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Using the formal pre-proceedings process to prevent or prepare for care proceedings

Judith Masson

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Abstract

The formal pre-proceedings process - a letter to parents listing child protection concerns and a meeting where parents are legally represented - succeeded in diverting a quarter of cases from legal proceedings for the child's protection. This chapter discusses how this simple process impacts on parents and social workers to protect parents' rights, ensure fairness and resolve child protection concerns. Recent reforms have changed the legal context for the process, increasing its importance and the focus on preparation for court. Nevertheless, by encouraging engagement it can still keep cases out of care proceedings.

Key words: care proceedings; child protection; compulsory intervention; law; legal advice; parents' rights; partnership; social work; England and Wales.

Introduction

Care proceedings, court proceedings to protect children, make substantial demands on professionals and are stressful for parents: local authority social workers must establish the legal basis for intervention in the family and present fully evidenced and reasoned plans for the children's future care; parents potentially face the removal of their children and their permanent placement with adopters. In England and Wales, over 11,000 families (18,000 children) experience care proceedings each year (Children and Family Court Advisory and Support Service (Cafcass), 2015, Cafcass Cymru, 2014). Over the last five years between a quarter and a sixth of these children have been adopted (Department for Education (DfE), 2014a). Similar processes exist across Western Europe, North America, Australia and New Zealand (Gilbert, Parton & Skivenes 2011), and in other countries with developed child protection systems, to authorize intervention where children need services or alternative care, and parents will not agree to this but adoption is used far less, except in the USA.

Compulsory intervention is a last resort; services which support children in their families are always preferable, providing children receive good-enough care. Preventing the need for compulsory intervention is recognized as essential to child protection under the United Nations Convention on the Rights of the Child (art 19). Within Europe, the European Convention on Human Rights requires States to respect children's and parents' rights to family life, and this means taking positive steps to involve them in decision-making, limiting intervention to cases where it is necessary and ensuring that it is proportionate (art. 8) (Fortin, 2009). In keeping with these principles, the Children Act 1989 imposes a general duty on local authorities in England and Wales to support children in need and their families (s.17) and specific duties to prevent neglect and abuse (Sched 2, para 4). These are additional to their general safeguarding duties (Children Act 2004, s.11) and specific duties to investigate and bring proceedings where children are in need of protection (Children Act 1989, ss.31 and 47). Similar provisions apply in Northern Ireland under the Children (Northern Ireland) Order 1995.

This chapter focuses on what works in prevention where families are on the brink of care proceedings. It is not only concerned with preventing harm to children by improving parental care but also with preventing the need for compulsory intervention. Preventing care proceedings often involves improving parenting and/or parent child relationships so that children can remain safely at home but proceedings can also be avoided if alternative care arrangements can be agreed. Parents

can agree to their children being cared for by a relative, friend, foster carer or in residential care; family arrangements for children's care are commonly made when parents cannot meet children's needs, or for respite (Nandy & Selwyn 2012). What is different here is that the initiative comes from the state, and is intended both to ensure children's care and to avoid the need for care proceedings. This raises issues about the use of state power without accountability to the courts, and the rights of parents and children where the courts are not overseeing the state's actions.

A broad definition of a (successfully) working process is taken in this chapter. A process 'works' if it achieves its goals – in the case of the pre-proceedings process this means, but is not limited to, diverting child protection cases from court proceedings. Even where cases are not diverted, the pre-proceedings process may 'work' if it results in parents having a better understanding of child protection concerns, social workers feel less conflicted in exercising their statutory powers or court proceedings are less contentious or resolved more quickly. Claims based on objective measures, diversion or contest rates, or the duration of proceedings are easier to test but the feelings of those involved can be equally important for identifying and explaining success. Identifying that a process 'works' does not mean that it is guaranteed to work or will do so irrespective of the care with which it is used. Rather that the potential benefits of using it *can* outweigh the risks and costs entailed. In the case of the pre-proceedings process, the main risk is that court proceedings are delayed, with adverse consequences for the child and parents.

