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Preparing for Care and Supervision Proceedings

A best practice guide for use by all professionals involved with children and families pre-proceedings and in preparation for applications made under section 31 of the *Children Act 1989*

Produced by the Care Proceedings Programme, Ministry of Justice
August 2009



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ENGLAND AND WALES



The Law Society
of England and Wales



Foreword

This comprehensive best practice guide is based on the findings of inter agency workshops and has been extensively peer reviewed. It sets out examples and puts forward suggestions as to how we can all work together, valuing and understanding the work and roles of colleagues, and puts the needs of the child firmly back at the heart of care proceedings.

The guide will complement the Statutory Guidance and Public Law Outline but it is not intended to be prescriptive. However, it describes the processes involved; the respective roles of those involved; tackles some of the most difficult and frequently raised areas of uncertainty; and provides examples of good practice. It also acts as a sign post towards the regulations and Statutory Guidance on specific issues and is one of a range of measures aimed at developing a consistent and practical approach to care proceedings.

The publication of this guide is particularly timely in view of the recommendations in Lord Laming's report "The Protection of Children in England: A progress report ", published in March 2009. The UK Government has accepted all 58 of Lord Laming's recommendations, and published an action plan on 6 May 2009, setting out the detailed response to the recommendations. The action plan is available at: www.everychildmatters.gov.uk/laming

The Welsh Assembly Government has put in place a programme of measures to strengthen arrangements to safeguard children. These include new arrangements to establish teams to provide intensive support to families whose children may be subject of a care order.

The guide has the full support of the National Family Justice Board. We would like to express our thanks to all those practitioners who have co-operated and contributed to this publication and in particular to the Family Law Bar Association and the Law Society for their endorsement.

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* sw - Social work professionals

lfC - lawyers for children

lfP - lawyers for parents or those with PR

lfLA - lawyers for the Local Authority

hmcs - court staff and magistrates’ legal advisers

cg - Children’s Guardians

j - Judiciary

Acknowledgements

A number of individuals and organisations gave their time to help with the creation of this best practice guide. We would like to express particular gratitude to all of them.

Abbreviations

ACA 2002	Adoption and Children Act 2002
ALDT/CLDT	Adults with Learning Difficulties Team/Community Learning Disability Team or LA equivalent
CA 1989	Children Act 1989
CA 2004	Children Act 2004
Cafcass	Child and Family Court Advisory Service
CAFCASS CYMRU	The Welsh Assembly Government Service in Wales
CMC	Case Management Conference
Experts PD	Practice Direction: Experts in Family Proceedings Relating to Children (President of the Family Division, April 2008)
FA	First Appointment
FGC	Family Group Conference
FH	Final Hearing
Framework	Framework for the Assessment of Children in Need and their Families, 2000, Department of Health. Framework for the Assessment of Children in Need and their Families, 2001, Welsh Assembly Government
HMCS	Her Majesty's Court Service
IRH	Issues Resolution Hearing
IRO	Independent Reviewing Officer
LA	Local Authority
LbP	Letter before Proceedings
LSCB	Local Safeguarding Children's Board

LSC	Legal Services Commission
Parent	The term 'parent' is used throughout but should be read to include "parent(s) or other person(s) with PR"
PD	Practice Direction: Guide to Case Management in Public Law Cases (Judiciary of England & Wales and Ministry of Justice, April 2008)
PLO	Public Law Outline (this is contained in the PD and replaces the previous 2003 protocol)
PPM	Pre-Proceedings Meeting
PR	Parental responsibility, defined in section 3 of the Children Act 1989
SG Statutory Guidance	The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (Department for Children, Schools and Families, April 2008) and the Welsh equivalent, The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (Wales)
Working Together	Working Together under the Children Act 2004 to Safeguard Children: Every Child matters. A guide to inter-agency working to safeguard and promote the welfare of children, 2006, HM Government Wales - Safeguarding Children - Working Together under the Children Act 2004

Chapter 1 - Introduction

1.1 Background to the reforms

Following the *Review of the Child Care Proceedings System in England and Wales*¹, reforms to s.31 CA 1989 proceedings were brought into effect in April 2008 by two key documents:

1. The Practice Direction: Guide to Case Management in Public Law Cases²; and
2. *The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders*³ in England, and *The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (Wales)*⁴ in Wales.

The aim of the reforms can be broadly stated as an intention to make the system for s.31 CA 1989 proceedings more efficient by reducing delay and to improve the outcomes for children and families who may become the subject of court proceedings. The Statutory Guidance focuses on social work undertaken pre-proceedings for two principal reasons. In many cases there will still be an opportunity for the social worker to work with the child and family with a view to avoiding the need for court proceedings. Secondly, work done at these stages can impact on the proceedings (if proceedings are later initiated) and the ability for the proceedings to be conducted as smoothly and expeditiously as possible providing the best possible outcome for the child and his/her family.

1.2 The status of this best practice guide

Ten initiative areas⁵ tested elements of the PLO prior to it being finalised. Professionals from those areas were well placed to share information about how their areas were dealing with the reforms 'on the ground'. The Ministry of Justice's Care Proceedings Programme Office⁶ held two workshops in July 2008 (Reading and Liverpool). The 'Moving Forward Workshops' brought together professionals from all fields of expertise (HMCS, legal, social work and Cafcass/CAFCASS CYMRU) from the initiative areas. A wealth of information came out of the workshops. We learned about the many examples of good practice, which some areas had already implemented and were working to; many of those ideas have been incorporated into this guide. We also learned of challenges, which some professionals were experiencing. We have sought to bring all that information into this one comprehensive guide to both share the ideas of good practice already operating but also to address and assist with some of the perceived problems.

¹ Review of the Child Care Proceedings System in England and Wales, Department of Constitutional Affairs, Department for Education and Skills and Welsh Assembly Government (May 2006). Accessible at: http://www.dca.gov.uk/publications/reports_reviews/childcare_ps.pdf

² The Practice Direction: Guide to Case Management in Public Law Cases, Judiciary of England & Wales and Ministry of Justice (April 2008). Accessible at: http://www.judiciary.gov.uk/docs/public_law_outline.pdf

³ The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders, Department for Children, Schools and Families (April 2008). Accessible at: http://www.dcsf.gov.uk/localauthorities/_documents/content/childrensactguidance.pdf

⁴ The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders, Welsh Assembly Government and NHS Wales (March 2008). Accessible at: <http://new.wales.gov.uk/dhss/publications/children/guidance/actguidance/courtorderse.pdf?lang=en>

⁵ Birmingham, London, Liverpool, Warrington/Chester, Newcastle/Sunderland, Exeter/Plymouth, Leicester, Milton Keynes/Oxford, Swansea, Portsmouth

⁶ An inter-agency group set up to deliver the recommendations arising from the 2006 Care Review at: <http://www.justice.gov.uk/guidance/careproceedings.htm>

The guide is not Statutory Guidance: it has no legal status. We have taken careful steps to ensure that various experts in their respective fields reviewed this guide before it was finalised. We hope practitioners may find it a useful additional source of information and explanation but it is no substitute for acting within the statutory framework set out in the Children Act 1989 and the regulations made under Part 3 of the Act and the Statutory Guidance on it.

1.3 Who should read this guide

This guide is written for all professionals who work with or for children and families where s.31 CA 1989 care proceedings are being considered or applied for. In the main those who we hope will find the guide of most use to their work are: LA social workers, LA managers, lawyers for the LA and for parents, Children's Guardians, lawyers for children, HMCS court staff and legal advisers, the judiciary and expert assessors who may be instructed pre-proceedings and within proceedings.

