



PUMP COURT

CHAMBERS

**PUBLIC LAW WORKING GROUP SEMINAR  
(PART 1)  
LESLIE SAMUELS QC**





# President of the Family Division's Public Law Working Group (PLWG) Final Report (March 2021)

Briefing on the PLWG best practice guidance  
on support for, and work with, families prior  
to court proceedings for use in local areas

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# Background to the report and practice guidance

- Differences in LA decision making and in the use of and/or approaches to the PLO and pre-proceedings process were identified as an area for focus and attention
- Particularly in light of the significant regional variations in the use of urgent applications to the courts.
- Over time, there is a growing sense of an increase in risk-averse practice in all parts of the family justice system.
- The public law aims were twofold:
  - Understand whether children and young people can be safely diverted from becoming the subject of public law proceedings; and
  - Enabling decisions about their lives to be made swiftly and fairly once they are subject to proceedings.

# Rationale for this work

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- What happens pre proceedings matters!
- For professionals, encouraging safe management of risk while building on family strengths and energising wider family support, is critical.
- The use of the PLO and pre proceedings should be an opportunity for families to embrace positive change. It should be a point of hope.
- The guidance underlines the fact that the legal threshold being met does not always mean it is right, or proportionate, to escalate to pre-proceedings or instigate care proceedings.
- It seeks to encourage confident practice by reference to practical tools aims to support practitioners in local authorities to confidently make consistent, timely and balanced decisions around the initiation of pre-proceedings.



# Work with children and families: the underpinning principles in the guidance

- First and foremost, the child's welfare is paramount.
- The child's views must be heard.
- Managing and mitigating risks whilst working with the child and their family is key.
- Work with the child and their family requires a collaborative approach to co-producing plans and to positively support change.
- A partnership approach employing the existing skills, knowledge and resources of all partners and agencies involved with the family is vital.
- Accurate and timely recording is vital as are clear communications with the family.
- Court proceedings must be necessary and proportionate, an option of last resort, be clear why this application, why now.
- Timeliness and minimising delay are important.

If in doubt all practitioners working in the system should always refer back to these principles.

# Deciding to initiate pre-proceedings process(1)

- The guidance underlines the fact it is not always right or proportionate, to arrange a legal gateway/planning meeting just because necessary threshold is met.
- Where one is needed, the meeting should be held in a timely way to consider the available information and decide the best course of action to protect the child's welfare e.g. move to pre-proceedings to issue immediate care proceedings.
- It should be chaired by a suitably senior manager and participants must agree on the specific issues, risks and mitigating factors of relevance.

# Deciding to initiate pre-proceedings (1)

- Factors to be considered:
  - What is the lived experience of the child and impact on their wellbeing?
  - How long have children's social care been involved with the family?
  - What support has been offered to the family and how have they engaged with this offer?
  - What assessments have been completed?
  - Have changes already been made by parents to mitigate the identified risk factors?
  - What needs to be offered to this family to effect change?

# Deciding to initiate pre-proceedings (2)

- If the legal threshold is met and attendees agree to initiate pre-proceedings then a tailored plan of action should be agreed, including:
  - Any continuing support or any additional direct work with the child during this period?
  - Any further support or direct work which could be offered the family to mitigate identified risks?
  - How risks and/or positive changes in this period will be tracked?
  - What expert assessments that are required, including who is being assessed, why, plus duration?
  - Wider family members to be consulted to offer support or be assessed as alternative carers?
- Can be stepped down, but to prevent further instability (for both the child and their family) there must be a degree of confidence that the changes sought are achievable and sustainable.



# Pre-proceedings and the PLO (1)

- The PLO brings together a series of steps that ensure the professionals working with children and their families explore all of the realistic opportunities to achieve the best outcome for the relevant children.
- It's important practitioners both understand this phase not simply as a procedural step to court: **pre-proceedings are an intervention in themselves** and act as the final chance to manage risk by supporting change.
- Every effort should be made to improve outcomes for the child as safely as possible. It also serves to 'narrow the issues' if entry to court is required.
- The report recognises the complex and difficult work social workers undertake and their skill and expertise in supporting children and families and the management of risk in the community.

# Pre-proceedings and the family

- Relationships are key!
- Clear communication with the family about identified concerns and the expectation of all of those who are involved in the process, including clear timescales to prevent drift is vital.
- It is crucial that the parents clearly understand this process, what is expected of them, how the LA will work with their family and agree plans.
- It is important to consider any support parents might need to understand the nature of the LAs concerns e.g. advocacy or interpretation services. Older children will also need support to understand this process.

