The pre-proceedings process for families on the edge of care proceedings

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Context

The pre-proceedings process was introduced in 2008 as part of the PLO reforms to care proceedings. Its aim was to divert cases of abuse and neglect from the courts, to ensure local authority applications were better prepared and to reduce the time courts took to decide these cases. Local authorities were required to write a 'letter before proceedings' to parents explaining their concerns and invite them to a 'pre-proceedings meeting' to discuss how proceedings could be avoided. Legal aid was made available so that parents could have advice and support at this meeting.

About the Study

The study, conducted in 6 local authorities in England and Wales, examined the operation and impact of the process through analysing local authority case and court proceedings files (207); interviews with social work managers (16), social workers (19), local authority lawyers (16) and lawyers who represent parents (19); observations of pre-proceedings meetings (36), interviews with parents who attended them (24); and a focus group with judges. Observed cases were followed up 6-18 months after the meeting. The research provides an in depth account of the operation of the pre-proceedings process, including how the parents and professionals experienced it, and its effectiveness in achieving diversion from court and reducing delay for children.

Key Points

- Use of the pre-proceedings process varies between local authorities. Those in the study used it in almost all cases where there was time to do so, around half of all cases where care proceedings were started.
- A third of pre-proceedings cases involved pre-birth assessments. Meetings were used to agree assessments, services and /or alternative care.
- Use of the process was supported by social workers and their managers who saw it as a more respectful way to work with families at risk of care proceedings.
- Parents felt supported by having their lawyer at the pre-proceedings meeting; for some this helped them to engage with children's services and improve care.
- The pre-proceedings process did succeed in diverting cases from court. Based on the file sample, about a quarter of cases did not enter care proceedings; in a third of these children were protected by kin care or foster care; and in two-thirds by improvements in care at home.
- Care proceedings were not shorter where the pre-proceedings process had been used. Courts did not appear to take particular account of this work.
- The pre-proceedings process delayed decisions for children who entered care proceedings. Court applications were delayed by attempts to use the process and sometimes by failure to recognise family care was not improving.

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Findings

The families

The families in the study were comparable to families in other studies of child protection proceedings. Within that, the characteristics of the 33 families in the observation sample were comparable to the 207 families in the file sample.

The use of the pre-proceedings process

The decision whether to use the pre-proceedings process or to apply directly to court was made at a legal planning meeting by a local authority lawyer, senior social work manager and team manager. Arrangements for these meetings differed; 4 of the 6 local authorities required written information – chronologies, case conference minutes etc in advance for non urgent cases.

Both local authority lawyers and social workers/ managers valued the process as an ethical way of practice, with potential to avoid proceedings and providing time for preparation of any court application. Positive views were tempered with concern about delays for children and disillusion arising from the failure of courts to take note of pre-proceedings work.

These local authorities had above average use of the pre-proceedings process. They did not avoid the process but used it for almost all cases where there was sufficient time to do so, between 42% and 73% of cases considered for action at a legal planning meeting. The process had been used in half the cases where care proceedings were started. Cases which went direct to court were more likely to be considered urgent (60% of direct cases went to court within 15 days of the legal planning meeting, or shortly after the baby's birth).

There were few differences between the family circumstances and parenting concerns where the pre-proceedings process was and was not used. A higher proportion of children were subject to child protection plans where the process was used (81%, compared with 46.5%). Conversely, fewer families were unknown to children's services prior to the precipitating incident – only 3 out of 16 unknown cases entered the pre-proceedings process.

The primary use of the pre-proceedings process was to reinforce the child protection plan; the process was a 'step up', used to indicate the seriousness of concerns and encourage the parents to co-operate with the aim of avoiding care proceedings (38%). It was also used to agree alternative care (12%), to plan care at birth (15%) or agree assessment arrangements (11% overall, with one local authority doing this in nearly half its cases).

In around a fifth of cases a 'letter of intent' was sent telling parents that proceedings would be started, advising them to take legal advice and inviting them to a meeting.

The letter

In most local authorities social workers prepared the letter before proceedings and it was signed by a social work manager. Local authorities used two distinct forms of letter, one which mentioned the possibility of avoiding court and a 'letter of intent' where proceedings were planned.

Letters where there was a possibility of diversion were based on the *pro forma* in the Children Act 1989 Guidance Vol 1 (DCSF 2008) but varied in length according to the detail given. Half the letters were 3 pages or less; on average 9 concerns about parenting were listed.

Mothers (109) were more likely to be sent letters than fathers (68); most letters to fathers were joint letters with the mother.

There are difficult balances to be struck in writing the letter. It needs to be clear and comprehensible, and also to contain sufficient information to explain the concerns and the proposals. It needs to make an impact, to ensure the parents are aware of the seriousness of the situation, whilst not alienating them further or making them think it is not worth attending the meeting.

Parents found the letter *'hard hitting'* and expressed shock or anger at the content even if they had been told it would be sent, as many were, and similar concerns had been raised at child protection meetings. In trying to explain the letter to parents and keep them engaged, there was a danger that some social workers lessened its forceful impact.

Obtaining legal advice

Not all parents saw the need to obtain legal advice, despite the clear prompt to do so in the letter and being given a list of specialist lawyers. Some parents had difficulty finding a solicitor to attend the meeting both because of their own abilities and a lack of available lawyers.

Parents rarely instructed a solicitor jointly; in only 1 of the 33 observed cases was there joint instruction. It was common for one parent, usually the father, not to obtain legal advice.

Specialist lawyers recognised the importance of advising parents at this stage but complained about getting little notice of meetings, either because the meeting was called at short notice or parents had delayed contacting them. Local authorities were willing to re-arrange meetings; the date was changed in around a third of cases.