1.4 How to use this guide

This guide is separated into two parts. Chapter 2 covers the pre-proceedings stages up to the point that a s.31 CA 1989 application is issued at court. Chapter 3 looks at the stages from the point that the LA issues a s.31 CA 1989 application through to disposal of the application and conclusion of the proceedings.

Some of the aspects discussed in this guide will be connected or relate to other aspects. We have used cross-referencing where this is the case. The intention of the guide is that it should act as a quick-reference tool to good practice. As the guide has been written to cater for all parties involved in care proceedings readers should gain a better understanding of the roles and responsibilities of other professionals involved. To make the guide as user-friendly as possible the contents identify the paragraphs which are recommended reading for the various professionals involved in s.31 CA 1989 proceedings.

Chapter 2 - Pre-proceedings stages

2.1 Introduction

In this document the term pre-proceedings is used to indicate the several stages of interaction between the child, family and the LA which occur prior to a court application being issued for a s.31 CA 1989 order. It is straightforward to ascertain the 'end' of pre-proceedings because this will be the date that the application to court is issued. Where the pre-proceedings stages 'begin' however, is less well defined. On the one hand all stages of involvement prior to an application being made could be termed 'pre-proceedings' but for the purposes of the recent reforms the use of the term pre-proceedings is rather precise. It denotes the stages from the point that the LA is considering making an application to court to protect the child but the risk of harm to the child is manageable if an application is not made immediately. Effectively, the LA's approach will be to further attempt to engage with the parent in order to put an agreement in place which reduces the risk of significant harm to the child to a manageable level at that stage.

The point at which pre-proceedings stages nominally commence in view of the recent reforms is where the legal gateway/planning meeting (section 2.3) has been held and the LA makes the decision to send a Letter before Proceedings (LbP) (section 2.4).

2.2 Social work

Volume 1 of the Children Act Guidance and Regulations is issued under section 7 of the Local Authority Social Services Act 1970. Local Authorities must, in exercising their social services functions, act under this guidance.

The Children Act 1989, the Adoption and Children Act 2002, and the Children Act 2004 combined with Regulations made under those statutes and the Statutory Guidance set out the statutory framework within which social workers should perform functions on behalf of the LA. The Statutory Guidance seeks to provide advice to the LA on relevant matters. In relation to care proceedings the Guidance stipulates the 'matters to be considered by the LA before making an application for a care or supervision order'⁷. The LA has many duties and obligations with which it must comply. The most relevant (at this stage) is the general duty to safeguard and promote the welfare of children in need and "so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs" (s.17(1) CA 1989).

The original version of Volume 1 was published in 1991. The revised Guidance gives updated advice to LAs on how they should meet their duties. Some key points from the Guidance are:

- That voluntary arrangements for the provision of services should be fully explored together with consideration of potential alternative carers

⁷ Statutory Guidance, paras. 3.22-3.33

- That prior to proceedings, work should be undertaken to explore alternative care solutions for the child, assess the suitability of those arrangements and consider the legal status of those arrangements.

2.3 The Legal Gateway/Planning Meeting

The purpose of a legal gateway or planning meeting is for the LA to seek legal advice about a particular case. These meetings should be attended by the child's social worker and managers together with the lawyer advising the LA. The social work team will usually set out the facts of the case, their concerns and explain what has been done to work with the child and family. The ultimate question will be "is the threshold criteria met and are court proceedings necessary at this stage?"

In those cases where it is agreed that it will be necessary to initiate Care Proceedings the LA will consider if it is appropriate to write to the parent to inform him or her that an application to court will be made shortly and to explain that he or she should seek legal advice. A template letter can be found at Annex A. There are two important points to note about sending such a letter to the parent:

- This letter is not intended to be a 'LbP' and therefore may not act as the trigger letter for Family Help Lower (level 2) publicly funded advice and assistance (section 2.6.3). However, the parent may still be eligible for means-tested advice under Legal Help (level 1) from a solicitor. Parents should be advised to seek further guidance from a solicitor on this point; and
- It will not be appropriate to send this letter in all cases where immediate issue of proceedings is decided. Whether or not to send the letter requires very careful assessment by the LA. For example, there may be concerns that if a parent knows that the LA is going to apply to court for an order allowing it to remove the child from his or her care, the parent and their children may leave the area.

2.4 The Letter before Proceedings (LbP)

If following a legal gateway/planning meeting it is decided that there is time to work with the family to avoid proceedings, and the short term safety and welfare of the child permits, a LbP should be issued. The LbP allows social workers to structure their work with the child and family and to consider alternative options and services which could be provided to the family. Once the LbP inviting a parent to a Pre Proceedings Meeting (PPM) is sent out, the LA has an opportunity to work with the family and to explore all options prior to making an application to court. Some LAs have indicated that the use of the LbP has helped to stop the drift in more long-standing cases. We found that many LAs have given lots of time and effort to adjusting the template LbP contained in the Statutory Guidance to their particular areas and we have been informed that generally parents have found the LbP useful as it sets out in one place the LA's concerns.

2.4.1 Ownership

As the LbP is a new stage in the process introduced by the revised Statutory Guidance (SG) we are aware that LAs have varying experiences of its use. The template LbP which is annexed to the SG envisages that the signature carried on the LbP will be that of the social worker's team manager.

The LA should request that their legal department check the contents of this letter to ensure that it includes all information relevant to the grounds for proceedings.

2.4.2 Timing

In deciding the timing about when best to send the LbP, the LA will have first considered and sought legal advice about whether it should make an application to the court (section 2.3). If it makes an 'in principle' decision that it would be appropriate to apply for an order but also concludes that the risk can be managed without an immediate application, the LA is effectively concluding that it can see a window of opportunity to try to continue to work with the family to maintain their children safely with their parents. The LbP should be sent at this point.

Once the LbP is sent the LA should utilise this opportunity to secure a plan or agreement to protect the child safely at home and work towards reducing the risk of significant harm to the child.

Where a local authority judges that there is not a window of opportunity to work with the family to continue to maintain the child at home, given its assessment of the safeguarding concerns in the case, the LA will need to apply immediately to court even on short notice for a s.31 CA 1989 order. Where this is the case LAs should consider using the immediate issue template letter at Annex A.

2.4.3 Contents

The Letter before Proceedings (LbP) is an important letter and should be carefully drafted. It is the trigger for non-means, non-merits tested publicly funded legal advice and assistance under 'Family Help Lower' (also referred to as Level 2 advice) (sections 2.6.2 & 2.6.3). It will be filed with the court, and it needs to be concise, clear and focused. For this reason the template LbP in the Statutory Guidance should be used as the basis for the letter.

It is important that the LbP is understood by the recipient. The template LbP in the Statutory Guidance uses very simple English and is jargon free so that it can be understood by recipients. If applicable it should be translated into the language used by the parent or carer. It is important that there should be no surprises in the LbP. Although the parent should already have had notice or knowledge of the LA's concerns, the purpose of the LbP is to be clear (in one place) about the concerns and what the LA needs to change or improve in order to reduce those concerns. Finally, it acts as formal notification that the parent should seek legal advice, together with a final warning that court proceedings may follow if the situation fails to improve.

The LbP also invites the parent to a Pre Proceedings Meeting (PPM) to discuss matters and hopefully finalise a plan or agreement. There needs to be sufficient time balanced against risk to

the child to allow the recipient of the LbP to actually receive the letter, consider it and to seek advice from a lawyer in advance. Social workers will need to consider these factors when proposing the date and time of the PPM in the LbP.

