

# **Pre-Proceedings Protocol: Pan Dorset approved by DFJ November 2017**

This protocol relates to Local Authorities operating within the areas covered by the Designated Family Judges for Bournemouth, Dorset and Poole.

## **1 Introduction**

This protocol is a collaborative document compiled by Bournemouth, Dorset and Poole Local Authorities to achieve consistency and effectiveness in the approach social workers and their legal representatives take prior to the issue of Care Proceedings.

If Care Proceedings are issued, the family judiciary in Dorset will have an expectation that this protocol will have been followed unless there is good reason to the contrary, for example, a situation of genuine urgency.

The Protocol does not contemplate or encourage any drift or delay in decision making for vulnerable children. The judiciary will be astute to identify cases where the issue of Care Proceedings has been delayed beyond a timescale which is justified by the requirements of this Protocol or the child's welfare, particularly cases where children are accommodated pursuant to s20 of the Children Act 1989.

## **2 Context and aim of the Pan-Dorset Pre-Proceedings Protocol**

This protocol has been developed to support social work practice across the region. The purpose is to provide social workers and their managers, and other practitioners, with a set of guidance notes to support practice prior to, and throughout, the process of a Care Proceedings.

The aim is to ensure that when Care Proceedings are necessary social work practitioners come to Court with a clear evidence base, having undertaken work, during the Pre-Proceedings stage, with colleagues from Early Help Services. In so doing the Court process is anticipated to run smoothly and Proceedings should thereby conclude in a timely manner, within the statutory 26-week timescale.

The Protocol outlines the work to be completed by the Local Authority prior to the initiation of Care Proceedings in chronic/ multi issue cases. It has been drafted in conjunction with representatives from the Local Bar, Family Solicitors, Lawyers and Senior Social Work Managers from each of the Local Authorities, with input from CAFCASS, with a view to providing a consistent approach to support families Pre-Court where Care Proceedings are a real possibility.

This Protocol is intended to supplement the guidance given in the revised Public Law Outline. It is aimed to be a useful guide and reference point for practitioners in the hope that the Family Court in Dorset will be in a stronger position to complete Care Proceedings cases justly within 26 weeks. It is intended to improve the consistency and quality of social work assessments and plans Pre-Court and within Proceedings and give the local Judiciary confidence in the expertise of the Social Worker.

### **3 When is it appropriate to follow Pre-Proceedings processes?**

When concerns for a child escalate beyond the remit of the Early Help Assessment and support remit, the continuum for offering support moves into a statutory framework of Child in Need (Section 17 of the Children Act 1989) or Child Protection (Section 47 of the Children Act 1989). Local Authorities will generally try to support children and their families by planning interventions in line with these statutory duties and child's timeframe prior to embarking on pre-proceedings processes outlined within this protocol.

A decision to intervene legally in a child's life is a significant one which will have major consequences for that child and their family. It is crucial that any decision to do so is based on clear, evidence-based assessment and planning, that is informed by attempts made to manage risk and support the child to remain in their family without further escalation to Care Proceedings.

The Local Authority will follow Pre-Proceedings processes in cases where immediate intervention by the Court is not yet established but concerns warrant Pre-Proceedings clarity and oversight.

Where the assessment/decision making concludes that a child's safety demands immediate protection, the Local Authority will issue without the implementation of Pre-Proceedings work. If the child's safety demands an application for an Emergency Protection Order, this will be made without delay. If the situation does not warrant an Emergency Order the Local Authority will generally issue an application for an Interim Care Order on notice to the parents.

### **4 Decision Making and Management Oversight**

Each Local Authority has established arrangements for local decision making in relation to Pre-Proceedings processes and the issuing of Care Proceedings, which include access to legal advice to consider whether threshold is met and to inform the decision making and planning process.

In chronic neglect cases, it is expected that Pre-Proceedings processes will be followed. It is however imperative that Local Authorities ensure robust monitoring and oversight of these cases to avoid unnecessary drift for the child. Local Authorities have established tracking systems to monitor these children, ensuring timely decision making and management that includes CP chair/ IRO oversight of Child Protection and Looked After Children cases.

