

Articles

Children's Social Care: a preliminary evaluation of two judge-led pre-proceedings protocols

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This article discusses a small exploratory study of two pre-proceedings protocols in the field of Children's Social Care that were introduced by the Designated Family Judges for Cheshire and Merseyside, and Bristol on 1 July 2012 and 1 July 2013 respectively. The article offers a preliminary evaluation of their impact and effectiveness.

The research considers:

- The changes that have been made as a result of the introduction of the pre-proceedings protocols.
- The extent to which the pre-proceedings protocols improve procedures for dealing with cases that do not require urgent court intervention but are nevertheless chronic, multi-issue cases.
- The impact that the pre-proceedings protocols have on the preparation and quality of plans submitted to the court in support of an application for care.
- The extent to which the pre-proceedings protocols reduce the time taken to undertake and conclude care proceedings.
- The effect, if any, that the pre-proceedings protocols have on minimising negative experiences and improving outcomes for families and children on the edge of care.
- The continuing challenges that are presented by the pre-proceedings protocols and the changes that are necessary to enhance their effectiveness.

Previous research has been carried out to evaluate the Public Law Outline 2008 and various local initiatives and pilots. This research provides a different perspective and considers whether two judge-led pre-proceedings protocols reduce unnecessary duplication and delay in the field of children's social care and achieve justice for children.

The initial phase of the research, funded by the University of the West of England, Bristol (UWE) was conducted between December 2013 and December 2014.

Context

Delay in public family law cases, and the resulting uncertainty that it places upon children and their families, has been of concern for some time. The Protocol for Judicial Case Management in Public Law Children Act Cases, which was published in November 2003, acknowledged this issue stating that:

'The average care case lasts for almost a year. This is a year in which the child is left uncertain as to his or her future, is often moved between several temporary care arrangements, and the family and public agencies are left engaged in protracted and complex legal wrangling.'

The 2003 Protocol attempted to reduce delay by introducing a set of deadlines with an expectation

that care proceedings would be decided within 40 weeks of issue.

The 2003 Protocol was replaced in 2008 by the 'The Practice Direction Guide to Case Management in Public Law Proceedings' [2008] 2 FLR 668, more commonly known as the Public Law Outline (PLO). The primary objective of the PLO was to enable the Court to deal with cases justly having regard to the welfare issues involved. The PLO set down guidance for case management. This included a requirement that the court would arrange a timetable to take into account significant events in the life of each child involved in proceedings, including any change in the child's family circumstances, any educational changes, any professional assessment of the child, and any review of the local authority's plans for the child.

In spite of the introduction of the PLO, it was apparent that delay in child care cases was still a major concern and indeed was worsening. According to paras 3.2 and 3.3 of the *Final Report of the Family Justice Review*, which was published in November 2011:

'Care and supervision cases are taking ... an average of 61 weeks in care centres and 48 weeks in Family Proceedings Courts ... and there are around 20,000 children currently waiting for a decision ... compared to some 11,000 at the end of 2008. It seems that delay is endemic [in Public Law cases] and builds up at every stage. Local authorities too often wait too long before making an application to court; the quality of evidence they present is not consistently good; this fuels distrust and lack of confidence in local authority social work.'

It should be remembered that local authorities may have been working with families for many months, if not many years, before starting care proceedings. As a result, a family may have been subject to state intervention and to delays in decision-making for a protracted period. The effect of this delay on children was captured in the *Family Justice Review*, and not least in [para 5](#) of the Executive Summary, which stated that. 'The life chances of already damaged children are further undermined by the very system that is supposed to protect them.'

A revised PLO was piloted in 2013. This, in line with recommendations from the Family Justice Review, stipulated an overall period of 26 weeks for proceedings from issue to conclusion. The Revised PLO was implemented on 22 April 2014, on the same day as the Children and Families Act 2014.

The pre-proceedings process and the judge-led protocols

A national pre-proceedings process was first introduced in April 2008 alongside the PLO. It placed certain obligations on local authorities to initiate a formal process of notification and discussion with families before starting care proceedings. It is possible, with appropriate support, some families will attain the requisite standards of care for their children and that it may not be necessary for care proceedings to be issued at all. The national pre-proceedings process is set out in the Revised PLO, which forms part of PD12A within the Family Procedure Rules 2010.