2.4.4 Plans and Agreements

The Letter before Proceedings will state what concerns need to be addressed by the parent and what support will be provided by the LA to help. These issues will be reflected in the existing child in need/child protection or care plan. The plan may be one of the following formats:

- (a) a care plan because the child is looked-after by the LA pursuant to a s.20 CA 1989 agreement; a looked after child's plan can only be amended at a Statutory review at which the parents will (hopefully) be present;
- (b) a child protection plan if the child is already the subject of child protection measures;
- (c) a Child in Need plan if the child is not looked-after but is deemed to be 'in need' of services pursuant to s.17 CA 1989.

It follows that the LA should update the plan and send it to the parent as a draft plan (ideally with the LbP) which he or she will be asked to agree at the PPM.

The Pre Proceedings Meeting (PPM) will work best where both the LA and the parent have had a good opportunity to prepare. For the parent this will mean considering the LbP and understanding the plan which he or she is being asked to agree to. The LbP must actively encourage the parent to see a solicitor for advice; ideally he or she will have given instructions and at least sought some brief advice before coming to the PPM with the solicitor. Parents should understand the details of the concerns about the child's developmental needs, including the need for safeguarding and the plan to meet them in order to know what is required of them and how they can fulfil the requirements or discuss the issues if they feel unable to make a meaningful change. Alternatively, they will be in a position to suggest factual corrections or amendments to the proposed plan through the negotiation that will take place during the PPM.

2.4.5 Communicating messages

It is important to be sensitive and careful in communicating messages from the LbP. Nothing in the proposed plan should be new or a surprise to the parent. The concerns will have continuously been referred to during meetings, case conferences, documents or correspondence between the LA and the parent.

- The LA should consider hand delivering the LbP (taking into account if it is safe to do so) so that the social worker can be sure that the LbP was actually delivered.
- The social worker may wish to ask the parent to sign a 'receipt' to evidence delivery of the LbP. Feedback informs us that parents are more likely to attend the PPM where the LA has met the parent to deliver the LbP to reinforce its meaning and purpose.

- If communication is difficult it will be even more important to record on the LA file the methods attempted by the social worker to deliver the letter.
- Where the LbP is being posted then use recorded delivery

The expectation is that the parents will seek legal advice and take the LbP to their solicitor.

The Ministry of Justice's Care Proceedings Programme Office will be issuing in 2009 a written pack for parents to encourage better engagement during the pre-proceedings stages. The material's target audience will be parents who are involved with the LA at the pre-proceedings stages. It is hoped that social workers and lawyers for parents will be able to refer parents to the material to aid their understanding of the pre-proceedings stages. It is intended that the material will be made more widely available within voluntary sector agencies/organisations whose service-user groups include parents involved with the LA in relation to their children.

2.5 The Pre Proceedings Meeting (PPM)

2.5.1 Timing

The Letter before Proceedings will have stated a date, time and venue for the PPM. Consideration should be given to re-scheduling when requested by the parents so long as this not does affect the child's safety and welfare.

2.5.2 Organisation and co-ordination

Ethos: The aim of the PPM is to reach an agreement on the proposed plan between the family and the LA. Although agreement may not be able to be reached in all cases or about all areas of the plan, a conciliatory approach is encouraged of the participants and their lawyers. It should be noted that the PPM is not intended to be adversarial in nature and therefore it would be unhelpful for any participant to take such an approach. It must be borne in mind that the PPM is a social work led meeting and not a court or tribunal where a judge or arbiter listens to evidence, argument and makes decisions. Neither is the PPM a forum for disputed facts to be determined, such as in a fact finding hearing. If there are disputed facts or issues, the participants can through negotiation agree facts or narrow issues down voluntarily. The PPM will not however, decide on anything which fundamentally remains contested or disputed. No participant should feel pressured to agree to anything that he or she does not want to. Legal advice during the meeting will assist the parent with this. It is vital for the parent to understand that the proposed plan being put forward by the LA warrants careful thought so that the parent is aware of what is likely to happen in the event that an agreement to the plan or amended plan cannot be secured.

Venue of the PPM: We know that in certain familial situations the issue of where the PPM takes place can be 'make or break' in terms of whether the parent will attend and engage in the PPM. The decision regarding venue will be taken by the social worker in conjunction with his or her manager and the person who will chair the PPM. The social worker will be key in influencing this decision - having the most detailed knowledge of the circumstances of the family.

Agenda for the PPM: Many LAs have formulated an outline agenda for use at the PPM. They have found that this is helpful as it formalises the meeting, ensures that everything is covered and demonstrates to the participants that the PPM is of a more serious nature than perhaps other routine meetings between a parent and the LA. Annex C is a list of points/agenda items which may be considered for inclusion in any agenda for such meetings. It remains, of course, for each LA to decide how it wishes to conduct the meetings and whether it chooses to create its own agenda using some or all of the suggestions contained in Annex C.

Engaging the parent: There may be times when a parent will either refuse to attend the PPM or disagree with the proposed plan. This can be a difficult process but there may still be an opportunity to narrow some of the issues. A brief case example is given at the bottom of Annex C.

Minutes of the PPM: It is good practice for minutes to be taken of the PPM and then for those to be approved by the LA and circulated to the parent as quickly as possible. The parent will then have the opportunity to suggest corrections or additions which the LA can then consider. We suggest that the LA adopt a similar practice regarding minutes of the PPM as they will have in place for child protection case/review conferences. Minutes are important for any formal meeting and it is preferable that they are provided in relation to all PPMs.

Communicating plans: The plan and any agreement which has been reached during the meeting will be a material document and it is important that it is accurate, and comprehensive.

2.5.3 Participants

Legal

If parents attend with their lawyer the LA lawyer should also attend.

Wider family members

Should a parent wish to bring a person in a supportive role it is in the discretion of the LA to allow this.

One possible tool that the LA might re-consider at this point is the use of a Family Group Conference/Family meeting which might assist identification of wider family support. However, it must be remembered that the child's welfare is paramount and also that the parents should be central to this process and their agreement obtained at the outset and throughout the process.

Other agencies/organisations: The PPM is not a multi-disciplinary meeting or forum and it is not appropriate for other agencies to attend.

Chairing the PPM: Some LAs have stated that they have not found it helpful for the child's social worker or manager to chair the PPM. Some suggestions on people who might be better suited to chair the PPM are:

- A senior manager from the LA; or
- A contracted person who is suitably qualified akin to an Independent Reviewing Officer.

In either case, it is preferable that the person who does chair should be someone with no prior direct involvement with the child and family and where practicable that this person should chair all the PPMs in that LA. LAs who are operating a system of one nominated person as chair for all meetings are finding this is beneficial to the outcome.

If this person has no prior involvement the chances of a productive meeting increase as the parent will hopefully look to the chair as someone who is fresh to the case, less likely to have preconceived ideas about the child or family, perhaps be more impartial than the child's social worker, and is sufficiently distanced to have a wider perspective on the issues. If the chair is able to gain the trust of the participants in the meeting, the meeting will proceed more effectively.

2.5.4 Attendees with particular needs

Given the nature, sensitivity and seriousness of the issues which fall to be discussed at the PPM it is crucial that the participants understand and are able to follow the discussions.

Some of the issues which come within the remit of the pre-proceedings stages are just as important as some of those that arise within proceedings. Where a person lacks the capacity to follow the litigation within proceedings, it is likely that he or she would also find it difficult to understand everything that is being said and asked of him or her pre-proceedings. Where an informal assessment suggests a parent may struggle to follow the pre-proceedings discussions or otherwise may have a learning disability or mental health problems which affect the parent's ability to follow the issues, then an immediate and urgent referral must be made to the Adults with Learning Disability Team/Community Learning Disability Team (ALDT/CLDT) or LA equivalent. Lord Justice Wall's comments in a recent case have clarified the Court's expectations in this instance:

"It is, I think, inevitable that in its pre-proceedings work with a child's family, the local authority will gain information about the capacity of the child's parents. The critical question is what it does with that information, particularly in a case where the social workers form the view that the parent in question may have learning difficulties" (para. 175).