The chapter starts by outlining the pre-proceedings process for care proceedings which operates in England, Wales and Northern Ireland. Using evidence from an Economic and Social Research Council (ESRC) funded study conducted in England and Wales between 2010 and 2012, it examines the operation of the process and its success in preventing the need for care proceedings. Taking specific examples from the research, it discusses how the process can be a catalyst for change, and the conditions which may promote its effectiveness. Recognising that the process can also operate negatively, it considers how adverse consequences can be avoided. Finally, it re-examines the role of the pre-proceedings process in the context of time-limited care proceedings under the Children and Families Act 2014.

The pre-proceedings process for care proceedings

The pre-proceedings process for care proceedings was introduced in 2008 in statutory guidance to local authorities (Department for Children, Schools and Families (DCSF), 2008, updated, DfE, 2014b; Welsh Assembly Government, 2008). Local authorities are required to follow specific steps before issuing care proceedings, where there is sufficient time to do so and this would not compromise the child's safety. The steps are:

- 1) A letter before proceedings (LbP): sending a formal letter to the parents alerting them to the possibility of court proceedings, listing the local authority's concerns and inviting them to a meeting;
- 2) Free legal advice and representation for the parents at the meeting: the letter advises the parents to seek legal advice and entitles them to receive this without charge; and
- 3) A pre-proceedings meeting (PPM): a formal meeting which provides an opportunity for the parents and social worker to discuss how proceedings might be avoided and/or the local authority's plans for proceedings, in the presence of the parents' lawyers.

Plans for avoiding proceedings are usually set out in a written agreement prepared by the local authority and signed by the parent at, or after, the meeting.

It seemed unlikely that a simple process involving a letter, a lawyer and a meeting could reduce the need for care proceedings, particularly given the high thresholds that local authorities apply when considering court action (Brophy 2006; Masson *et al.*, 2008). Moreover, the process had no theoretical or empirical roots, and was devised without consultation with social workers or lawyers. Rather, it was based on the notion that because care proceedings provide a 'wake-up call' to parents, and parents' lawyers enable parents to recognize the seriousness of child protection concerns when cases are before the court (Masson, 2012), earlier introduction of these elements might help parents to step back from the edge of care, and avoid the need for proceedings (Department for Education and Schools, Department for Constitutional Affairs & Welsh Assembly Government, 2006).

The process provides a framework for the social worker parent relationship when care proceedings are planned. It represents a 'step up' in the formal child protection process (HM Government 2013), and is used to underline the importance of co-operating with the child protection plan. Alternatively, it can be seen as 'another step' on the route between making a formal child protection plan and applying for a court order (Dickens & Masson, 2013). The pre-proceedings process is not time limited but local authorities are now advised to review parents' progress in working with the written agreement six weeks after the meeting; to terminate the process if there is no progress at this point; and to be clear with parents when the process has ended (DfE, 2014b). Where improvements in care are maintained, parents should be told that an application to court is no longer being considered. Child protection plans may remain in place if this is thought to be necessary.

Researching the pre-proceedings process – method and main findings

A mixed methods study was designed to examine the operation and impact of the process (Masson *et al* 2013). It was conducted in 6 local authorities in England and Wales and funded by the ESRC. The file sample included 207 randomly selected cases where a local authority lawyer had advised that the threshold for care proceedings had been met. These cases were tracked through the pre-proceedings process and or care proceedings from April 2009 to January 2012 (or until court proceedings were complete). The observation sample included 33 cases from the same authorities where a pre-proceedings meeting was held during the fieldwork period and attended by one of the research team. This sample included most or all meetings in each local authority in a two month period. A total of 70 interviews were conducted with social workers, social work managers and local authority lawyers, and parents' lawyers from the study areas. Twenty-four parents, whose meetings had been observed, were also interviewed.

The local authorities in the study made substantial use of the pre-proceedings process, using it in 43 per cent to 73 per cent of cases considered by their lawyers to meet the threshold for care proceedings. Cases with and without the process were similar; the key distinguishing factor was the perceived urgency of the case. Use of the process was higher in pre-birth child protection cases because care proceedings cannot be started until the child is born (Masson & Dickens, 2014). In these cases plans for the child's protection at birth must be agreed with parents if emergency intervention at birth is to be avoided. There were no other features which indicated that the cases that were referred to the pre-proceedings process differed from those taken directly to proceedings. All cases were of high concern; over 80 per cent of the children whose cases were channelled into the pre-proceedings were subject to a child protection plan (Masson, Dickens, Bader & Young, 2013).

