate legal representation for parents in the pre-proceedings period, given the limited level of legal aid available (Jessiman et al., 2009; Masson et al., 2013; Holt and Kelly, 2016; Mason et al., 2022) and the shortage of legal aid lawyers able to take on public law family work in some areas (Masson et al., 2013). Statutory guidance refers to the potential benefits of providing parents with independent advice and advocacy at an early stage before formal pre-proceedings (DfE, 2014, para 20).

Once in care proceedings, a child or young person has a Cafcass guardian appointed by the court and a solicitor to represent their interests, but they do not have legal advice or advocacy at the pre-proceedings stage. Arguably, moving more decision-making into the pre-proceedings stage 'means that many such decisions are now routinely taken without the benefit of separate representation of the child's interests' (Welbourne, 2014 p 589; Jessiman, 2009; Holt and Kelly, 2016). The Cafcass Plus pilots (Broadhurst et al., 2013 and Holt et al., 2014) were attempts to provide a voice for the child during formal pre-proceedings, but the pilots led to the conclusion that Cafcass did not have the capacity to provide children's guardians during this period. Statutory guidance refers to the potential to use children's advocates to ensure a voice for the child (DfE, 2014, para 20).

### Reflections

- > Do you think parents and children receive good quality legal advice and help in your area during the pre-proceedings period?
- > What might be done locally to improve the independent legal advice and help provided to parents and children?
- > How are children and young people in your area supported to put forward their own voice in the formal pre-proceedings period?



## Engaging the wider family and friends network

Statutory guidance highlights the importance of the involvement of wider family members as early as possible when there are welfare or safeguarding concerns. The guidance refers to family group conferences (FGC) as being a tried and tested family-led method for identifying and harnessing the potential of support from the extended family. Masson et al. (2013) found that around one third of those children diverted from proceedings moved to live with relatives, and research into final orders in care proceedings has shown the rise in the proportion of children who move to live with relatives under a special guardianship order (Harwin et al., 2018). Research into the formal pre-proceedings process found that the involvement of the wider family was not happening as much, or as soon, as it could (Masson et al., 2013; Bowyer, 2016) and that the appearance of family members once proceedings have started is one of the causes of delay. Research into the use of special guardianship orders (Simmonds et al., 2019) indicated the need for greater attention to identifying potential carers for the child in the formal pre-proceedings phase. The Public Law Working Group practice guidance on special guardians (2021b), emphasises the importance of involving family members at the formal pre-proceedings period, if they have not already been involved, and encourages the use of FRG's guidance on carrying out an initial viability assessment.

- > [Initial Family and Friends Care Assessment: A good practice guide - Family Rights Group \(2017\)](#)

## Reflections

- > Have all children and families in pre-proceedings been enabled to lead their own FGC? At what point in working with a child and family do you facilitate a FGC in your local area? Is this a universal offer at the early help stage?
- > What mechanisms do you have for involving the wider family in the formal pre-proceedings process or before that process starts?
- > What support – financial and other – does your local authority provide for kinship carers and special guardians?

## Pre-birth pre-proceedings

Masson et al. (2013) found that one third of the cases being dealt with in the pre-proceedings period were pre-birth cases. Research has identified a rise in the number of and proportion of care proceedings involving newborn babies (Broadhurst et al., 2017; Alrouh et al., 2019) and a rise in the number of such cases which start with an urgent hearing at no notice, or at three or seven days' notice (Pattinson et al., 2021; Broadhurst et al., 2022).

This research has identified many issues with the pre-birth assessment process and the level of support and services provided to parents in the pre-birth period when there are safeguarding concerns (Mason et al., 2019; Mason et al., 2022; Ryan, 2020). Two key issues are the practice of delaying assessments until late into the pregnancy and a focus on assessment rather than on practical support and intervention (Mason, 2022; Ryan, 2020). Evidence suggests that starting work with prospective parents as early as possible increases the possibility of parents being able to demonstrate their abilities to parent safely (Cox et al., 2020). The PLWG practice guidance has a separate section on pre-proceedings in the pre-birth period stressing the need for parents and their legal representatives to be clear about the plan if a decision has been made to issue proceedings when the child is born (paras 44-46, PLWG, 2021a).