The meeting

Meetings were generally chaired by a service manager and attended by the local authority social worker and lawyer; the local authority side usually outnumbered the parents' side. The number of people at these meetings ranged from 3-10, 7 was the most common number of attendees.

The meetings were used for a variety of purposes, notably to *agree care arrangements*; to *agree assessments*; to *reinforce the child protection plan*; and to *inform parents that proceedings would be brought*.

Mothers were usually legally represented (74%); fathers were less likely to be invited, to attend or to have legal representation. Parents spoke for themselves; their lawyers said relatively little but were a powerful presence in meetings, providing support, advice and restraint. One parent said:

'When you've got your solicitor with you, you know they're the only person who's 100 per cent backing you up, so it helps you …'

Another:

'… I think he handled it really well, and he helped me stay calm and if I was rambling on…'

Lawyers advised parents to co-operate with children's services, and sometimes proposed changes to written agreements to make it easier for them to do this.

The conduct and tone of the meeting varied according to the purposes and the circumstances of the case, the style of the team manager and the approach of the authority. Some meetings could be positive and encouraging, others were more of a 'telling off' for parents and laying down of expectations. Some meetings were very difficult, and parents could get distressed and angry. Practical matters such as the size of the room, seating arrangements and the timing of the meeting could make a difference.

Most meetings were relatively short (two-thirds of the observed meetings lasted 45 minutes or less). Longer meetings did not necessarily mean there was more time for negotiation; one area had longer meetings than the others, but this was to go through the list of concerns.

There was no provision for review meetings in the Guidance but these had become a regular feature of practice in some areas. Reviews raised challenging questions about how much progress should be expected between meetings, how far apart meetings should be, and how they integrate with other processes such as child protection case conferences.

Despite concern about the level of fee (£405 at the time of the study) lawyers outside London usually attended review pre-proceedings meetings. Their attendance was particularly useful if this meeting was used to inform parents that care proceedings would be started.

The impact of the process

The research examined three aspects of the impact of the pre-proceedings process: 1) the avoidance of court proceedings; 2) delayed application to court; and 3) its effect on court proceedings.

Avoidance of proceedings

There were 30 file cases (24%) out of an estimated 127 in the 6 local authorities which were diverted from care proceedings through use of the pre-proceedings process. The diversion rates in the six local authorities ranged from 12.5% to 33% with the lowest rate in the authority that made least use of the process.

Diversion was achieved through alternative care arrangements in 10 of these cases: 3 children moved into foster care with strangers and the remaining 7 were cared for by parents or grandparents, including 3 where fathers obtained residence orders. In 16 cases there were improvements in care or engagement with services and in 6 of these the improvements were substantial. In four cases the local authority legal file had insufficient information to establish how the case had been diverted. Other factors, such as the problems of establishing threshold on the basis of

past concerns and evidential problems also contributed to the decision not to bring proceedings.

Out of 28 cases where meetings were observed and diversion was possible 19 had not entered care proceedings (68%) by the end of the study. There were alternative care arrangements in 4 of these cases, substantial improvements of care in 7 cases, and more limited improvements in 8, some of which may have subsequently entered proceedings. Out of these 19 cases 12 were no longer in the pre-proceedings process, although some children were still on child protection plans.

Delay

The average time between the legal planning meeting and the care application was just over 7 weeks for cases where the pre-proceedings process was not used. Where the pre-proceedings process was used, the average was 23 weeks, that is 16 weeks longer.

These figures do not support the view that local authorities use the pre-proceedings process without allowing parents sufficient time to change. The pre-proceedings cases that went into proceedings most quickly were marked by a lack of parental engagement or an incident of violence.

There was potential for delay at all stages of the pre-proceedings process, preparing and sending the letter, holding the meeting and taking the decision that care proceedings were required after all. Optimism about parental care and a bias against court action can combine to produce a perception that parents are engaging and their care is improving. Delay is easier to identify with hindsight; the file sample included cases with a history of neglectful parenting which had been left to drift in the pre-proceedings process.

Care proceedings

There was no evidence that courts took account of the local authority's pre-proceedings work. Local authorities felt let down by the failure of courts to respond to the additional work they had undertaken and to conclude cases more speedily, without further assessments.

There was no significant difference between the length of care proceedings for cases where the pre-proceedings process was used and those that went into care proceedings directly. The average length of proceedings for the whole sample was 52 weeks.

Case length from the legal planning meeting to the end of the proceedings averaged 59 weeks for cases that went direct to court and 70 weeks for cases with pre-proceedings. This was a statistically significant difference (p=0.018).

There was no significant difference in the proportion of cases with and without pre-proceedings where there were disputes about interim care orders, assessments, contact or placement in the care proceedings. A higher proportion of care proceedings direct had disputes about threshold or causation, a reflection of the cases which were where the pre-proceedings process was considered inappropriate.

Although the numbers involved are small, it appeared that use of the pre-proceedings process made it less likely that proceedings would be withdrawn before the final hearing. Apart from that, there was no difference in the orders made at final hearing.

Judges who took part in the focus group said that they were generally not aware whether the pre-proceedings process had been used. Their explanations for ordering further assessments were scepticism about the quality of local authority work and the care system, the need for fairness to the parent(s), and to prevent their decisions being overturned on appeal.

Further details of the research

This ESRC-funded Study was undertaken by Judith Masson, Professor of Socio-legal Studies, and Kay Bader, Research Assistant, from the School of Law, University of Bristol and Dr Jonathan Dickens, Senior Lecturer in Social Work and Julie Young, Senior Research Associate, from the School of Social Work, University of East Anglia

Further details of the research and findings are contained in the research report: *Partnership by Law?* School of Law, University of Bristol and Centre for Research on Children and Families, University of East Anglia (2013) which can be downloaded without charge along with further copies of this summary at:

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