Despite the limited nature of the pre-proceedings process and serious concerns in the cases, a quarter of cases where it was used were diverted from care proceedings, with a higher diversion rate, 33 per cent, if only the cases where parents had attended the pre-proceedings meeting are

counted. The diversion rate in the observation sample was higher, over 50 per cent, but the cases were only tracked for six months rather than at least a year. Care proceedings were avoided by better parenting or agreements for alternative care. In over half of the cases parental care improved according to the child's social worker, with substantial improvements in a third of them. In another third of cases, parents agreed to their children being cared for away from home with relatives or foster carers. In the remaining 10 per cent of cases, the files contained insufficient information but it was known that proceedings had not been brought and the family remained in the area. Small pilot studies of a scheme involving a social worker from Cafcass attending the pre-proceedings meeting had comparable findings (Broadhurst, Doherty, Yeend, Holt, & Kelly, 2013; Holt, Kelly, Broadhurst & Doherty, 2014).

Case studies

All names are pseudonyms.

The Mahmood Family

Mrs Mahmood had come from Pakistan for an arranged marriage and had no support from relatives in the UK; her immigration status remained precarious and she was dependent on her husband to be able to improve this. There was substantial domestic violence by Mr Mahmood, which had been witnessed by the 4 children (aged between 8 and 4) and reported by them to their teachers. For this reason the children were subject to child protection plans and then brought into the pre-proceedings process. The couple had separated with Mr Mahmood returning to his mother's home but Mrs Mahmood was willing for him to return despite the violence. Mrs Mahmood's solicitor encouraged her to obtain an injunction against her husband and subsequently to renew it, something the local authority wanted her to do. Mrs Mahmood also agreed to attend a programme for victims of domestic violence. Mr Mahmood was required to attend a programme for perpetrators. There had been no further incidents of domestic violence since Mr Mahmood completed the programme; Mrs Mahmood was also getting support from her mother-in-law, who now appeared to recognize the unacceptability of her son's behaviour. The positive relationship between the mother and her solicitor, who was very experienced in domestic violence work, helped Mrs Mahmood to understand the steps she needed to take, and to forge a good relationship with the social worker. It also appeared to change the stance of her mother-in-law.

The Drurys

Colette had mental health and learning difficulties. She had a long history of involvement with children's services, her children had been removed in care proceedings; she had now formed a new relationship with Owen and was pregnant. Owen had had no involvement with children's services, his children by his former partner were now adults. A pre-proceedings meeting was called because of the local authority needed to assess what, if any, protective measures to put in place for the couple's baby. The case was considered high risk because of Colette's negative psychological assessment in the recent care proceedings. The same lawyer represented both parents, which is unusual and indicates that they had agreed a common approach. At the pre-proceedings meeting the parents were positive about engaging fully with any assessments and courses the local authority required. These assessments and their co-operation encouraged the local authority to manage the case without proceedings. The baby went home with the parents. The social worker was confident in the positive assessments of the couple but commented that her colleagues

(who knew of the previous children's removal) were concerned that proceedings had not been started. The case remained open with social work support but by the time the baby was 1 year old it was closed. Colette and Owen were being supported through the Children's Centre.

Sally Fry

Sally had a long history of substance misuse non-engagement with drug treatment services. Her three older children were all in the care of her mother, Danielle, who was their special guardian. When Sally was pregnant she expressed a wish to become drug free, a process which would involve residential treatment. Danielle said she was only willing to care for the baby temporarily so the social worker planned foster care for the period when Sally was in treatment. The pre-proceedings meeting was called to discuss these arrangements with Sally; the baby had been born prematurely and Danielle was now willing to care for him longer. Sally had told her solicitor before the meeting that she did not want the baby to stay with her mother but after a short break in the meeting she agreed to the new proposal for him to stay there. Danielle was approved to foster the baby. Sally was not able to stop taking drugs; a year later proceedings were planned for Danielle to become the baby's special guardian.