Many parents who face pre-birth safeguarding concerns and care proceedings on their newborn babies are parents who have had previous children removed. Research into parents who experience recurrent care proceedings has highlighted the lack of support available for parents once their children have been removed through care proceedings (Broadhurst et al., 2017; Philips et al., 2021; Ryan, 2021). A growing number of services working with such parents have demonstrated effective ways of working that enable some parents to demonstrate change and be able to keep future children and to support others through the loss and grief of child removal and perhaps to make the choice not to have further children (Cox et al., 2020; Boddy et al., 2020; Roberts et al., 2018).

Further guidance can be found in [Working with recurrent care-experienced birth mothers: Online Resources \(2019\)](#) and the [Supporting parents who have experienced recurrent care proceedings: Website](#)

## Reflections

- > Do you know how many care proceedings in your area involve parents who have had previous children removed through care proceedings?
- > Do you know how many care proceedings are issued in your area in relation to newborn babies?
- > Do you know how many of these proceedings start with an urgent hearing (under seven day notice)?
- > Do you have evidence-informed practice and processes for pre-birth assessments in your area?
- > Do pre-birth assessment timescales allow sufficient time to assess and support parents prior to the birth?
- > Do you ensure that help, support and services are provided in working with parents pre-birth, alongside assessment activities?
- > Do pre-birth cases come into formal pre-proceedings in your area?

## Diversion of cases

One key aim of the formal pre-proceedings process is to divert cases away from care proceedings, where this is safe for the child. The legal planning meeting which decides that a case should move into formal pre-proceedings may also decide that proceedings should be issued immediately. Masson et al. (2013) found that 43% of cases across the six local authorities went straight into proceedings without a formal pre-proceedings stage, although there was variation among the six. Dyke (2020) found that over the four years of the study 52% of cases went straight into proceedings. Of the cases that went into formal pre-proceedings Masson et al. (2013) found that 24% of cases were diverted, with a range of 12%-33% across different local authorities. Some of those diverted cases subsequently come back into proceedings later, reducing the overall rate of diversion of cases which went into pre-proceedings to 20% (Masson et al., 2020). In the studies conducted by Broadhurst et al. (2013) and Holt et al. (2014) rates of diversion were higher at 40-54%, although the numbers of cases involved were lower, and practice conditions were unique in that the research focused on three local authority areas which were testing the involvement of Cafcass guardians in the formal pre-proceedings period. Dyke (2020) found an overall rate of diversion of 46%, but also noted that over the four years of the study the diversion rate increased year on year, so that by 2016 it was 60%. This study found very few cases diverted through pre-proceedings coming back into proceedings at a later date. It also found that cases which did not go into proceedings were in formal pre-proceedings for an average of 40 weeks. These studies do not provide details of the types of cases most likely to be diverted or the types of interventions most likely to lead to diversion, but the point is made that families involved in the pre-proceedings process face many problems and have a range of vulnerabilities, so that even when proceedings are avoided, families continue to need support and services (Masson et al., 2020).

## Reflections

- > Are you able to audit, monitor and analyse the level of ongoing support provided to children and families in your area when a case is diverted away from proceedings?
- > Do you monitor the proportion of cases diverted from proceedings in your area that come back into proceedings? If so, what analysis do you make of the reasons for that?

## Duration of court proceedings

Another key purpose of the formal pre-proceedings process is to ensure that the issues in dispute are narrowed, and that the local authority evidence is well prepared, with the aim of contributing to reducing case duration in court. Findings from research differ on whether formal pre-proceedings activity reduces the time cases spend in court (Masson et al., 2013; Dyke, 2020; Broadhurst et al., 2013). However, it is clear from research that the introduction of a time limit of 26 weeks for cases in 2014 did substantially reduce the duration of proceedings (Masson et al., 2020). One of the impacts of the pandemic has been that case duration has risen once again, linked to the difficulties arising from remote hearings and the challenges in arranging assessments during lockdown.

Prior to the pandemic, evidence from research suggests that reasons for delays include:

- > Court ordered expert evidence – despite the 2014 legislative restrictions on the instruction of experts during proceedings, there is evidence that courts continue to order further assessments.
- > Family members coming forward at a late stage for assessment as carers – Masson et al. (2017) found that in 60% of 203 cases in their second sample the court ordered viability assessments of relatives or friends. This emphasises the importance of early engagement of wider family members.
- > International issues (Bowyer et al., 2016; Masson et al., 2013, 2017 and 2020).