The judge-led pre-proceedings protocols, which were appraised in this research, also place expectations on local authorities regarding communication with families so that families may understand what is expected of them. However, the judge-led protocols go further than the national pre-proceedings process in two key respects:

- First, they establish a target of 26 weeks for the pre-proceedings process (calculated with reference to the date of the legal planning meeting when the decision to enter the pre-proceedings process was made, and the date when care proceedings were issued).
- Secondly, where assessments are conducted before the issue of proceedings, the local authority is not required to duplicate that work during the proceedings. This does not, of course, prevent the court from ordering any necessary additional assessments but it does introduce an element of mutuality and oblige the courts to avoid any unnecessary

duplication of pre-proceedings work following the issue of any proceedings.

The court and the local authorities must also strive to ensure that the delay that previously occurred within the court process is not transferred to the pre-proceedings period.

Research methodology

The research involved an analysis of HMCTS raw data, a study of children's services files and a number of in-depth semi-structured interviews. All but one lasted between 45 and 90 minutes. Forty-eight professional stakeholders and parents participated in the study. Of these, 36 took part in eight focus group interviews. The remaining 12 participants were interviewed individually. All of the focus group interviews and most of the individual interviews were conducted in person. Three interviews were conducted by telephone.

By studying raw data collected before and after the introduction of the judge-led protocols, it was possible to compare the number of cases that were taken to court, the length of the proceedings and the number of hearings, and to consider what effect, if any, the judge-led pre-proceedings protocols may have had on the subsequent conduct of court proceedings.

The children's services files that were analysed included cases which concluded during the pre-proceedings stage as well as cases which resulted in the issue of care proceedings. Some of the cases in this latter category resulted in the making of a care, supervision, special guardianship or private law order.

The stakeholders interviewed included parents; solicitors and barristers acting for parents and children; local authority social workers, managers, and lawyers; Cafcass, court legal advisers, magistrates and judges. The interviews with professional stakeholders focussed on operational and systems issues and perceptions about the effect of the judge-led protocols on the outcomes for children and families. The interviews with parents focussed on their experience of the pre-proceedings process.

Initial findings

Analysis of children's services files indicated that the 26 week time-frame for pre-proceedings was met in most instances. In some cases, proceedings were issued at the end of the pre-proceedings process. However, many cases were 'stepped down' and families were returned to children in need or child protection plan status. Where proceedings were issued, the 26 week PLO time-frame was met in most cases, meaning that in many instances, the pre-proceedings process and the proceedings themselves were concluded in less than a year in total.

Analysis of HMCTS raw data relating to areas governed by the judge-led protocols revealed a significant decline in the duration of care proceedings and the number of hearings. Although the raw data did not establish a causal link between the judge-led protocols and the swifter, more efficient proceedings, such a link was suggested by a number of professional stakeholders.

Impact on professional stakeholders

In general, the research found that the judge-led protocols had brought about more structured, coordinated and focused practice. There was general agreement amongst professional stakeholders that the judge-led protocols arrested drift and delay.

Social workers stated that the amount and quality of judge-led training had exceeded their expectations. They understood that the pre-proceedings stage was concerned with preparation for court and felt that their approach to the gathering and analysis of evidence was better targeted. They felt more valued and more able to use their professional expertise than previously. In court, they felt more confident about the care plans and the reasons for them. Social work assessments

were organised earlier. Guardians felt they had more information on which to base a decision which in turn made the court process quicker and easier.

Social workers, local authority lawyers and Cafcass stated that there was better communication and collaboration amongst them. One reason that was frequently cited for this was that everyone had to work together if they were to meet the 26 week pre-proceedings deadline. People were more inclined to pick up the telephone and discuss the issues directly.

Judges, magistrates and court legal advisers stated that the documentation presented to the court was clearer and more concise and that social work statements were more explicit and made better use of evidence. There were fewer and quicker hearings. Magistrates and judges felt that the new, slimmer time-frames did not jeopardise justice for families because the court could challenge the local authority's case.