How and why does the pre-proceedings process work?

The perspectives of the parents on the receiving end of the pre-proceedings process, their lawyers and the local authority professionals involved provide the basis for explaining how and why the pre-proceedings process prevents care proceedings, using social work theories of parental involvement, empowerment and engagement. The process does not simply act on the parents, changing the way they behave, it impacts on the parent social worker relationship, encouraging greater engagement and trust, and lowering perceptions of risk. There is no magic in the meeting, rather it is the process as a whole, with the parents' lawyer as a catalyst, which can provide the foundation for building an effective partnership between the parents and the social worker (Dickens, Masson, Bader & Young, 2013).

First, the letter gives a stark indication of seriousness of the local authority's concerns. The headings: "IMPORTANT! PLEASE DO NOT IGNORE THIS LETTER - TAKE IT TO A SOLICITOR NOW" and "HOW TO AVOID GOING TO COURT" (DCSF 2008, 73) now replaced with "LAST OPPORTUNITY TO STOP YOUR CHILDREN BEING REMOVED FROM YOUR CARE" (DfE 2014b, p. 52) emphasize the urgency of the situation and are forceful reminders of the social worker's power to intervene in family life. Interviewees, both parents and professionals, frequently referred to the letter as "*wake-up call*". One mother said, "*it felt really threatening*", and other parents said they had been "*shocked*" or "*scared*" by the letter.

The letter is not simply a threat, it also offers two opportunities. The letter invites the parents to a meeting, indicating that they could have some involvement in decisions. Importantly, it suggests their situations is not hopeless, they *could* avoid court. The literature on working with highly resistant families (Fauth, Jelcic, Hart, Burton & Shemmings, 2010) stresses the importance of involving families and dealing openly with the power dynamic between them and social workers. If parents are to try to make changes they need to feel that they can succeed; self-esteem, competence and hope have all been linked to parents engaging with social workers to resolve problems (Yatchmenoff, 2008).

The letter allows the parents to access free legal advice from a specialist solicitor of their own choice. To help parents do this, it is usual for the social worker to include a list of all solicitors in the area, who could do this work. Not all parents followed the instructions to contact a lawyer but most did so; mothers were more likely to act on the letter than fathers. Solicitors were willing to take this work despite the limited funding, partly because they recognized its importance and partly because of the opportunity it provided for more clients. Local authorities showed their commitment to these meetings by being flexible; they were usually willing to re-arrange the meeting where the timing meant the chosen solicitor was unable to attend. Alternatively, solicitors might arrange for a paralegal to attend, explaining this to parents and sometimes introducing the staff member. Where this person was knowledgeable about child care practice and could relate well to parents and social workers, their lack of formal qualification was not seen to undermine the parents' confidence in them, or their effectiveness.

Secondly, the solicitor's advice encouraged parents to respond positively to the opportunity the pre-proceedings process offered. Despite the negative views about practice in children's services departments sometimes expressed by lawyers who represent parents (Pearce, Masson & Bader, 2011), they all advised parents to co-operate with social workers. Lawyers representing parents viewed co-operation as the strategy most likely to enable parents to keep their children, on the basis that any other response would be likely to lead to proceedings and make this harder to achieve. Lawyers made this clear to parents:

Whenever you get to these meetings, you always give a client exactly the same advice: "This is the last chance saloon. You either row in now or you're going to end up in court, and trying to undo it is going to be a damn sight harder than it is to stick to the contract." (Parent's solicitor)

Such advice was not intended to produce mere compliance – lawyers told their clients that the local authority would not easily be diverted from its child protective path. Lawyers also provided a positive message 'you can beat them', indicating that the solicitor had faith in the client, in their capacity to do what was necessary, and in the possibility of winning against children's services. This encouragement was not usually based on knowledge of the client or on an appraisal of the local authority's concerns, rather it was a standard approach taken at the beginning of pre-proceedings work. At the start of the process lawyers rarely knew enough about the child and family's circumstances to assess the strength of a case but knew that pre-proceedings meetings were only called where proceedings were being planned.