A consultation carried out during 2021 found that these were still the primary reasons for delay (Ryan et al., 2021), that they had been exacerbated by the pandemic and that there were additional causes of delay relating to the process of remote hearings and because of the growing backlog of cases. As researchers and commentators have pointed out, family circumstances are dynamic and can change rapidly, requiring the assessment process to be dynamic as well. When assessments reflect the position at a fixed point, subsequent changes in circumstances may indicate a need for an updated assessment (President's view March 2022; Brophy, 2006; DfE, 2014).

## Reflections

- > Do you encourage a dynamic assessment process, combining assessment with intervention and updating the analysis and progress?
- > Do you have effective forums for discussion among local authorities, Cafcass, lawyers and judiciary about the reasons for delay in your area?
- > Does your local Family Justice Board provide such a forum for discussion?
- > Have concerns about delays in court processes led to an over-focus within Children's Services on the formal pre-proceedings period?

## Delay and drift

Some of these research findings indicate that, rather than speeding up decision-making for children, the formal pre-proceedings process can actually contribute to delay and drift in planning for children and to delay in issuing proceedings (Jessiman et al., 2009; Bowyer et al., 2015; Masson et al., 2013), although Dyke (2020) found that over the four years of the study time in pre-proceedings prior to proceedings being issued did reduce. The flowchart on pre-proceedings in statutory guidance suggests a timescale of 12-16 weeks with a review halfway through that period. Masson and colleagues (2013) noted that reviews were taking place during pre-proceedings but commented that holding such reviews raised the issue of how much progress there should be before it could be decided that proceedings did not need to be issued and that a lack of clarity here could lead to drift in decision-making.

An evaluation of a care proceedings project involving two London boroughs concluded that the tracking of the time it took to reach a decision about the permanent placement of children should start from the first child protection plan relating to the child if there was to be clarity about timeliness of decision-making, rather than just measuring the time spent in pre-proceedings and proceedings (Rothera and Ryan, 2015).

## Reflections

- > Do you monitor time spent in pre-proceedings and, if you do, how do you use this information?
- > Do you have a case manager, or person with a similar role in tracking cases in your area?
- > In your perspective, would analysis and learning be best enabled by tracking pre-proceedings commencing from first child protection plan, the sending of the pre-proceedings letter to parents or the first legal meeting in pre-proceedings?



## Quality of social work evidence

The role of a 'case manager', introduced by many areas as part of activity to ensure compliance with the revised PLO and legislative changes in 2014, was identified as key in assisting local authorities prevent drift in the formal pre-proceedings period and to ensure quality in the preparation of evidence for care proceedings (Becket et al., 2013; Bowyer et al., 2015). While this valuable role continues in some areas, anecdotally we are aware that the role was discontinued in many local authorities after the initial implementation funding ceased. Retention issues mean that many social work teams have relatively few experienced practitioners and large numbers of newly qualified and relatively inexperienced workers. Without mentoring and structured professional development, the quality of social work evidence and reports to court will inevitably suffer.

### Reflections

- > Who in your authority (case manager, principal social worker or similar) quality assures and develops the quality of evidence being collected as part of the formal pre-proceedings process?

## Variations

Research carried out as the first PLO was introduced across England and Wales found wide variation across local authorities in relation to preparing for proceedings (Jessiman et al., 2009; Masson et al., 2013). Subsequent research into activity in 21 local authorities, carried out shortly after the implementation of the 2014 family law reforms, suggested that while the majority of areas had made substantial changes to pre-proceedings processes in response to the revised PLO and legislative changes there were differences in how well this was embedded within practice (Bowyer et al., 2016). Variations relate to the conduct of legal planning meetings, the proportion of care cases which are issued following a period in pre-proceedings, the time spent in pre-proceedings, the duration of proceedings and the orders made at the end of proceedings (Masson et al., 2013, Mason et al., 2019; Dyke, 2020; Harwin et al., 2018)

## Reflections

- > Does your local authority collect data on the numbers and proportion of cases that enter pre-proceedings before going into proceedings?
- > If so, how can this data be shared and used to inform local practice? If not, what could collecting this data tell us?
- > Do you have opportunities to reflect with other local authorities in your Local Family Justice Board (LFJB) area on variations in pre-proceedings practice?
- > Does your LFJB provide opportunities to reflect and discuss variations with other areas in relation to duration of proceedings and orders made at the end of proceedings?