"At this point, in many cases, the local authority will be working with the child's parents in an attempt to keep the family together. In my judgment, the practical answer in these circumstances is likely to be that the parent in question should be referred to the local authority's adult learning disability team (or its equivalent) for help and advice. If that team thinks that further investigations are required, it can undertake them: it should, moreover, have the necessary contacts and resources to commission a report so that as soon as the pre-proceedings letter is written, and proceedings are issued, the legal advisers for the parent can be in a position, with public funding, to address the question of a litigation friend. It is, I think, important that judgments on capacity are not made by the social workers from the child protection team" (para. 176).

In the pre-proceedings phase local authorities should feel free to do whatever is necessary in social work terms to assist parents who may become protected parties. My view, however, is that this is best achieved by members of the adult learning disabilities team who do not have responsibility for the children concerned” (para. 181).

P v. Nottingham City Council and the Official Solicitor [2008] EWCA Civ 462

On a practical level ALDT/CLDT must be asked to assess the parent and to make recommendations as to capacity to understand the information being discussed and shared at the pre-proceedings meetings. It may be that the parent can properly engage during pre-proceedings if supported by a social worker from the ALDT/CLDT. Alternatively, a voluntary sector organisation may be able to provide an advocate who is experienced in working with those with learning disability. If those options fail then the LA may wish to consider inviting a close family member or friend to support the parent during the PPM. That however is not ideal. Ultimately, if the social worker or the lawyer for the parent believes that the parent is unable to understand and follow the subject matter properly in order to then give considered instructions to the solicitor, it may be the case that the LA will have to issue an application to court so that the Official Solicitor can be invited to act for the parent within the proceedings.

Language barriers must also be considered where a parent’s capacity to understand is clearly limited and the LA should make arrangements for a suitable independent interpreter and not rely on a family member or friend.

2.5.5 Reviewing plans

The objective of the PPM is to:

- Agree a plan; and
- Track and monitor progress to implementing the plan

The plan for the child might be that the child will be accommodated by the local authority. This is a key option for the child even if only as a temporary measure (section 2.8). If it is agreed that the child should be looked-after under s.20 1989 the LA must comply with all statutory duties in relation to looked after children.

Where the child is not a looked-after child because he or she will remain in the care of the family or be subject to a private fostering arrangement between the parent and a third person (such as a family friend or more distant relative) it is likely that the child will remain a child in need for the requisite period. The LA will however be responsible for checking and supervising any private fostering arrangements. If the arrangements are brokered by the LA then the child becomes a looked-after child under a s23 placement.

2.5.6 Children's participation and the participation of the child

So far as it is reasonably practicable and consistent with the child's welfare, every child should be notified in age appropriate language by the LA that a PPM is to be held, with an explanation that the purpose is to help parents to keep them safe. The child should then be given the chance to make written representations to the PPM. The social worker has an ongoing duty to ascertain the wishes and feelings of the child[♦]. The social worker should be in a position to feed those wishes and feelings into the PPM. Acting in the best interests of the child will be the **responsibility** which pervades everything the social worker does in a particular case. The social worker is therefore in a position to make clear the child's views at the PPM.

Additionally, the LA must decide in each individual case whether to invite the child to the PPM. In considering the matter, there will be a variety of factors which will be taken into account including:

- The child's age;
- The child's level of understanding as to what is involved;
- The child's coping skills; and
- Whether it is appropriate for the child to be present for all or for part of the PPM.

If the child is invited and attends the meeting, the LA should review agenda items, as there may be information that could be difficult for a child to manage within this forum. The social worker should also inform the chair of the PPM that the child will be attending.

If it is felt inappropriate to invite the child to attend the PPM or the child rejects the invitation, the social worker must consider how the child's wishes and feelings could be heard at the PPM.

The LA should ascertain the parent's views towards the child's attendance at the meeting. If the parents oppose the child's attendance at the meeting it must be remembered that the LA does not have parental responsibility at this stage.

If parents do not wish the child to attend, the child should be informed about the LA's complaints procedure. In these circumstances the LA should consider other methods of ensuring that the child's voice is heard, such as:

- the child making written representations for the meeting;
- the social worker having a meeting with the child;
- the child being referred to a local advocacy service able to support the child.

[♦] Amendments were made by s.53 CA 2004 to the following sections of CA 1989: s.17(4A), s.47(5A) and s.20(6) (all of which relate to ascertaining wishes and feelings of the child).

A template letter to the child can be found at Annex B. This should be tailored and adapted where the LA decide to notify a child about the PPM in writing. If the child does not attend the meeting the social worker will explain the plan to the child and take account of their wishes and feelings. As in all issues pre, during and after proceedings there must be a child focused timetable.

2.5.7 The role of lawyers

The role of lawyers in PPMs is to provide impartial legal advice in private to a client if appropriate.

If the lawyer is able to familiarise himself or herself with the relevant papers at the outset this will aid his or her ability to properly advise the client when needed. Lawyers for LAs are likely to first hear about a particular case during the legal gateway/planning meeting. It may however, be some time later when the LA come back to the lawyer for further advice or to ask that the lawyer be present at the PPM. Reading updated social work documents is useful at this point. In relation to lawyers for parents, in some circumstances the lawyer will have been instructed even prior to the LbP being sent (section 2.6.1). Where this is the case, the lawyer may have already seen documents or will have sought disclosure from the LA. Otherwise the first involvement for the lawyer for the parent will be where the parent brings in the LbP to the first attendance with the solicitor. There may be very little time between instruction of lawyers and the PPM taking place.

2.5.8 Lawyer for the parent

If the PPM is to have the best possible chance of resolving issues or identifying an alternative care solution it is vital that both the LA and the parent have appropriate advice from their qualified legal advisors.

2.6 Public funding (Legal Help and Legal Aid)

2.6.1 Legal Help – public law

Some parents may have had a lawyer during other stages of their involvement with the LA. In those cases the lawyer will have assessed the client's eligibility for Legal Help (referred to as 'Level 1 Advice'). Unlike Family Help Lower this level of service is means-tested and therefore not all parents will be financially eligible. There is also a merits-test which has a low threshold ('the sufficient benefit test'). This is payable by way of a fixed fee.

2.6.2 Importance of the LbP

Each local authority will have sent the parent a Letter before Proceedings (LbP) inviting the recipient of the letter to a meeting to discuss concerns and plans for the child and family. From the moment that the letter is received, the person to whom it is addressed automatically becomes eligible for advice and assistance. It is vital that the LA ensure that the parent receives the LbP (section 2.4). Only then will he or she be able to secure non-means, non-merits tested advice and assistance from a solicitor on this basis; the LbP acting as the trigger for eligibility. The LA are encouraged to enclose with the LbP a list of firms/organisations who do such work and in particular

those that have staff who are members of the Solicitors Regulation Authority's (formerly the Law Society) Children Panel.

2.6.3 Family Help Lower

Advice and assistance is provided by the legal advisor under a scheme called Family Help Lower (also referred to as 'Level 2 Advice'). This is a form of Controlled Work and therefore it is for the lawyer to assess whether the person seeking assistance is eligible for this level of service. Any parent or person with Parental Responsibility (PR) who receives a LbP is entitled to this level of service; it is non-means and non-merits tested. The parent is free to instruct any firm or organisation which does public funded family work.