For Mrs Mahmood, her solicitor brought very relevant experience of acting for victims of domestic violence. She helped Mrs Mahmood to see that domestic violence was not something to be expected or accepted, and would be treated seriously by the courts. She helped persuade her client to attend the programme that the local authority proposed and to renew her injunction.

Thirdly, the solicitor's presence at the meeting impacts positively on how parents feel and participate, and also on what is agreed. Parents' solicitors try to improve their client's position by making sure that written agreements put forward by social workers did not include terms that parents could not keep, seeking adjustments where these might easily be broken, and making sure that their clients understood what they were agreeing. For example, where a parent was required not to contact a specific person, usually an abusive partner or relative, lawyers raised the issue of unplanned meetings in the street, where a parent might feel obliged at least to be civil.

The solicitors' role is widely recognized as that of a partisan supporter (Davis, 1988). Even though most had spoken to their lawyer only once before the meeting, parents trusted their lawyer to act in their interests:

It's a lot easier having a solicitor with me [at the meeting] actually, because I never used to have one and until the children were in care I never needed one ... You know that everyone in the room is against you ... and when you've got your solicitor with you, you know they're the only person who's 100% backing you up, so it helps you. (Parent)

Parents acknowledged that having their lawyer at the meeting made them feel more confident, and enabled them to focus and get their view across more coherently:

I think he [solicitor] handled it really well, and he helped me stay calm and if I was rambling on – you know, when you talk about it more you get angry – he was like “calm down”, and he was really good ... (Parent)

Support, including legal advocacy, is recognized as a means of encouraging parental participation in child protection (Darlington, Healy & Feeney, 2011). Their lawyer's presence was seen to have this effect in many of the pre-proceedings meetings observed. It was notable that most parents' solicitors said relatively little in these meetings, leaving the talking to the parents themselves. This allowed parents to show that they were willing to discuss the local authority's concerns. However, lawyers were clearly listening attentively: they intervened occasionally to clarify points, or to take a parent out of the meeting before they got too angry or distressed.

Parents' lawyer's assumed partisanship also makes their advice more acceptable: parents were more willing to listen to their lawyer's advice than to the same advice from the social worker, a point noted by many of the local authority staff interviewed:

Their solicitor would say to them clearly, “this is serious stuff” – so it's not just us as a department saying it – or nagging them to death, as they might well see it – there's somebody else outside the authority actually saying to them that this needs to change. (Social work Manager)

Fourthly, the supportive approach of the parents' lawyers helped local authority staff to view the pre-proceedings process positively. Having a meeting with parents and attempting to avoid proceedings was “fairer” and “the right thing to do”. This feeling that the lawyer was helpful to the local authority encouraged social workers and their managers to use the process to try to promote change. Effective engagement can only occur where both social worker *and* client are willing to engage (Darlington *et al.*, 2011). Some social worker managers used the meeting skilfully to harness the parents' assumed desire to do the best for their children, focusing on what the parents could do to achieve this:

[I] try and focus on where we would like to go from here – trying to see if there are some positives, and try to hang on to those and try and move those forward. (Social work Manager)

In the case of Colette and Owen Drury, the pre-proceedings process supported the development of a good working relationship between the parents and the social worker. The parents' co-operation meant that the social worker could undertake assessments, become satisfied that the baby was not at risk in the parents' care, so there was no need for care proceedings to be started at birth. Of course, the assessment might have been negative; if this had been the case, the fact that the parents had had legal advice would have shown the court they were treated fairly (see below).

Having a solicitor at the meeting and legal advice made a substantial difference to parents. Not only did they feel encouraged and supported, some thought that social workers moderated their behaviour because of it. Parents felt less “picked on”, were more willing to accept the social worker's proposals, and were reassured by the prospect of the lawyer's assistance if the local authority did not keep to the agreement. Support and the feeling that the social worker was controlled

empowered parents, redressing the power imbalance inherent in any child protection meeting. As a consequence, parents were more willing to engage with the local authority's plan for their child. Empowerment (Fauth *et al.*, 2010), redressing power imbalances and using power with parents not over them (Dumbrill, 2006) are seen as crucial for successful social work intervention. They provide a foundation for parental engagement, a state where the parent does not merely comply with the terms of the agreement but "buys in" to the idea that they will make changes in their parenting (Yatchmenoff, 2008) and is a "key contributor" to effective helping (Munro, 2011, para 2.24).

