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Leicestershire County Council - Pre-proceedings Guidance

Applies to- Children in particular circumstances

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1. What is Pre-Proceedings?

The Public Law Outline: Guide to Case Management in Public Law

Proceedings came into force with effect from 6th April 2010. This followed on from previous statutory guidance for local authorities effective from 2008, which resulted from the Review of the Child Care Proceedings System in England and Wales. A Pilot Scheme of a revised Public Law Outline (PLO) was phased-in between 1st July 2013 and 7th October 2013 and ran until 21st April 2014. A revised Public Law Outline was then introduced on 22 April 2014. A subsequent report by the Public Law Working Group in March 2021 has subsequently reviewed and strengthened the use of the Public Law Outline.

The Public Law Outline sets out streamlined case management procedures for dealing with public law children's cases. The aim is to avoid care proceedings if possible and for those cases where proceedings are necessary, identify and focus on the key issues for the child, with the aim of making the best decisions for the child within the timetable set by the Court, and avoiding the need for unnecessary evidence or hearings.

As well as the Court-set timetable, the case management tools also involve the case management documentation to be filed by the local authority and other parties, (including case summaries and a schedule of proposed findings), advocates' discussions/meetings, a Case Management Hearing and an issues resolution hearing before the final hearing.

Under the revised section 32(1)(a) of the Children Act 1989 (introduced by section 14 of the Children and Families Act 2014), care and supervision proceedings must be completed 'without delay, and, in any event, within twenty-six weeks beginning with the day on which the application was issued' unless the case is exceptional.

This places an increased emphasis on pre-proceedings work and the quality of assessments.

Vital to the Public Law Outline is the use of pre-proceedings and work completed prior to proceedings. This is for two reasons:

- It may divert a case along a route which avoids the need for care proceedings;
- When that is not possible, and proceedings have to be commenced, the preparatory work will facilitate the smooth running of the case.

Usually, when PLO is initiated, the child has been subject to a Child Protection Plan but insufficient progress has been made. Where the social worker feels that the risk of harm to a child is so great, or the case is so urgent, a decision may be made that the case should go straight to court and the pre-proceedings work does not take place. This guide, however, will focus on this extremely important pre-proceedings work.

What should pre-proceedings work include?

When it is decided that pre-proceedings work with the family will take place, there are specific things that need to happen from the date of the decision. These are:

- Letter Before Proceedings
- Pre-Proceedings Meeting
- Period of change— this is the time for the parents to make the necessary agreed changes to reduce the concerns. Support is provided by the local authority and progress is monitored by them through for example child protection core group meetings and conferences and is set out in the trajectory.
- Pre-Proceedings Review

The key activities in pre-proceedings work are:

- To fully explore voluntary arrangements before an application to the Court is made.
- To look within the child's extended family network – using Family Network Meetings– to determine whether the child can remain within their family, and whether this could prevent the child being looked after.
- To completely assess parents' capacity to meet their child's needs
- To complete any assessments as considered necessary by all parties – within planned timescales
- To provide advice and support
- To set out clearly defined expectations of all parties

2. The Process of Pre-proceedings

The Public Law Outline states that the local authority should hold a legal planning meeting to obtain legal advice about a case when they remain concerned about whether a child is at risk of significant harm and improvements and changes are not being made via the current intervention. Guidance states that this should be attended by the child's social worker, relevant social work managers, and the local authority lawyer. At the meeting, a decision should be made in principle about whether the threshold criteria have been met. The local authority should then decide, based on a robust analysis of the level of assessed risk, whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, or whether proceedings should be initiated immediately. The meeting should also identify any evidence gaps, clarify whether additional assessments will be required, and consider what would be a suitable draft care plan for the child. Within Leicestershire County Council, the functions of a legal planning meeting, set out above, take place at the *Child Decision Making Panel* as a formal meeting and decision-making forum.

The decision to commence pre-proceedings should be made at the Child's Decision-Making Panel (CDM). Prior to a case being presented at CDM, it is expected that there is a discussion about the case held between the social worker, team manager and service manager. This will be in the form of a Key Decision Discussion (KDD).

In urgent circumstances where it is unsafe to delay until the next CDM, this process can be supplemented with an urgent Legal Planning Meeting subject to Head of Service approval.