The level of service (Family Help Lower) is remunerated as a standard fee. The LSC has calculated this fee based upon Controlled Legal Representation rates, which are higher than Legal Help and are similarly used in mental health and immigration cases involving priority clients. The LSC has increased the fee so that it currently represents over 7 hours of work.

2.6.4 Exceptional cases

There may be cases where the issues are very complex or great in numbers. For example there may be several persons with PR or the LA has had long-standing involvement and so there are many historic but relevant issues and documents or the assisted person (client) has significant learning difficulties or mental health problems. Those circumstances may make taking instructions, advising the client or negotiation on behalf of the client difficult and complicated. Work done under either Legal Help, Family Help Lower (or both levels of service) when compared to hourly rates may exceed the fixed fee. Where the work was justified and the time spent (based on applicable hourly rates) amounts to three times or over the fixed fee the firm/organisation will be able to claim their costs on a full hourly rates basis rather than being restricted to the fixed fee.

2.6.5 Further information

Further information about publicly funded family services can be found on the Legal Service Commission's website: www.legalservices.gov.uk⁸. A list of LSC family regional contacts can be found at: http://www.legalservices.gov.uk/civil/civil_justice_system_initiatives.asp.

2.7 Assessments

2.7.1 Adapting to change

The assessment of children and their families is a key task for social work professionals. What the reforms do is to focus on purposeful, analytical and evidence based assessments and their importance. The child's allocated social worker is responsible for coordinating the work on that child's case with support from team/service managers and possibly other agencies. The assessment

⁸ A Q&A document is also helpful reading and is accessible at: http://www.legalservices.gov.uk/docs/cls_main/QandAPublicLawCareProceedings050308.pdf

process is discussed in the Statutory Guidance⁹ and in Working Together¹⁰. Assessments, both Initial and Core should be undertaken in accordance with these documents and the detailed guidance set out in the Framework for the Assessment of Children in Need and their Families DH et al(2000). The LA must not work in isolation and it is imperative that the appropriate sharing of information between the professional network continues to take place to ensure that the child's safety and welfare is kept central to the process.

Where cases rely on specialist assessments to inform the assessment which may not be completed within the target time frame, the core assessment should still be completed and should note any timescales agreed with partners who may be undertaking specialist assessments documented¹¹. Planning, intervention and urgent work to safeguard the child's welfare will need to continue not withstanding an incomplete or outstanding core assessment.

The core assessment is the means by which LAs gather and analyse information about the child and family as it undertakes its s.47 CA 1989 enquires¹². It is the process by which evidence is gathered which is important to the LA's case when it applies to court¹³; the LA will file the core assessment record with the court as its primary piece of evidence to support its application. As it is a live document it will continue to be updated during the LA's involvement with the child and it may well evolve as circumstances change and new information about the family is obtained. Assessment is a continuing process and not a single event.

2.7.2 Change of circumstances

It is essential that the extent to which a child is suffering, or is likely to suffer, harm is kept under constant review and that if necessary the matter proceeds immediately to court irrespective of whether or not the LA has completed its preparation or documentation.

Where the LA decides (usually having taken legal advice) that it needs to take steps to protect a child who it considers to be suffering or likely to suffer significant harm, the LA may take immediate protective measures which could include requesting police protection or an application at court for an order. This may be for an emergency protection order (EPO)¹⁴ because the LA believes the child is in imminent danger, or for an interim care or supervision order¹⁵ in order to safeguard the child. It is recognised that in some cases a core assessment will not have been completed or even started at the point that an application is made to the court. Where however, the LA has been involved with a family for some time and/or has already commenced enquiries pursuant to s.47 CA 1989 it should be conducting the enquiries via a core assessment and documenting findings from the assessment

⁹ Statutory Guidance, paras. 3.12-3.18

¹⁰ *Working Together*, paras. 5.60-5.67

¹¹ Statutory Guidance, para. 3.16

¹² Statutory Guidance, para. 3.15

¹³ Statutory Guidance, para. 3.16

¹⁴ Statutory Guidance, paras. 4.25-4.63

¹⁵ Statutory Guidance, paras. 3.44-3.47

process in a core assessment record. Where the core assessment is not available or completed at the time of issue, the LA will inform the court of the reason why it has not been filed and of the expected date of filing. That information should be given at column (d) of Part 1 ('Pre-proceedings checklist') of the Supplementary PLO1 form. See the Practice Direction 10.2 and 10.3 for guidance on compliance with the pre-proceedings checklist.

2.7.3 Specialist assessments (pre-proceedings)

The key question for the LA to ask itself is "is there an element or aspect of the core assessment process which cannot be completed because specialist expertise is required".

Specialist assessments are those assessments which the LA believe are required when for example there is a particular aspect of the child's or family's circumstances which require a specialist assessment from a professional other than a social worker such as an adult mental health assessment. The specialist assessment will only address that specific aspect and it will feed into the core assessment.

Where a specialist assessment is thought to be required, the decision to commission such an assessment must be made as soon as possible to avoid introducing unnecessary delay into resolution of the proceedings. Consideration should also be given to the joint instruction of experts. The PPM can be used for this purpose.

Any specialist assessments commissioned pre proceedings should be presented by the LA in any proceedings, and for that reason it is suggested that the LA consider the requirements of the Experts PD¹⁶, particularly those that relate to pre-proceedings assessments

2.8 Alternative care for children:

Section 20 Children Act 1989 and the function of the Independent Reviewing Officer (IRO)

There will be some circumstances where it will be appropriate for children to be looked after by the local authority following agreement with those who have parental responsibility that this arrangement would be the best way to meet the child's needs. Where the authority provides accommodation for a child under a voluntary agreement, then the LA does not share parental responsibility for the child and the parents may remove the child from the arrangement at any time. The parents' wishes regarding the care of their child must be respected, unless they are putting the child at risk of significant harm, and the parents and the child must be consulted before any decisions are taken that affect their child. Providing services to children in this way will not be appropriate where there are continuing concerns about significant harm to the child.

Children accommodated under s. 20. like every other looked after child, must have a care plan based on a comprehensive assessment of their needs, setting out how the authority intends to

¹⁶ <http://www.hmcourts-service.gov.uk/cms/files/Experts-PD-flagB-final-version-14-01-08.pdf>

meet those needs in partnership with the child's parents. This will include detail about how the authority intends to establish legally secure care arrangements for the child (e.g. permanency options might include making arrangements to reunite the child with their birth family or planning for the child to be placed in a permanent substitute family or long term foster care). The care plan must be regularly reviewed. Review meetings must be held at minimum statutory intervals – within 28 days of placement, then within 3 months and six monthly thereafter. Reviews must involve the child, their carers and representatives of the local authority responsible for their care, most reviews will also involve other appropriate professionals. The LA must appoint an Independent Reviewing Officer (IRO) to chair reviews.

The IRO's functions are to

- a) Participate in the review of the case of each looked after child
- b) Monitor the authority's functions in respect of the review
- c) Refer a case to Cafcass/CAFCASS CYMRU if the failure to implement the care plan might be considered to breach the child's human rights

Regulations require IROs to fulfil the following responsibilities

- a) To ensure that the views of children and young people are understood and taken into account (in care planning);
- b) that the person's responsible for implementing any decision taken in consequence of the review are identified; and
- c) that any failure to review the case or to take proper steps (to implement review recommendations) is brought to the attention of person's at an appropriate level of seniority within the responsible authority.