Overall, the pre-proceedings process has the potential to deliver key aspects of successful intervention with highly resistant parents. It can empower parents; it allows parents some involvement in planning; and it limits the extent to which social workers can use power over them. In this way it can provide a foundation for their engagement and an effective partnership with the social worker, sometimes a new social worker for the family. The partisan role of the lawyer is a catalyst whose presence makes the difference for the parent. Parents' lawyers support the provision of services for families at the edge of care proceedings; some parents engage with services they had rejected earlier. The process provides a "last opportunity" (DfE 2014b, 52) for parents to avoid care proceedings, either by improving their care or agreeing to a change of the child's carer. This effect also depends on the capacity of the social work staff to use the process to establish a working partnership with the parents.

Where the plan is care by others

Agreeing to alternative care, whether chosen by parent or the local authority is an altruistic, child-focused decision by a parent. Loss of the child's physical presence and responsibility for day to day care diminishes the parent's sense of self-worth, and others' view of them (Jenkins & Norman 1972; Fernandez, 1996). Where alternative care has been agreed in the context of child protection, the judiciary in England and Wales have expressed concern about the adequacy of parents' consent to such arrangements (*Re CA* 2012; *Re U* 2013; *Northampton CC v S* 2015). Lawyers have also noted that parents are not always clear about their rights to contact or to reclaim their child (Stather, 2014).

There are advantages for parents and children of keeping cases out of the courts even though they are separated. Parents and children find care proceedings extremely stressful and confusing even where they are well represented (Freeman and Hunt, 1998; Masson and Winn Oakley, 1999). Parents understandably find reading or hearing evidence about their behaviour and its effect on their children an upsetting experience, which further reduces their self-esteem. From the local authority perspective, enabling the parents to access legal advice can ensure that they are giving informed consent. Social workers and managers can feel that they have not acted oppressively. If, subsequently, proceedings are brought, the court can be reassured that the parents had independent advice before the separation.

In the case of Sally Fry, one might question whether she freely consented to her mother taking over her baby's care. It appeared that she only agreed to this arrangement after a discussion with her solicitor. However, proceedings would have produced the same result. Sally could only regain care of her child if she was able to overcome her addictions. The court would not have approved a different care plan from the one Sally reluctantly accepted given Danielle's ability and willingness to provide care, and the fact that this meant the baby would be live with his siblings. Sally's opposition to Danielle's care would demonstrate to the court Sally's inability to understand her children's needs.

Not a golden solution – negative aspects of the pre-proceedings process

Of course the positive effects of the pre-proceedings process were not present in all cases. Some meetings were quite negative; some were not well prepared, held in unsuitable rooms and poorly conducted, or with two parents who were not well supported or were in conflict with each other. There were also parents who were felt disempowered and did not engage, despite the presence of their lawyer, and others who chose not to contact a lawyer or did not respond to the letter at all.

The key negative effects, which must be avoided are duress, drift and delay. Pressure on parents to agree the local authority's proposals came not only from social workers but also from parent's lawyers. A mother, who had already lost the care of her older children explained why she had agreed to her new baby being placed in foster care, despite having told her solicitor earlier that she was opposed to this:

[S]ome things I don't agree with but I feel pushed to go along with it, because in the past I have sort of said I don't agree with something and then it has been, "Okay then, we will just go to court", so now I keep my mouth quiet about things I don't agree with ...

Pressure might be well-intentioned but still left parents coerced to agree. In one such case the mother was effectively told by her lawyer that the only option she had for keeping her child was to agree to a mother and baby foster placement. The lawyer did not advocate for alternative arrangements, which the mother said she preferred, accepting the social worker's view that these were not available or considering them unsuitable. Such an approach sets parents up to fail. The lawyer must advise the parent about their preferred options, not simply tell them what they ought to do. Social workers, who think the parent's lawyer may be exerting too much pressure on their client are in an invidious position. They cannot intervene in the professional relationship between a parent and their lawyer. They can try to ensure that the parent has an opportunity to express their views, and should discuss their concerns with the local authority's lawyer. They can propose that proceedings are started so that the court takes responsibility for decisions about the child's care.