Magistrates in Bristol noted the value of working in the same building as the judges, stating that this had helped with interpretation of the law. More interaction with judges was desirable.

Judges felt that the regular training of social workers was essential if the swifter time limits were to be upheld and if an understanding of what was required in relation to the preparation of evidence was to be maintained.

Some local authority managers said that it would take time for the new procedures to be understood fully and established and expressed concerns about the cost of pre-proceedings work as it involved a substantial 'front loading' of resources.

Impact on children and families

Parents described their terror upon receiving a letter before proceedings from the local authority and the possibility of losing their children. They also described the number and speed of assessments they had undergone and felt upset about what they saw as constant intrusion and scrutiny. They were critical of what they described as 'poor communication' on the part of the local authority and said that they felt powerless if social workers said one thing and did another.

Cafcass and lawyers for parents and children felt that emphasis on speed was likely to be detrimental to the final decision. Concern was expressed that there might be some instances where children were being placed with alternative carers and/ or adopted because the 26 week pre-proceedings period did not provide parents with enough of an opportunity to improve their parenting skills.

Some solicitors acting for parents and some magistrates felt unsure about applying for, or granting, an extension to proceedings. Some solicitors stated that justice was sacrificed where judges did not take advantage of extensions in appropriate cases. There seemed to be a lack of understanding of the case law in this area.

A major issue for lawyers acting for parents was the unavailability of legal aid before entering the pre-proceedings process. This meant that legal advice was not available at the point when it was most needed in terms of helping parents to understand the position they were in or the potential consequences of entering the pre-proceedings process. Lawyers stated that they normally became involved after service by the local authority on their client of a letter before proceedings. They felt that their clients would usually listen to the advice of their lawyer, even if the message was hard-hitting, but that parents needed legal advice before a matter entered the pre-proceedings stage. This way, parents would have a better chance of understanding how their situation might develop into pre-proceedings and what they could do to avert proceedings and even pre-proceedings whilst there was still time. Once a case had entered the pre-proceedings stage, however, lawyers for parents and children felt that their clients were comparatively powerless as the local authority was focussed on preparing its case for court and had, in effect, up to 26 weeks to rehearse and perfect its case.

Conclusions

Overall, delays in public law cases in the family justice system meant there was a need for reform. Many professional stakeholders involved in this research had observed a tightening up of procedure; greater clarity about what was expected of the parties; and an improvement in the quality of evidence. Where proceedings were issued, they noted that there were fewer hearings, shorter hearings and fewer delays. Analysis of HMCTS raw data confirmed a reduction in the number of hearings and in the length of care proceedings. Analysis of children's services files indicated compliance in the majority of cases with the 26 week time limit for the formal pre-proceedings process and the 26 week time limit for care proceedings, meaning investigation and disposal of such cases in under a year.

The judge-led protocols require stakeholders to focus on the best outcomes for the child and not on the best outcomes for the parents. Opinions were divided as to whether the judge-led protocols helped families to stay together in appropriate cases or increased the risk of placement with an alternative carer or adoption. Another concern was that the 26 week period might not be sufficiently flexible in all cases. Timely advice and adequate support might help parents to effect the necessary changes during the 26 week pre-proceedings period. This in turn might avert proceedings and enable families to stay together.

It will take time for procedures to be established and understood and there were concerns as to whether local authorities could continue to finance pre-proceedings work as it involved a substantial 'front loading' of resources. Adequate and continuing training of stakeholders was essential to reinforce the importance of keeping to the time limits and what was required in relation to the preparation of evidence.

In summary, the data collected indicates that delay has been arrested and that decisions affecting children are now made more quickly. This must help to reduce uncertainty for children. There are, however, unresolved issues surrounding the role of parents and what opportunities they may have to change their ways in time to keep their families together.

The research is ongoing and the research team would welcome comments and contributions. If you would like to contact the research team, please email emma.whewell@uwe.ac.uk or call her on 0117 328 3897.