The review meeting is one of the key components within the core processes of working with children and families. The purpose of the review meeting is to consider the plan for the welfare of the child and then to monitor the progress of the plan and make decisions to amend the plan as necessary in light of changed knowledge and circumstances. The appropriate legal status for the child's care must be considered at every review meeting and the review should make recommendations to senior managers in children's services if the child's legal status no longer seems appropriate to the child's needs. For example, where the circumstances of a child accommodated under s.20 have changed such that it may be necessary for the authority to consider making application for a care order to make legally secure plans to meet the child's future needs.

DCSF are currently re-writing all the Children Act 1989 regulations and guidance and the NMS for fostering and adoption services. In addition DCSF will be issuing Strategic Guidance for consultation in October 2009 on a new framework for family and friends care which will contain a model for assessing relative carers.

2.9 Safeguarding and Child Protection

2.9.1 Threshold

S.31 (2) Children Act 1989 sets out the threshold criteria. A court has no power to make a care or supervision order in favour of a local authority unless, as a matter of fact, it is satisfied that:

- (a) the child concerned is suffering, or is likely to suffer, significant harm, **and**
- (b) that the harm or likelihood of harm is attributable to **either** (i) the care given to a child or likely to be given to him if the order were not made not being what it would be reasonable to expect a parent to give him or (ii) the child is beyond parental control

Harm includes impairment from seeing or hearing the ill treatment of another.

The court will only act on evidence and will make findings of fact about whether the child is suffering significant harm. If the LA have reasonable cause to suspect that a child is suffering significant harm they will make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote a child's welfare. The court has to establish that it is more probable that the fact(s) in question occurred than they did not. Mere suspicions are not sufficient. It has to be shown that the child is or is likely to suffer significant harm, with significant being the key word. The harm has to be due to unreasonable parenting i.e. parents not giving the care it would be reasonable for a parent to give that child.

The threshold is established as a matter of fact on the evidence at the point when protective measures are implemented.

Only once the court is satisfied that this threshold has been established does the court have the power to make a care or supervision order.

Finding that threshold is proven does not mean that the court must automatically make a care order. Once threshold is established, the court will then go on to hear argument and evidence to determine what order is in the best interests of the child having regard to the welfare checklist set out in section 1 of the Children Act 1989. This might be a care or supervision order or, for example where a suitable kinship carer has been identified, it might be a residence order. The final outcome may also be an order of "No Order" where the court believes that the interests of the child would be best served by no order being made.

The Public Law Outline usually needs to be considered in the context of whether or not there is a need for an order at that stage and the focus should be upon whether the risk is manageable without an order.

2.9.2 Managing significant harm

Managing possible harm to the child whilst working with families is a delicate task which demands careful social work judgement in discussion with line managers. The Statutory Guidance emphasises the importance of taking pre-proceedings steps such as the Pre Proceedings Meeting which follows the Letter before Proceedings (LbP) and investigating alternative care solutions, it also recognises that there will be some cases where an immediate application to court will be required. The LA may consider that a case may fit into this category and that certain pre-proceedings steps e.g. dispatch of the LbP cannot be complied with because it might place the child at increased risk of harm or fail to stop the child suffering harm. A typical example might be where the social worker considers there is a real risk of a parent absconding with the child if he or she were to become aware that the LA is considering applying to court. This is entirely a decision for the LA, making a judgement based on its professional experience of child protection and its knowledge of the child and the family.

When the court application is prepared there may be some information or documentation which cannot be submitted with the application such as the LbP or kinship assessments which may not yet be completed. It is again essential to emphasise that if the child is suffering or likely to suffer significant harm and s31 threshold has been established following legal advice, the matter must proceed to court. The supplementary form PLO1 lists the documentation, which should accompany the application form itself. Column (d) on that form allows the Applicant Authority to state any reason why it has not filed any document. In an emergency LAs are not required to provide pre-proceedings documentation on issue but will be required to file it later.

2.10 Working with partner organisations and agencies

2.10.1 Sharing information

Sharing information arising from the PPM is subject to the usual guidance and practice which governs the LA sharing of information. The general position is that “the consent of children, young people and their parents or caregivers should be obtained when sharing information, unless to do so would place the child at risk of significant harm. Decisions should also be made with their agreement, whenever possible, unless to do so would place the child at risk of significant harm”¹⁷.

Where consent to sharing information cannot be secured it will generally be safe to share information where this is justified in the public interest. For example, where there is a clear risk of significant harm to a child or adult it will usually be justified to share information so long as sharing that information is in the best interest of the child’s safety and welfare. Detailed guidance can be found in ‘Information sharing: Practitioners’ guide’¹⁸.

¹⁷ *Working Together p. 101*

¹⁸ Information sharing: Practitioners’ guide’, HM Government 920020. Accessible at: http://www.everychildmatters.gov.uk/_files/ACB1BA35C20D4C42A1FE6F9133A7C614.PDF

Chapter 3 - Making a section 31 CA 1989 application

3.1 Preparing an application for court

3.1.1 The forms

Set out below is a list of some of the forms available at the present time with advice on their completion:

- **PLO1 - Application for a care order or supervision order: Supplementary form**

To be filed by the LA with its application. Part 1 is a checklist of the necessary documents. Part 2 is the Record of Case Management Documents filed and to record which case management documents are filed as the case progresses.

- **PLO2 - Local Authority Case Summary**

This standard form should be filed by the LA setting out its position, before the First Appointment (FA), Case Management Conference (CMC) and Issues Resolution Hearing (IRH) and will include details of: proceedings relating to the child, living arrangements, summary of incidents/concerns, key issues in the case and directions for the court to consider.

- **PLO3 - Case Management Order**

This contains standard provisions designed to help the parties, their legal representatives and the court, and has three sections: 1) Preliminary, 2) Order and 3) Recitals. The LA should prepare an initial draft in advance of each advocates' discussion/meeting and share this with all advocates involved in the case, as this document forms the basis of discussions at the advocates' meeting. Following each advocates' discussion/meeting, it is the responsibility of the local authority advocate to file the draft order with the court at least one working day before either the CMC or IRH.

- **PLO4 - Allocation Record and Timetable for the Child**

To be filed by the LA with its application. It sets out an allocation proposal regarding the appropriate tier of court. It will also be used to record the court's allocation decision and reasons. The LA also uses it to provide important dates in the child's life to assist the court set a suitable Timetable for the Child.

- **PLO5 - Standard Directions and allocation on issue of proceedings**

- **PLO6 - Standard Directions and allocation at First Appointment**

Forms PLO 5 and 6 are completed by a judge or legal adviser once an application is lodged at court and at the First Appointment. The court will consider giving standard directions appropriate to each case at Issue and First Appointment stages using these forms

3.1.2 The documentation

All pre-proceedings checklist documents should be filed with the application where available.

The documents which the LA are called upon to create specifically for filing with the application are:

1. The Schedule of Proposed Findings;
2. Initial Social Work Statement;
3. Care Plan for each child;
4. The Allocation Record; and
5. Timetable for the Child.

The Public Law Outline is explicit about the required documents that should be filed and issued by the court.

LAs should file and serve under the category of the 'Other relevant reports and records' (see item 7 on form PLO1, Part 1) the child's full birth certificate or relevant ID as this is likely to be required by the court at some stage and therefore would be useful to be filed at the outset.