# Pre-proceedings and timescales and review

- The pre-proceedings phase should be no longer than 16 weeks but this is dependent on myriad factors, from the child's needs to the number of professionals involved.
- It is important social workers keep a clear, accurate record of the agreed plan and the status of assessments in progress and/or outcomes to inform future decision-making processes. A template developed and used successfully in one DFJ area is included in the guidance.
- Review and analysis are essential. A process is required!
- Outcomes should be clearly recorded at the end of the PLO process - escalation to court, an extension to continue working with the family or 'stepping out' of the process if sufficient progress has been evidenced.
- The deciding factor must always be the immediacy of harm.

# Pre-proceedings proforma and recording

An example of a pre-proceedings proforma in use in several local authority areas is included in the guidance. It fulfils a number of functions and is based on a simple, medical record. It has received positive feedback from social workers, families and the courts and has contributed to a reduction of public proceedings:

- It is a record and reminder of the issues of concern and the work that is being undertaken. When necessary, this can be referred to in discussions with parents.
- Its simple layout and format allows the family an opportunity to become involved and invested in the support and assessment.
- It puts into sharp focus the necessary elements that must be reviewed at each review. This is particularly important when considering the progress.
- It is a living document which records the changes that have been identified and it ensures the evidence that is gathered is relevant and fresh if proceedings are contemplated.
- It is important evidence of the work that has been undertaken if proceedings are issued. This should be filed with the application to the court.
- If proceedings are issued, it avoids duplication of work particularly (expert) assessments that have already been undertaken.

# Additional reading and resources for practitioners

- The PLWG report includes a series of resources for practitioners who work with children and families during public proceedings:
  - A pre-proceeding proforma to keep a clear record of this important work\*
  - A set of principles for the letter before proceedings plus a parent's commentary on the standard template for this letter
  - Top tips for professionals from children and young people with experience of public law proceedings
  - Best practice guides on the use of Section 20/76, on case management and special guardianship orders (SGOs)
  - A revamped social work evidence template (SWET) plus new user guidance
  - A new abridged version of the SWET for use in urgent hearings
  - A PLO toolkit developed by Essex County Council.

# Pre-proceedings and the PLO with newborns

- Pre-proceedings can be initiated for an unborn child and should be held as early as possible, with timescales monitored closely.
- If there is already involvement with the expectant parents, this work must begin as early as possible; the identification of needs, and the provision of support, must happen as soon as possible.
- Some assessments or interventions may not be able to start or finish before birth and specialist medical advice may be required about some of the timings.
- However, the agreement may be completed and agreed prior to the birth.
- If a decision to issue proceedings on birth is made then draft documents should be ready to send to lawyers prior to birth and parents should be provided with copies at the earliest opportunity.
- Placement options should be considered early on and discussed with parents e.g. parent-and-baby foster placements, so that early permanence is achieved for babies, as appropriate.



# Pre-proceedings and Court

- Pre-proceedings may not always secure the required changes and the PLWG report recognises this.
- Courts are encouraged to do the same, noting that where timely, intensive work is underway, criticism of the local authority is unwarranted.
- Where all other options have been explored and issuing is the only safe option, the courts will benefit from the work that has been undertaken during pre-proceedings.
- A record of what has been done pre proceedings is an essential tool for justice and analysis



# Applications and Case Management

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# What's new?

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- Advance notification to Cafcass of the issue of proceedings
- New C110A – the online form (or use of the 'urgent information sheet' where the online form is not in operation)
- Pleading the grounds – concise numbered paragraphs
- The revised SWET and a new short-form SWET for urgent applications

# What's new? cont.

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- The child's birth certificate/proof of birth as core documentation
- Increased focus on the appropriate timing of urgent and non-urgent hearings to maximise participation and optimise the effectiveness of the hearing
- ICO checklist to assist good practice and appropriate early case management
- Increased focus on effective Advocates' Meetings (a) with the use of template documents and (b) filing the minutes before the CMH

# 1. Advance notification of Cafcass of the issue of proceedings (F1, para 2)

- At the time the decision is taken to issue

## 2. The application form (F1, para 1)



- Completion of the revised/online C110A (the Public Law Platform)
- Highlighting the changes
- Completion of the existing C110A (if still in use) and the 'urgent application information sheet' in appropriate cases (F3)
- Urgent applications – crucial information for the court



# 3.

## The grounds for the application (F1, para 1(i))

- Numbered paragraphs
- Focused and concise
- Threshold findings/other grounds relied upon

# 4. The statement in support of the application

- The revised SWET –
  - The new form
- The short form SWET for urgent applications
  - The relevant information for urgent hearings
- What makes a good statement?