## Discussion

We hope that the evidence summarised here and the reflective questions (re-presented as a checklist in the accompanying appendix) will support planning, workforce development and quality assurance in relation to pre-proceedings practice. Formal pre-proceedings are a time-limited period in which a range of tasks have to be completed and all concerned have to negotiate a range of possibilities. Engaging families to explore wider family support and the possibilities for safe diversion from court, and the rigorous preparation for potential court proceedings have to be balanced, in a context in which a child has been assessed to be at risk of, or experiencing, harm. It's vital that this work is informed by evidence on social work practice to engage families and support positive change.

## Summary of research focused on the formal pre-proceedings process and PLO

- > The most detailed study of the pre-proceedings process was carried out between 2010 and 2012 by Masson et al. (2013). The research was mixed methods, based on 207 randomly selected cases in six local authorities. The researchers also carried out interviews with parents, local authority lawyers, social workers, social work managers and parents' solicitors. A subsequent and connected study by this team (Masson et al., 2020) looked at how the reforms to care proceedings introduced in the *Children Act 2014* were working in the same six local authorities. This enabled them to compare another 203 cases which went to court in 2014-2015 with their earlier sample. This second study focused on what happened once proceedings had started rather than on pre-proceedings.
- > Jessiman et al. (2009) carried out a mixed methods study in three geographical areas which were trialling the new PLO process in 2007, looking at the process of implementation and the impact on professionals, through examination of court files (53) observation of hearings and interviews with 72 professionals. Although the main focus of the study was on court proceedings, the study also considered the pre-proceedings process.
- > Broadhurst et al. (2013) study was carried out between 2011 and 2013 in two local authorities in the same designated family justice area, comparing 30 cases using normal processes with 26 which were using the Cafcass Plus approach. In Cafcass Plus a children's guardian was involved in the pre-proceedings process, with the aim of narrowing the issues that were put before the court should the case enter proceedings and enabling the guardian to give an early steer on case management issues, as well as ensuring that the welfare of the child remain central to decision- making.
- > Holt et al. (2014) looked at the Cafcass Plus approach in one local authority area between 2012 and 2014, comparing 15 comparator cases to 11 Cafcass Plus cases. Holt and Kelly (2016) reflect on the perspectives of professionals in relation to the changes to care proceedings introduced in 2014, based on the Cafcass Plus evaluations.
- > Bowyer et al. (2015 and 2016) carried out rapid and deep dive investigations into the impact of the 2014 reforms to family justice. One study (2015) reports findings from 58 qualitative interviews with local authority and Cafcass staff in six local authorities, and the other (2016) was focused on gaining a better understanding of variations in case duration across different local authorities and involved 60 interviews with senior social work professionals in 21 local authorities. Both studies looked in some detail at pre-proceedings practice.

- > Rothera and Ryan (2015) carried out evaluation of activity in two London boroughs in relation to meeting the requirements of the changes to care proceedings in legislation and guidance in 2014.
- > Trowler (2018) carried out an exploratory study, through case files, of ten cases which had completed proceedings in the first quarter of 2018 in each of four local authorities in England (40 cases in all).
- > Dyke (2020) looked at case files in one local authority in relation to 937 children in 522 families involved in pre-proceedings and care proceedings between 2011 and 2012.
- > Thomas (2018) provided the research evidence relevant for the Care Crisis Review, including an overview of the current research relevant for pre-proceedings.
- > FRG (2018) Options for Change report included findings from the Care Crisis Review process and relevant research in relation to effective ways of working with families and potentially reducing the need for proceedings.
- > Research focused on the issuing of care proceedings in relation to newborn babies, has also identified issues in relation to the pre-proceedings process pre-birth (Pattinson et al., 2021; Broadhurst et al., 2022; Mason et al., 2022) – as has research looking at parents' experiences of supervision orders and care orders at home (Harwin and Golding, 2022). Research into special guardianship (Simmonds et al., 2019) has highlighted the particular issues relevant for early assessment of family members as potential carers.