3.2 Parties with particular needs

In s.31 CA 1989 proceedings where the social worker or any party believes that a parent may not have capacity to conduct the litigation the court can be asked to make a direction inviting the Official Solicitor to act on that person's behalf. It must be considered that appropriate social work expertise within the local authority disability team can be used pre or post proceedings to inform a decision on their client's capacity. The Official Solicitor is a "litigation friend of last resort" and will only accept that invitation if there is no one else who is willing and suitable to conduct the litigation on the parent's behalf. Invariably in family proceedings it will be difficult to say with any certainty that another family member is suitable because he or she may have a view which is in conflict with the parent or otherwise because he or she is very close to the subject of the litigation so will not be able to present the parent's views properly. It is important that the Official Solicitor is approached as soon as possible if required to assist:

"if all the professionals involved with the proceedings and with the parents, including the judges, solicitors, barristers, advocates, and court staff, are aware of the need from the start of the proceedings to take time to consider the parent and whether the proceedings are proving too much for the parent to fully understand. If at any time there is a genuine concern about the parent's capacity to understand the proceedings and to instruct their solicitor, the parent should be able to ask for, and to receive assistance without being made to feel stigmatised by their disability"

<http://www.officialsolicitor.gov.uk/docs/parentsnetworkarticle.doc>

3.3 Advocates' Meetings

3.3.1 Attendees

A Children's Guardian (CG) is a social work professional appointed by a court to independently represent a child subject a care or adoption procedures. They are officers of Cafcass/CAFCASS CYMRU. Children's Guardians and social workers must not attend Advocates' Meetings but they should be notified of the time and date of the meeting and they should be contactable throughout so that counsel may take instructions as necessary.

The Advocates' Meeting should not take place on the morning of the hearing but in accordance with the requirements of the PLO. It is advisable to book the meeting promptly following any previous meeting. When advocates are considering timetabling a meeting, due consideration should be given to utilising telephone or video conferencing where attendance in person is impractical.

It is recognised that it is sometimes unhelpful to a party to have a different advocates representing him or her at various hearings. At times, this can have a bearing on the smooth running of the proceedings. Any client should be free of constraints to choose who he or she wishes to instruct as his or her representative and therefore the Practice Direction (PD) cannot be prescriptive on the issue. Nevertheless the PD does acknowledge the concern and provides a reminder to advocates (for all parties) that the advocate who represents at the final hearing should be the same advocate representing the client at the CMC and IRH. Where this is not possible the PD suggests that an advocate who is familiar with the issues in the case should attend¹⁹.

3.3.2 Preparation

The aim of the Advocates' Meeting is to facilitate agreement between the parties and narrow the issues in dispute²⁰. In order to save valuable court time the Advocates' Meeting also acts as a forum where the draft Case Management Order is discussed and prepared²¹. Meetings will only be productive if all the advocates have prepared what is the background to and the issues in the case, what their respective client seeks to achieve from the proceedings, and up to date instructions from their clients in advance but as close to the Advocates' Meeting as possible.

To aid the smooth running of the Advocates' Meeting the draft Case Management Order should be prepared as an initial draft by the LA in advance of the Advocates' Meeting itself. If this is circulated to the other parties even a day before the Advocates' Meeting is scheduled to take place, it will act as a working document which all can come to the meeting armed with comments on. It will also act as the agenda for the meeting which would be helpful.

¹⁹ PD, para. 16

²⁰ PD, para. 3.11

²¹ PD, paras. 13.1-13.7

If proceedings are to run smoothly and with as little delay as possible, it will be important that all parties comply with the filing of evidence and in time. Where compliance with a particular direction is not looking possible, the relevant party's representative must seek agreement from all the parties for an extension of time or draw the non compliance to the attention of the court.

3.3.3 Drafting the Case Management Order

During the Advocates' Meeting there will be a discussion about the Case Management Order and the Applicant's advocate (usually the LA) will take the lead in preparing or drafting that document together with the other advocates. Ideally matters can be agreed and the Case Management Order can be filed as a single agreed case management tool to assist the judge at the hearing. Where that is not possible the advocates will specify on the Case Management Order (or on a separate document if necessary) the provisions which they agree and disagree²². There must be a clear narrative detailing what the LA is asking the court to do, with the CMO fully completed. Detailed standard variable directions are available from the HMCS website to provide assistance on the full and appropriate wording to be used when considering the required directions for the draft case management order.

3.4 Care planning

The plan for the care of the child should be based on findings from the initial and core assessments. It should set out the aims of the plan and intended outcomes for the child, informed by the findings from the assessments ie. The identified developmental needs of the child and the capacity of the parents to respond to the child's needs in the context of their wide family and environmental factors. It will set out clearly what the plan for the child if the Court makes a care order.

In those relatively few cases where the identified permanence option, at the point of the commencement of proceedings, is for the adoption of the child, and where the decision that the child should be placed for adoption has been taken in accordance with the Adoption Agencies Regulations 2005 (SI 2005/384), the local authority must apply for a placement order issued simultaneously with, or as soon as possible after, the issue of the care proceedings.

3.5 Role of the Children's Guardian and the Independent Reviewing Officer

Where possible the Children's Guardian (CG) should meet with the child, where age appropriate, and with other parties in advance of the First Appointment (FA). The Guardian must have read the court papers and provided the required analysis.

The Practice Direction defines Case Analysis & Recommendation (A&R) as being a "written or oral outline of the case from the child's perspective prepared by the Children's Guardian or other officer..."²³. A list follows that paragraph of the PD setting out the particular points that the Case

²² PD, para. 13.5

²³ PD, para. 25(8)

A&R should address. It is anticipated that the CG may not always be in a position to file a written Case A&R and this is why the definition allows for an oral outline to be provided by the CG at the FA. Where an oral report is given it is suggested that the child's solicitor takes a note of the oral report and then files it as an agreed note. **However, in Wales practice guidance requires that the CG provides an initial analysis in written form at the earliest stage and if feasible by the FA.**

In subsequent hearings, the CG should be up to speed and in a position to provide written Case A&R that will be filed by the child's solicitor as per the court's directions.

The child's care plan must be maintained by the local authority and kept under review at the statutory intervals and whenever significant changes are proposed to the plan throughout proceedings. It will be good practice for the Children's Guardian and the IRO to maintain a constructive working relationship throughout proceedings. Both the Children's Guardian and the IRO should be properly informed about the local authority's plans for the child so they are able to scrutinise these plans to make sure that they are based on good quality assessment so that the plan demonstrates how the child's needs will be met, with the child being provided with the opportunity to be meaningfully involved in planning for their care. The local authority will need to take the views of the IRO on the quality of planning into account in formulating the final care plan to be put to the Court²⁴.

Where a child is accommodated by the LA upon issue of proceedings e.g. under s20 of the CA 1989, it is good practice for the LA to serve a copy of the LA Case Summary (form PLO2) together with a copy of the Initial Social Work Statement, Schedule of Proposed Findings, Care Plan and Allocation Record and timetable for the child on the IRO. Additionally the LA should provide the parties and the Children's Guardian with the name and contact details of the IRO together with the dates of any statutory reviews which have been arranged.

At the conclusion of proceedings IROs may well have an important role in ensuring that the implications of the agreed care plan are understood by all professionals, carers and family members, as there will no longer be any oversight by the Court of the care planning process. In particular, the IRO will have a role in enabling the child to understand their plan and to participate in future care planning.

²⁴ The Children and Young person Act includes provision which significantly strengthens the IRO function. In future each looked after child must have their own personal named IRO; the IRO will be responsible for monitoring the quality of the local authority's care planning function; and ensure that in every care plan due consideration has been given to the child's wishes and feelings.

3.6 Issues Resolution Hearings and Final Hearings

The purpose of the Issues Resolution Hearing (IRH) is to narrow the issues in so far as to conclude proceedings if possible.

There is some concern amongst professionals that a final hearing is only listed by the court at the IRH. This seems to have given rise to some anxiety about the List Office's ability to secure a date in the court diary for a final hearing soon after the IRH. Where the court is able to do this, some are worried that there will not be an opportunity to give adequate notice to experts and that this may also cause difficulty for the consistency of advocates.