During the Pre-Proceedings process, if not before, Local Authorities should use best endeavours to facilitate a Family Group Meeting to consider the wider family support available to the child and their parent/carer. This meeting should also include an identification of any alternative carers from the informal Friends and Family network who are willing to be assessed and able to provide care should a decision be taken to place the child with alternative carers.

## **5 Letter Before Proceedings and Pre-Proceedings Meetings**

There is consensus between the Local Authorities that cases should have Pre-Proceedings meetings at the earliest stage in the child's journey where threshold is thought to be met. This allows parents to have access to legal advice at a stage when there is a greater chance of change being made and sustained within the child's identified timeframe. Assessment and intervention required to effect change will be discussed at the Pre-Proceedings meeting, thus enhancing the prospect of progress through preventative strategies.

A Letter before Proceedings is the trigger for non-means; non-merits tested publicly funded legal advice and assistance. Letters before proceedings will therefore need to inform the parents that the local authority is considering the possibility of care proceedings if a plan cannot be developed to address the concerns identified about their parenting. This does not make Proceedings inevitable, but will have the effect of triggering entitlement to Pre-Proceedings legal advice, and will enable parents to have the benefit of legal representation at the Pre-Proceedings meeting.

The Letter before Proceedings will clearly outline the concerns that need to be addressed by the parent and the timeframe for change. It will also define the support that will be provided by the Local Authority and other agencies to achieve the stated objectives. The letter will reinforce the need for the parents to identify family members as sources of support or alternative carers if the parents cannot make the changes identified as necessary in a timescale that meets the needs of the child.

The Letter before Proceedings will invite the parents and their legal representatives to a Pre-Proceedings meeting with the Local Authority social worker and their legal representative. The meeting will be chaired by the Local Authority.

The Pre-Proceedings meeting provides an opportunity to set out clearly for parents, the position of the Local Authority in respect of existing concerns and to identify improvements the Local Authority considers essential in the parenting of their

children. It is an opportunity to discuss the workplan needed to assist the parents in addressing identified risk and deficit. The meeting is outcome focussed and clear goals are set in relation to parental expectation and the overview and monitoring of progress. Additionally, it provides a setting for the parents to hear, with legal support, the steps that will be taken by the Local Authority should circumstances remain the same or further deteriorate.

Specifically, the Pre-Proceedings meeting will identify any additional assessments proposed by the local authority, and the arrangements that will be made to facilitate these assessments.

The Pre-Proceedings meeting must also promote, as constructively as possible, the need for parents to identify family and friends for the purposes of evaluating their capacity to offer support to the parents, and/or as potential alternative carers for the child, in the event that this becomes necessary. Strong emphasis by all parties to identify potential alternative cares is an essential component of this meeting.

The minutes of the meeting should provide an accurate record of measures discussed to improve the children's circumstances, and the offer of assistance by the Local Authority, and partners/family members. The child, where age and developmentally appropriate, should be informed of the outcome of the meeting by the social worker and/or an appointed advocate. These minutes will form part of the supporting evidence provided to the court on issue.

## **6 Social work practice Pre- Proceedings**

When concerns increase for a child it is essential that Local Authorities work effectively, combining their own evidence and those of partners to regularly evaluate the threshold of risk and deficit and to increase levels of intervention and support to ultimately avoid, where possible, the necessity of issuing Care Proceedings.

Where preventative measures do not sufficiently reduce the level of risk and concern for the child, Local Authorities, on issuing will need to evidence to the Court work that has been undertaken during any Pre-Proceedings phase, including;

- (a) Multi-Agency work with the child and family to effect sustainable improvement and change.
- (b) Robust, analytical expert social work assessments underpinned by intervention tools that consider child impact, parental strengths and challenges and capacity to change.
- (c) Findings of any wider commissioned expert reports.
- (d) Pre-Proceedings meetings with the parents and their legal representatives at an early stage of the process to identify the significant issues to be addressed and the mechanisms of support.

- (e) Family Group Conferences/Meetings to establish and assess, where necessary, the potential for family and friends to offer support to the parents or to act as possible alternative carers for the child.

## **7 The Local Authority 'expert' Social Work Assessment**

Once a child becomes known to children's social care, as either a Child in Need, Child Subject of a Child Protection Plan, or indeed as a Looked after Child, an evidence based, social work assessment is undertaken. This forms part of a continual assessment process and should not duplicate earlier assessments. Identifying the child's welfare and key developmental timeline will ensure focus and avoid drift and delay.