The pre-proceedings process resulted in delayed decision-making where cases were allowed to drift without parents making or sustaining the necessary changes in their parenting.

[The agreement] does say "And if there is insufficient progress then consideration will be given to starting care proceedings" ...– but what happens in practice is ... because one or two things may have improved on a temporary basis, perhaps, the social worker will think that's good enough and so they'll say "Well you've done this, this and that – you haven't done this one and that one, so we'll go for another 4 weeks to give you a chance to do that." And six months down the line they're still reviewing the pre-proceedings process. ...I don't think it was ever designed to do that ... this was meant to be a short assessment period of whether they really could change – and it's becoming a drift. (Local Authority Solicitor)

The pre-proceedings process does not ensure that social workers remain objective in their assessment of parents or prevent a loss of focus on the child. This is one reason why it can be helpful to operate the pre-proceedings process alongside the formal child protection planning process. Bringing care proceedings is a difficult decision in a society with strong support for parental care; some cases involving neglect were allowed to drift in the pre-proceedings process when parents were viewed as complying with the written agreement even though their care remained poor, or where they were not complying but the terms breached did not have a clear impact on their parenting. The pre-proceedings process is only a tool to support case management. Written agreements have to fit with the parenting concerns so that compliance results in improved parenting, and they must be closely monitored.

Pre-proceedings and care proceedings under the Children and Families Act 2014

Reforms introduced following the Family Justice Review (Ministry of Justice (MoJ), 2011) have made changes to the procedures for care proceedings so that they can be completed within the statutory time limit of 26 weeks (Children and Families Act 2014, s. 14). Rather than ordering assessments of the parents' parenting and capacity to change, and the suitability of potential carers during proceedings, the courts expect and require local authorities to include this material with their application, so far as possibly (Judiciary 2014, DfE 2014b). Where psychological assessments are required, these are now frequently commissioned by the local authority before proceedings start rather than jointly by the parties during proceedings. Psychologist undertaking assessments should ask whether the pre-proceedings process is underway and what discussion there have been with the parents and their lawyers about assessments. Further expert assessments are only allowed during proceedings where they are "necessary to resolve the case justly" (s.13(6)). In this context, the President of the Family Court has called pre-proceedings work "vital", noting that it will "pay rich dividends later on" (Munby, 2013, p. 6). The courts have also been critical of the use of agreements for foster care, except for short periods, in cases that result in proceedings (*Northampton CC v S*, 2015; *Re J*, 2015).

Refocusing care proceeding impacts on the pre-proceedings process: it is now crucial that it is used both to support parents to avoid the need for a court application *and* to collect evidence to prove a case for a court order (Masson *et al.*, 2013; Dickens and Masson, 2014). The courts have become more demanding in terms of the evidence they expect (*Re J*, 2015), linking the basis for intervention to specific risks to the child (*Re A*, 2015), and in relation to care plans. They now expect the local authority to consider the pros and cons of "all realistic options" for the child in the care plan and explain why the preferred option is a proportionate intervention in the family (*Re B-S*, 2013). This makes it all the more important that all actions are reasoned and documented, and that options for alternative care in the family are fully explored. It can be helpful to hold a family group conference so that families have an opportunity to identify solutions for the child's protection and care, including additional support for the parents. However, the need to avoid delay in protecting the child and to satisfy the court can mean the principles of family group conferencing are abandoned and families are merely pressed to identify people willing to be the child's carers (Connolly, 2009; Connolly and Masson, 2014). Such action is likely to undermine parental and family co-operation with children's services, and may produce arrangements which do not endure.

Overall, reformed care proceedings provide a stronger impetus to use the pre-proceedings process. However, there is a real danger that work becomes focused on preparing for court, rather than supporting families to avoid court. Not only is this challenging for social workers, it is also potentially confusing for parents, who may find that they are suddenly expected to respond more quickly and consistently than previously. The current context for the pre-proceedings process appears to be more threatening and offer fewer opportunities to parents. Conversely, care proceedings have become more demanding for local authorities.

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