## Appendix 1: Reflective Questions

- > Thinking of your local practice system, specific services within it and the underpinning practice approaches in your area, are you satisfied that your multi-agency working arrangements, the workforce development offer and proactive family engagement activities support all the above elements?
- > How do you support practitioners to balance priorities between preparing well for proceedings and supporting family change in the formal pre-proceedings period?
- > How do you ensure clarity about the link between ongoing work under a child protection plan or in relation to work with a child in voluntary care with activity in relation to formal pre-proceedings?
- > What impact is the tension between diverting cases and preparing well for proceedings likely to have on parents' and families' engagement with services during formal pre-proceedings?
- > Are you satisfied that enough is done to engage parents in the formal pre-proceedings process?
- > What are the key ways of helping parents to engage with local authority concerns at this point?
- > How does your service draw on existing relationships of trust between practitioners and parents, children, young people and wider family networks to support engagement with parents at this late stage in service involvement with the family?
- > How well do you engage fathers? In what proportion of your pre-proceedings meetings are fathers directly invited to attend? What proportion do attend the meetings?
- > Do you have sufficiently intensive services available in your area to work with families in the formal pre-proceedings period and before this begins?
- > How do you quality assure and improve letters to parents to ensure they 'narrow and focus the issues of concern' in language that will make sense to parents?
- > Do you think parents and children receive good quality legal advice and help in your area during the pre-proceedings period?
- > What might be done locally to improve the independent legal advice and help provided to parents and children?
- > How are children and young people in your area supported to put forward their own voice in the formal pre-proceedings period?



- > Have all children and families in pre-proceedings been enabled to lead their own FGC? At what point in working with a child and family do you facilitate a FGC in your local area? Is this a universal offer at the early help stage?
- > What mechanisms do you have for involving the wider family in the formal pre-proceedings process or before that process starts?
- > What support – financial and other – does your local authority provide for kinship carers and special guardians?
- > Are you able to audit, monitor and analyse the level of ongoing support provided to children and families in your area when a case is diverted away from proceedings?
- > Do you monitor the proportion of cases diverted from proceedings in your area that come back into proceedings? If so, what analysis do you make of the reasons for that?
- > Do you know how many care proceedings in your area involve parents who have had previous children removed through care proceedings?
- > Do you know how many care proceedings are issued in your area in relation to newborn babies?
- > Do you know how many of these proceedings start with an urgent hearing (under seven day notice)?
- > Do you have evidence-informed practice and processes for pre-birth assessments in your area?
- > Do pre-birth assessment timescales allow sufficient time to assess and support parents prior to the birth?
- > Do you ensure that help, support and services are provided in working with parents pre-birth, alongside assessment activities?
- > Do pre-birth cases come into formal pre-proceedings in your area?
- > Do you encourage a dynamic assessment process, combining assessment with intervention and updating the analysis and progress?
- > Do you have effective forums for discussion among local authorities, Cafcass, lawyers and judiciary about the reasons for delay in your area?
- > Does your local Family Justice Board provide such a forum for discussion?
- > Have concerns about delays in court processes led to an over-focus within Children's Services on the formal pre-proceedings period?
- > Do you monitor time spent in pre-proceedings and, if you do, how do you use this information?

- > Do you have a case manager, or person with a similar role in tracking cases in your area?
- > In your perspective, would analysis and learning be best enabled by tracking pre-proceedings commencing from first child protection plan, the sending of the pre-proceedings letter to parents or the first legal meeting in pre-proceedings?
- > Who in your authority (case manager, principal social worker or similar) quality assures and develops the quality of evidence being collected as part of the formal pre-proceedings process?
- > Does your local authority collect data on the numbers and proportion of cases that enter pre-proceedings before going into proceedings?
- > If so, how can this data be shared and used to inform local practice? If not, what could collecting this data tell us?
- > Do you have opportunities to reflect with other local authorities in your Local Family Justice Board (LFJB) area on variations in pre-proceedings practice?
- > Does your LFJB provide opportunities to reflect and discuss variations with other areas in relation to duration of proceedings and orders made at the end of proceedings?

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