In establishing the level of statutory concerns, underpinned by evidence from the multi-agency professional network, the social worker will compile a genogram and chronology and begin to collate an evidence base; identifying the key issues to address and the most appropriate assessments and support to respond. From a platform of a robust, analytical assessment, planning and reviewing process the social worker will build an evidential picture that is crucial in ensuring timely planning for the child in the event of further escalation or deterioration.

When assessing risk, and need and planning for permanence, social workers must be mindful of the child's voice and their stated wishes and feelings.

- A social work assessment will tell the child's story and demonstrate the skill of the social worker to step into the child's shoes in order to analyse and articulate the child's daily lived experience;
- A social work assessment will focus on a child's need for permanence. Social workers must think permanence in respect of each child they work with.
- Consideration should be given to using the many assessment tools to further enhance the quality of the assessment and amplify the voice of the child.

The 3 Local Authorities in Dorset share similar models of social work assessment and intervention that have the principles of the Protocol in mind. Assessments will follow a structured framework common to most Local Authorities and staff will receive training in delivering the designated model of assessment and intervention.

Whenever possible and practicable and in line with the most effective and efficient use of resources the 3 Local Authorities will endeavour to provide continuity of social worker in cases under the pre-proceedings protocol.

There will be a Single Assessment undertaken by the social worker for all children and families that meet the statutory threshold and this document will be submitted to the Court if Proceedings are required. This will constitute a primary component of the social work analysis in the case at the point of issue, and will refer to other interventions and assessments which have informed the social work analysis.

Nothing in the Protocol developed between the Authorities should suggest that where families are asked to engage in social work assessment, or additional assessment independent of the allocated social worker, Care Proceedings are inevitable. The primary aim of social work conducted outside of Court is to avoid the need for issuing Proceeding, wherever possible.

## **8 The use of expert assessments during the Pre-Proceedings phase**

Pre-Proceedings work undertaken by the Local Authority often identifies the need for specialist assessment and intervention to assist social workers in providing cogent expert analysis at the point of issue, with reference to accepted bodies of research. This can include, amongst others, specific parenting assessments and sibling separation assessments. When the Protocol is adhered to the necessity for external instruction should ultimately reduce; indeed, experts should only be commissioned where the need arises outside the social work scope and remit.

It is however recognised that there will be occasional cases where it is necessary and appropriate for the local authority to work with partner agencies, and commission targeted experts' reports from the private, voluntary and independent sector. These could include Alcohol and Drug testing, DNA testing, Community Mental Health Assessments.

## **9 Involvement and Evaluation of Wider Family**

Identification and engagement of non-resident birth father(s) and wider maternal and paternal families can play a critical role in promoting positive outcomes for children and in reducing delay.

Within Pre-Proceedings work the Local Authorities will strongly encourage parents to provide details of family members who can offer support, assistance and possible future care for their children, at an early stage. Wherever possible a worker will meet with those identified to complete Suitability and/or Viability assessments in relation to any offers or interest.

Family Meetings/Conferences will be held, if appropriate, prior to Proceedings as an additional means of identifying potential friends/family carers, and support to the parents from the wider family network.

If a formal Family Group Conference is not appropriate and/or cannot take place, this will not prevent the social worker from exploring with the parents any wider family support options or possible respite care provision in the interim for children.

In all cases a comprehensive genogram will be drawn up. It should be formulated based on information already known to the local authority and as part of the process of proactively considering with the parents the need for early identification of sources of support and potential alternative carers from the wider family network.

If it is known in advance of the Letter Before Proceedings meeting that parents are reluctant to share wider family details, then this should be specifically raised as a point of issue both within the letter outlining concerns and within the meeting. The minutes will also record if information is not provided in respect of extended family members.

If parents remain unwilling to identify wider family and friends, or share their contact details, they will be requested to give clear cogent reasons for not doing so and the Local Authorities will look to the Parents' legal representatives to reinforce this essential planning component in the life of the child.

Parents who do not provide cogent reasons for their refusal to identify family and friends for potential evaluation will be advised by the social worker that their stance will feature in the local authority's evidence analysis should the matter go to Court. They will also be advised that should Care Proceedings ensue the Court will expect them to identify potential alternative carers in the response document which they will be directed to file 24 hours before the first Advocates Meeting and CMH if they wish the Court to consider an alternative to Foster Care or ultimately Adoption.