If the decision is taken at the Child Decision Making Panel to undertake a formal pre-proceedings process, then this process will be commenced. Legal advice will be given regarding Threshold (ie. for pre-proceedings or issuing care proceedings). Cases that enter pre-proceedings are cases where the concerns are so serious that if parents do not engage with the pre-proceedings process, then an application will likely be made to the court.

When the decision is made to enter pre-proceedings at Child Decision Making Panel, discussions are held regarding the actions needed and length of review.

3. Letter before Proceedings/Intent to Issue

Pre-Proceedings

To commence pre-proceedings, the Local Authority must write a formal letter to notify parents/legal guardians. This is the Letter Before Proceedings. This letter is to be written by the allocated team either by the team manager or the social worker and be approved by both. The letter is then to be sent to legal services to approve prior to this being shared with parents. This letter should be sent within **5 working days** of the decision being made to commence pre-proceedings. A letter should be written for all parents, and all persons with parental responsibility.

Parents need to receive this letter allowing a **minimum of 5 working days**, between receiving the letter and the date of the pre-proceedings meeting. The Pre-Proceedings Meeting should take place **within 15 working days** of the decision to commence pre-proceedings

This letter should be shared and discussed with parents and importance of seeking legal support made clear. It should include a list of solicitors for parents. Parents will need to be told that they do not have to pay for a solicitor, and this will be free (if they hold Parental Responsibility).

This letter should be clearly written, jargon-free, and provide details of the concerns in a succinct way.

This letter should **always** follow the agreed format unless there is an exceptional need to deviate.

See appendix 1.

Issuing Care Proceedings

If the decision has been made to issue care proceedings directly, and not have a period of pre-proceedings, then a Letter of Intent to Issue should be written and sent ***within 15 working days*** of the decision to issue care proceedings.

Care Proceedings should only be issued with the explicit approval of a Head of Service unless in exceptional circumstances. For planned applications the case will ordinarily need to be presented at CDM.

This letter should be shared and discussed with parents and importance of seeking legal support made clear. It should include a list of solicitors for parents. Parents will need to be told that they do not have to pay for a solicitor, and this will be free (if they hold Parental Responsibility).

This letter should be clearly written, jargon-free, and provide details of the concerns in a succinct way.

This letter should **always** follow the agreed format unless there is an exceptional need to deviate.

See appendix 2.

4. Trajectory plan

A trajectory plan needs to be developed to make clear the work and actions needed as part of pre-proceedings. This is to ensure that progress remains on track and that any drift can be noted and addressed.

This trajectory must be prepared and ready before the pre-proceedings meeting and shared with the parents at this meeting. Within the meeting, parents need to be given opportunity to suggest changes/additions to this trajectory.

This trajectory should be able to take many of the actions from the child protection plan, however, making them specific and time-limited for the period of pre-proceedings.

This trajectory needs to include expectations of parents, social worker and children's services staff, and other professionals. This trajectory will outline all actions, assessments, services and support that will be included in the pre-proceedings period. This trajectory should be signed by parents, the social worker, and team manager as a form of written agreement.

The trajectory should use the template as a basis. This trajectory includes a signature page for parents, the social worker and team manager, and thereby functions as a written agreement.

This trajectory should set out the work needed from the first meeting to the review meeting. If progress is not being made and trajectory is not where it should be between **week 6 – 8**, there should be a discussion between the social worker and team manager as how to proceed.

An amended trajectory may be needed after the first pre-proceedings review meeting, if pre-proceedings are to be extended.

See appendix 3

4. Pre-proceedings Meeting

The purpose of the meeting is to identify whether it is possible to reach agreement about what needs to happen to protect the child from harm, so that court proceedings can be avoided and therefore, what is being proposed as part of this pre-proceedings process.

The meeting should be chaired by the Team Manager or Senior Practitioner and attended by the child's social worker and a legal representative for children's services.

This meeting is also attended by parents and their legal representative. A decision will need to be made as to whether the meeting is held jointly for parents, or separately. This will depend on the case itself and whether parents are separated or presenting as a couple. Each parent should have their own solicitor.