## 5. Core documentation, to include (F1, para 3)

- The child's birth certificate, or
- Identity documentation/biometric page of the child's passport for foreign national children without a birth certificate

## 6. Listing urgent applications (F1, para 4)



- Notice to respondents/sufficient time to arrange representation
- Listing on shorter notice than requested in exceptional circumstances only

# 7. Good practice at interim care hearings

- Use of the ICO checklist (F7)

## 8. Case Management at urgent care hearings

- Progressing the case at an early stage
- Suggested case management directions for ICO hearings (in ICO checklist)



## 9. Listing the first CMH in non-urgent cases (F1, para 5)

- Within the CMH window
- Giving enough time for effective preparation
- Not necessarily the first available date

# 10. Effective Advocates' Meetings (F1, paras 6-8)

- Use of Advocates' Meeting templates (F4 – F6)
- Minute of the meeting to be filed in advance of the CMH
- Use of template case summary/position statements

# 11. Wellbeing (F1, para 10)

- National focus
- Local arrangements (each DFJ area)



# Case Management Best Practice Guidance

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# What's new?

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- Short form orders after completion of full CMO at first hearing
- Case summaries & position statements to be filed and served 4pm the day before the hearing
- Focus on navigating judge/justices through the bundle and provide a short reading list set out in CS or PS, rather than editing/filleting the bundle
- New born babies – strict case management and time limits

# What's new? cont.

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- Greater use of extensions to the 26 week time limit in appropriate cases
- More intense focus on (a) whether expert NECESSARY and (b) whether another FCMH or directions hearing is NECESSARY
- For CMH or FCMH PS on behalf of CG is sufficient rather than a detailed case analysis
- Limit the number of issues (ie no more than 6) to be determined at a FFH



# What's new? cont.

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- Routinely release CGs from attending the whole of a FFH
- Do NOT list a FH before an effective IRH
- More intense focus on IRHs being effective to conclude the proceedings or limit the issues in dispute
- No COs with children remaining at or returning home, unless exceptional reasons for making a CO

# 1. Short form orders (paras 11-15)

- CMO completed ONLY for first CMH
- Thereafter short form order containing only the information, recitals and orders relevant to or made at this hearing
- To be submitted to court within 24 hours of the hearing unless the judge directs otherwise

## 2.

Case Summary, Position Statements and CG's  
Position Statement to be in template format  
(Appendix H1-H3) (paras 16-17)

- To be filed and served on or before 4pm the day before the hearing
- After the first CMH, Case Summaries should not repeat the whole of the background information

# 3.

## Newborn babies (paras 18-20)

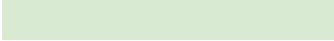
- Prepare application and supporting documents in advance of birth where application intended to be made for removal of baby into care
- Strict case management directions and time limits

## 4. 26-week limit (para 21)



- Where way forward is clear (eg child not to return to parent(s)) but further time is required to determine plan or placement which in best interests of child, consider extending the 26 week limit

## 5. Experts (paras 22-24)



- ONLY where NECESSARY for just and fair determination of the proceedings
- Judges MUST scrutinise all applications for experts with rigour

# 6. Hearings & FFHs (25-29)

- Is a further hearing in the case really NECESSARY?
- If so, why and for what purpose?
- For purposes of stand CMHs or FCMHs, position statement from CG will suffice rather than detailed case analysis
- Limit the issues to be determined at FFH – no more than 6
- Focus on identifying the father, DNA testing (if necessary), DBS checks, disclosure of documents to those subject of viability assessments & early identification of realistic kinship carers
- Importance of judicial continuity

# 7. Do NOT list FH before effective IRH (paras 30-33)

- List IRH for realistic period of time
- Advocates' meeting at least 2 days before IRH
- Steps & information required for an effective IRH



# 8. Care Orders at home (33-37)



- Requires exceptional reasons to make a final CO with child/children remaining/living at home
- Must NOT be used as a vehicle for provision of support & services
- Rare in extreme that risks merit a CO but risks can be managed with child/children living at home
- CO represents a serious intrusion by the state into family life



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