The Practice Direction itself does not require final hearings to only be listed at the IRH. The PD states that at the Case Management Conference (CMC) the court will set a date for the IRH and "if necessary, specify a period within which the Final Hearing of the application is to take place unless a date has already been set"²⁵. Rather than taking a prescriptive approach the PD is flexible about the listing of final hearings leaving it for the court to decide when it lists the final hearing and in accordance with its case management functions. The Timetable for the Child will greatly influence how the court manages its case especially in regard to the listing of hearings.

3.7 Collective participation and co-operation

All professionals involved in public law proceedings will work together with the court to assist achievement of the overriding objective. The parties have a duty to do this, which is enshrined in the PD²⁶.

It is also emphasised²⁷ that the parties and their representatives should co-operate with the court in case management. Furthermore, the parties and representatives should monitor compliance (generally) with the Court's directions and inform the court or court officer about any failure to comply with a direction of the court or any other delay within the proceedings²⁸. A number of courts have a case progression officer (CPO) who should be the first point of contact with regard to Public Law cases.

3.8 The nature of the Public Law Outline

The purpose of the PLO is to reduce delay in these important proceedings concerning the short and long-term placement future of children. It has had to be robust in order to achieve its objectives and to secure outcomes for children and families involved within the target timeframe set by the Timetable for the Child (which is one of the case management tools)²⁹. It should be

²⁵ PD, para. 14.5(2)

²⁶ PD, para 2.3

²⁷ PD, para 5.4

²⁸ PD, para5.5

²⁹ PD, paras 3.2-3.4

borne in mind that the PD does acknowledge that the court has flexible powers. At any stage in the proceedings the court may exercise those powers³⁰.

The expectations³¹ are that the proceedings should be conducted using the Case Management Tools and Documentation and determined in accordance with the stages in the Timetable for the Child (together with the timeframes indicated for the various stages within the PLO). It is however, acknowledged that the child's welfare in some cases may require a more tailored approach; possibly one that does not fall firmly within the stages and expectations of the PLO. In those cases it will be for the court to determine the appropriate case management directions and timetable³² but the court must record on the face of any order its reasons for departing from the PLO's general approach. This aids the parties' understanding of why the court is managing its case in the way it is and it also protects the court itself from any potential criticism for departing from the PLO's expectations.

³⁰ PD, paras 17.1-17.3

³¹ PD, para. 4.1

³² PD, para. 4.2

Annex A: Immediate Issue Letter (template)

SENT BY [RECORDED DELIVERY/BY HAND]

Office Address

Contact

Direct line

My ref

Fax

E-mail

Date

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

Re: [insert name of Local Authority] CONCERNS ABOUT [insert name(s) of child]

I am writing as you were told I would, when you spoke to [name of social worker] on [insert date of last interaction]. As you are aware [name of Local Authority] is extremely worried about your care of [name(s) of child/ren]. We told you about these main concerns in [reference to the Letter before Proceedings/PPM/child protection case conference/any social work meetings].

We have tried to work with you to help you improve your care of [name(s) of child/ren] but unfortunately things have not changed. We are writing to tell you again that we will be going to court to try and make sure [name of child] is safe. You will soon receive a copy of our application to the court and other important documents, which set out the key issues.

We would urge you, if you have not done so already, to get advice from a solicitor. We have sent with this letter a list of local solicitors who specialise in work with children and families. They are not part of Children's Services (Social Services).

Yours sincerely

[name]

Team Manager

Local office/service

cc. Social Worker [name]
Local Authority in house Legal Team

Enc. List of Law Society Children Panel Solicitors

Annex B: Letter notifying a child about a Pre-Proceedings Meeting (template)

Delivered by Hand

Office Address

Contact

Direct line

My ref

Fax

E-mail

Date

Dear [name]

As you know, there have been some concerns about how your parents/carers [delete as appropriate and/or name] have been looking after you.

Although we have been trying hard to sort out these problems, unfortunately, at the moment, we are still worried that you may be at risk of harm.

Our next step therefore is to hold a 'pre-proceedings meeting'. At that meeting we will try to agree a plan with your parents/carers about what needs to be done to deal with our worries about you.

If we cannot sort things with your parents/carers at this meeting, it may mean that our only option is to go to court. Hopefully this will not happen but if it does, you will be given plenty of information about what happens and your role in it all.

I am now writing to invite you to attend the pre-proceedings meeting which is being held on [date] at [time] at [venue]. This will give you the chance to tell the meeting about your thoughts, wishes and feelings. If you would rather not attend the meeting, that is fine. You can always put your thoughts in writing if that is easier.

I shall be present at the meeting, with my manager, [name] and our legal advisor. Your parents have of course been invited and may have their lawyer with them.

I shall call you soon to check if you would like to attend all or part of the meeting. It may be that you would like an adult (who should be unconnected to the family) to support you during the meeting.

Alternatively, I may be able to arrange for an advocate to attend the meeting with you. An advocate's job is to make sure that a young person's views are heard, either through speaking for a young person or helping a young person speak for him or herself. Please let me know if you would like any more information on this and you can telephone me on [.....].

If you have any questions or worries please contact me on the above number.

Yours sincerely

Social Worker [name]
Local office/service

Annex C: List of potential agenda items for a Pre-Proceedings Meeting

- Introductions
- Setting out any special requirements (interpreter, sign language interpreter, presence of an advocate)
- Outline the purpose of the meeting and establish ground rules and specify roles
- Outline duty of the LA to protect children, duty (where possible) to promote the child living with the family, balance of that against need to protect and promote welfare of the child. Explaining why it may be that a court application is necessary but that the LA hopes that the meeting may avoid the need for that
- Explain the concerns of the LA and referencing the LbP
- Initial views and opinions of the parent and specifying or clarifying any areas of agreement and disagreement
- Discuss what can be done to help improve the child's situation on the part of the parent including any assessment outcomes and gaps identified
- Discuss what services have been provided to the family by the LA and can be provided to help i.e. promoting the idea of collaborative working between family and the LA in the best interests of the child
- Discuss the outcome of the Family Group Conference/Family meeting
- Identification of alternative carers (this will be a revisit to the concept as it will have been discussed previously within the assessment process)
- Lead into a discussion of the proposed plan for the child including the need for any further assessments (the auspices of that plan i.e. Child in Need plan or Child Protection Plan)
- Break away for both parent and the LA to take advice from their respective lawyers
- Initial views from parent as to their thoughts on the plan/agreement
- Reconvene for focused discussion on the plan. Can an agreement be reached on the plan/agreement as it stands in draft or can revisions/amendments be agreed now to avoid proceedings
- If no agreement can be reached such that the LA believes it will have to issue an application with the court consider scope for discussion as to any issues which may be resolved now.

Brief case example: mother abuses alcohol and her partner is abusive to her. Both elements raise safeguarding concerns. At the PPM the plan is that mother should (1) agree to cease excessive drinking and agree to attend a community drugs and alcohol programme; and (2) agree to her partner moving out of the family home and to seek assistance from domestic

abuse support group/project to support mother with skills/knowledge to leave a violent relationship and to avoid entering into similar relationships in the future. Mother agrees to do (1) but not to do (2). Mother provides details for the first time of alternative carers but refuses to agree to information being disclosed to those persons. The LA decides that it will need to seek an interim care order to safeguard the child. Although proceedings have not been avoided, one crucial issue has (potentially) been resolved and the LA will now be able to press ahead with consideration of alternative carers whilst not disclosing information which the mother has not consented to.

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