If parents attend the meeting without a solicitor, they should be advised of how important this meeting is and that a solicitor is essential to give them independent advice. Options are then to re-arrange the meeting for another date, giving the parent time to seek a solicitor, or continuing with the meeting but without any legal representative's present (ie, children's services legal representative would not attend the meeting either). This decision will depend on the case itself.

A formal record should be produced of the meeting. At present, it is proposed that these should be taken by the team's social work

coordinator. This is currently under review but is agreed in principle. If they are not available, a request should be made to business services staff and if they are not able to assist, then this request should be made to legal services.

The Record should follow the template (appendix 5). The Record should be circulated **within 7 working** days of the meeting. Once written, the Record should be sent to the Team Manager and Social Worker to check and confirm that they are an accurate representation of the meeting. The social worker or team manager is to then forward the Record to the legal representative to circulate. Business support staff should upload this document onto the child's Mosaic file.

This meeting should follow the set agenda and is to make clear the safeguarding concerns regarding this child, what support is being offered and what the parent needs to do to reduce the concerns in the form of the trajectory plan. All actions needed should be discussed in this meeting, including any expert assessments or reports – such as DNA testing, cognitive assessment, medical disclosure, or other reports as agreed/recommended by CDM.

At the end of the meeting, a review pre-proceedings meeting must be booked. *This should take place within no more than **12 weeks***, however, the timeframe should be specific to the case, so therefore a review could be booked for 6 weeks or 8 weeks or 12 weeks depending on the case.

See appendix 5.

5. Review of Pre-proceedings

Pre-proceedings should be closely monitored and actions progressed as set out in the trajectory plan. Pre-proceedings status is when there are serious concerns about the welfare of a child in their parents' care, where the Local Authority are actively considering issuing care proceedings. For this to be the case, threshold needs to be met in terms of the legal definition of significant harm under the public law outline.

Any decision to issue Care Proceedings requires the case to be presented at the Children's Decision Making Panel unless explicitly approved by a Head of Service should it be necessary to issue Care Proceedings earlier and it would not be appropriate to wait until the Children's Decision Making Meeting.

If a parent does not engage with pre-proceedings process, the consideration that threshold has been met and that the concerns for the children are so serious, issuing care proceedings may be needed. A decision to issue care proceedings due to non-engagement should be made via the Child Decision Making Panel or by the relevant Service Manager in consultation with their Head of Service.

If there is critical incident during the time of pre-proceedings, it may be necessary to issue care proceedings as an emergency or bring the review meeting forward. All such decisions should be made via the Child Decision Making Panel or by the relevant Service Manager in consultation with their Head of Service.

At the pre-proceedings review meeting, a decision can be made to end the pre-proceedings process due to reduction in the concerns, to extend the pre-proceedings for a further period, or to issue care proceedings. Pre-proceedings should be in place for a short time-

limited period, and should ideally last no longer than **16 weeks**. Local Guidance states that pre-proceedings should be in place for a **maximum of 6 months** (26 weeks).

If pre-proceedings is being extended beyond 26 weeks, it should be considered how long this extension should be and what work needs to take place for the pre-proceedings to either be ended if the concerns are mitigated, or for the case to be issued.

Pre-proceedings that exceed 26 weeks are required to be reviewed at Child Decision Making Panel.

6. Best practice within pre-proceedings

Involvement of Family and Friends

It is incredibly important that information about family members and friends is sought within pre-proceedings. This is so that viability assessments can be completed of alternative carers for the children, in case care proceedings are issued or accommodation is needed. This is also so that we can ensure that there is a family network and safety network around the child and family.

Parents should be asked to provide information at the pre-proceedings meeting of family members and friends (if this information is not already known).

Arrangements must be made for a family network meeting to bring the family support together to create a safety network during pre-proceedings. This should take place ***within 20 working days of the initial pre-proceedings meeting*** and be included in the trajectory plan.

Decisions also need to be made regarding which family members viability assessments should be completed of. Viability assessments need to be completed within the pre-proceedings period. If positive and where appropriate assessments need to progress to a full kinship assessment via the kinship team.

It is appreciated that it is sometimes difficult to gain this information from families; however, it is vital that we continue to try to do this. Tools such as genogram's or other associated family finding tools can help (see tools and information on the learning hub about finding family networks).

See appendix 6 for an example of a letter that could be given to family members.