Wherever it is practicable to do so, within the child's identified timescales and need for permanence, Local Authorities will strive to conduct Suitability/Viability Assessments of any relevant family and friends putting themselves forward as potential alternative carers prior to the issue of Proceedings. In doing so specific family members assessed as suitable and/or expressing an interest in making an application for a SGO can be referred to Aspire Adoption who can advise of assessment timeframes at the CMH.

## **10 Further Expectations Prior to Issue**

Where the Local Authority concludes that Care Proceedings are inevitable to protect the child all of the assessments and evidence obtained will be considered and when safe to do so a Review Pre-Proceedings meeting will be held to enable parents to hear the Local Authority's decision.

At the point of issue there will be an analysis by the Local Authority social worker in respect of parental capacity to change and sustain change, within the timetable for the child. Capacity can only be tested through the setting by the Local Authority of appropriate and reasonable goals, the identification of support that the parents would



reasonably need to reach those goals and the articulation, with the benefit of Legal Advice of the consequences of failure to engage or comply.

In the application made by the Local Authority a request can be made, if supported by the parents solicitor, for a cognitive assessment. This assessment is to be funded by the individual's public funding certificate. The purpose of this request is to obtain a direction at allocation/gatekeeping to enable a report to be obtained ,if possible, by the CMH.

## **11 Expectations of Local Authorities and the Parties Solicitors Upon the Issue of Proceedings in the Bournemouth Family Court.**

This Protocol is in addition to any national expectations promoted by the National Family Justice Board or the revised Public Law Outline.

Whenever it is safe to do so and consistent with the child's wellbeing and timetable Care Proceedings should not be issued until the Local Authority has prepared to a satisfactory standard all the Annex Documents required under the revised PLO to be filed alongside the application form.

The local authority evidence will be structured, focussed on intervention and outcomes and contain analysis, conclusions and recommendations for the child. The statement will outline the key issues in the case with realistic options for the child, including an analysis of steps taken to address the concerns without the need for Court intervention. The statement will indicate the extent to which pre-action protocol has been complied with. If it has not been adhered to the reason for non compliance should be set out for example the application was urgent or the concerns escalated to the degree that an immediate application needed to be made to court.

Where the case involves a sibling group, the Local Authorities will use best endeavours to ensure the siblings can be placed together where appropriate and in the best interests of the children. If this is not possible, the Initial Statement must outline why and cover the arrangements for inter-sibling contact (in addition to contact with parents) in detail.

The Local Authorities will file a concise chronology of significant events and a genogram. This will best inform the Court of the child's journey and the key people in the life of the child.

Where further evidence or information is identified by the Local Authorities in their statements at the time of application, eg Police Records, Medical Records, DNA Testing, Drug Testing, this should be identified at the Advocates Meeting or as soon as practicable before the CMH. Additionally, any identification of family members expressing an interest to apply for a SGO in respect of the child should be

highlighted and Aspire Adoption notified of the likely need for an assessment within the agreed timetable.

The Legal representatives for the respondents must ensure the Response to Threshold document is filed in accordance with the allocation directions before the CMH.

## **12 Social Work Role Throughout Care Proceedings**

It is imperative that the Local Authorities have robust decision making frameworks in place to respond to wider evidence emerging during Care Proceedings and ensure timely decisions and recommendations are made to inform the final care plan. The Local Authority must consider all available family arrangements to care for the child prior to making any decision for permanent separation, especially where Adoption plans are being considered. Local Authorities will be mindful of Re- BS when formalising Final Care Plans.

Most of the social work evidence will have been provided at the point of issuing Proceedings, however it is incumbent upon the Court to request any additional social work assessment and evidence as required to enable a best paramount decision to be made regarding the child's future.

A Final care plan will be prepared, setting out the Local Authority's proposals to meet the child's needs, including issues pertaining to placement provision, health care, education and contact with birth relatives. The Independent Reviewing Officer will scrutinise the final care plan, and the Court will be made aware of any areas of disagreement.

The Local Authority will plan effectively to comply with the Court timetable and ensure decisions are made in a timely manner.