Assessments of Parents/Guardians

During this time, we should be assessing parents' ability to safely meet the needs of their children against what the worries are. Consideration needs to be given as to what form of assessment is needed – ie, is this by a social worker or support and assessment worker, is this a full parenting assessment or a specific targeted parenting assessment (please see the East Midlands Parenting Assessment Framework Guidance) or risk assessment.

It should be considered if additional information is needed from other professionals such as mental health professionals or GP. If so, consent should be sought from parents during the pre-proceedings meeting and signed paper consent given.

It should be considered if additional assessments are needed of parents – this could include expert assessments such as psychiatric or psychological assessments, DNA testing or drug testing. If these expert assessments are required, they need to be agreed and approved at Child Decision Making Panel or by the relevant Service Manager. They should then be proposed to parents during the pre-proceedings meeting and their consent sought. If consented to, legal services will approach experts and write the letter of instruction and arrange this thorough parents' solicitor.

It is important to consider if the parent has any learning needs or needs in relation to their understanding of the concerns or Children's Services involvement. If there are concerns regarding

this, consideration needs to be given to a cognitive assessment. When thinking about parents' understanding needs you could ask questions such as: do you have a diagnosis of learning disability or difficulty, did you have additional help or support in school, are you able to read and/or write, do you have difficulty remembering information. As a worker, you also need to consider your interactions with the parent and their past presentation. This cognitive assessment can be completed if you think a parent lacks capacity, and/or if you are questioning their level of understanding. Again this needs to be discussed at the pre-proceedings meeting and parents' consent sought.

Information from Professionals

It is important during pre-proceedings to regularly contact other professionals for their views and information that they can share. For some cases, legal services may give advice that it would be beneficial to have a statement from some involved professionals, such as a health visitor, setting out their concerns. If so, legal services can assist in taking this statement if information of the professional is provided to them.

Involvement of all Parents/Guardians

All parents with parental responsibility must be included in pre-proceedings and must be invited to a pre-proceedings meeting, even if they do not currently have care of the children.

If a parent, such as a father does not have parental responsibility, however, the parents are clear that person is the child's father, then they also must be included and invited to a pre-proceedings meeting. If the father does not have parental responsibility, consideration will

need to be given as to how much information can be shared with this father. Advice should be sought from legal services.

If the mother refuses for the father to be contacted (yet CFS know his contact details), advice should be sought from legal services.

If the mother refuses to provide information for the father so it is not possible to contact him, continued conversations will need to be held during pre-proceedings to emphasise the importance of involvement of the father in the hopes that the mother may then change her mind.

Steps must be taken by Children's Services to try and find information about parents/guardians if they are not known.

Any person with parental responsibility must be included and invited to a pre-proceedings meeting, this may include a family carer who has parental responsibility via an order such as a Child Arrangements Order or Special Guardianship Order.

Section 20 accommodation

For some cases, pre-proceedings may include Section 20 accommodation for a child. Please see associated guidance on Section 20 accommodation for further information. Section 20 accommodation should be agreed at Child Decision Making Panel as part of the pre-proceedings/intent to issue plan, or by the relevant Service Manager.

If this is for a care placement outside of the family network then a Decision to Seek Accommodation step must be completed on Mosaic at the earliest opportunity.

If this is for a family placement, a viability assessment must be completed and approved by the relevant locality service manager,

kinship team manager, and then Regulation 24 approval given by Head of Service. A Decision to Seek Accommodation step must also be completed on Mosaic.

Parental consent is ordinarily needed for Section 20 accommodation and therefore this should be discussed and agreed at the pre-proceedings meeting. If there is more than one person with parental responsibility, informed consent is needed from all parties with parental responsibility.

Section 20 is not always the most appropriate option for children and considerations need to be given as to what is in the child's best interests. For example a family arrangement not meeting the requirements of Kinship Fostering Standards, Parent's not consenting to Section 20, but not objecting etc. It is important to take relevant legal advice or direction from senior management in these circumstances.

Direct Work with the Children

It is important that direct work with the children continues through pre-proceedings so they understand what is happening (appropriate to their age and stage of development). This could be through individual sessions with the children and/or words and pictures. It is important that workers can review and monitor the lived experience of the children and how this changes, or not, during pre-proceedings.

End

