

1GC | Family Law

Care orders

How do you show that all efforts have been made to support birth parents before removing a child or children? How to incorporate the views of birth parents in the application?

15.1.21

What sort of cases ?

- Some applications are long in the making
- Some come out of a clear blue sky;
- Removal implies efforts to preserve placement with parents has failed
- More relevant to chronic cases of neglect, drug abuse, parents with LD and not sudden revelation of inflicted death or serious injury of child or CSA.

Focus on Pre-proceedings

- By the time application is made LA needs to show that not reasonable to support parents in placement and risks too high
- Test for removal: welfare 'requires' separation;
- Must have exhausted other alternatives;

Assessment and PLO

- Range of assessments which can be undertaken
- Public Law Outline

Assessments

- Following referral:
 - 1. NFA
 - 2. Emergency intervention – EPO etc
 - 3. S 47 investigation: safeguarding issues
 - 4. Child In Need Assessment
 - 5. Specialist assessment (child with disabilities)

Initial and Core Assessment

- Assess all aspects of welfare
- Consult with school and health services
- Speak to parents
- Discuss support services –
- Family Support Workers
- Link with Adult Service when parents with significant LD – qualify for support under Care Act

Section 47 investigation

- Duty to investigate where reasonable cause to suspect that a child is suffering or likely to suffer significant harm;
- Framework of assessment : *Working together to protect children (2018)*.

Consultation with parents

- *Venema v The Netherlands*, the European Court of Human Rights stated:
- *‘it is essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking measures of protective care or in taking decisions relevant to the care and custody of a child. Otherwise the parent will be unable to participate effectively in the decision-making process or put forward in a fair or adequate manner those matters militating in favour of his or her ability to provide the child with proper care and attention.’*

PLO

- The pre-proceedings process was introduced in 2008 as the part of the Public Law Outline (PLO) reforms to care proceedings. It has been revised by the Public Law Outline 2014 and the Children and Families Act 2014, and there is now a 26-week time limit for the completion of care and supervision proceedings. This places an increased emphasis on pre-proceedings work.

Pre proceedings

- In the View from the President's Chambers: The Process of Reform: the revised PLO and the Local Authority' [2013], The President of the Family Division, Sir James Munby, stated:
- *'Work done by the local authority in the period pre-proceedings—front loading—is vital for two quite different reasons. Often it can divert a case along a route which avoids the need for proceedings. When that is not possible, and proceedings have to be commenced, work done beforehand will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly than a case which reaches the court in an unsatisfactory state.'*

Letter

- The letter before proceedings must be sent to a parent(s) and any other person with parental responsibility for the child inviting them to attend a pre-proceedings meeting with the social worker. The letter must be:
 - a summary in simple language of the local authority's concerns
 - a summary of what support has already been provided to the parents
 - what parents need to do and what support will be provided for them, to avoid proceedings, including time scales
 - information on how to obtain legal advice and advocacy and make clear how important it is for the parent to seek legal representation

- The parents must take this letter to solicitors as they will be entitled to **non-means-tested legal aid representation** and advice for the pre-proceedings process, see Practice Note: [Public funding in care proceedings](#). Good practice provides that a parent should have up to ten working days' notice of a pre-proceedings meeting.
- It is also advisable to attach with the letter a separate pre-proceedings plan setting out **clear expectations** of the parents and of the local authority so that the parents' solicitors can advise them on the plan ahead of the pre-proceedings meeting.

Meeting

- To ensure that the pre-proceedings meeting is effective the local **authority lawyer should prepare and send the following information to the parents solicitors for them to consider and advise their** client ahead of the pre-proceedings meeting:
 - experts CVs, time scales for assessments and draft letters of instructions
 - evidence the local authority is relying on, any social worker documents, police reports etc
 - details of support services/agencies that the parents need to engage with as part of the pre-proceedings process

- **Pre-proceedings meeting**
- The pre-proceedings meeting is chaired by a team manager and attended by:
 - the parents(s)
 - any person with parental responsibility
 - their solicitor
 - social worker
- The LA lawyer is not required to attend but will often do so if the parents attend with their own solicitors. If the social worker requires legal advice during the PPM, the LA lawyer will be provide such advice away from the PPM.
- A child may attend a PPM if they are of an age and have capacity to contribute to the pre-proceedings process. They are not entitled to free legal advice so the LA needs to identify support or Advocate for that child.

- During the PPM provides that during the meeting, the attendees should:
- agree and sign a pre-proceedings/working together plan
- specify what assessments and services the parents need to engage in and time scales
- identify family members' details for a FGC or family meeting
- set down dates for review and conclusion of the Pprocess
- clearly outline what steps the local authority will take at the end of the process depending on the progress or otherwise of the plan
- **set out what support the local authority will provide to the family**

- **Review of pre-proceedings**
- To minimise drift under pre-proceedings, there should be a:
 - midway review pre-planning meeting—six to eight weeks to consider the progress of the plan and outcome of assessments
 - a final pre-planning meeting—12–16 weeks
 - review legal planning meetings between the local authority lawyer and client to discuss the impact of assessments on the threshold criteria, parallel planning, any developments influencing the care plan
- These time scales are subject to the needs of the child and the progress by the parents and therefore pre-proceedings can be concluded sooner.
- Under the pre-proceedings process, the local authority must actively consider family and friends because if a child[ren] cannot remain in the care of this parents, the local authority has a duty to consider in the first instance placement with other family members and friends.
- Local authorities will use family meetings or family group conferences (FGC) to include family members in the decision making and to identify alternative family carers and support. FGC's are a voluntary process for family members to attend a meeting and agree a family plan for supporting the parent(s) and child[ren]. The meeting is normally organised by a FGC coordinator who is independent of the local authority.
- Where preliminary assessments of family members are positive, the local authority will normally complete a special guardianship assessment or a connected persons/Kinship assessment, if the child is looked after

- **Preparation for issuing care proceedings**
- Guidance on how applications for care proceedings should be conducted is set out in Practice Direction 12A of the Family Procedure Rules 2010.
- In preparation for issuing care proceedings the local authority lawyer must consider the pre-proceedings checklist with the social work client and ensure the care plan is supported by:
 - robust and up to date assessments
 - family members have been identified and assessed. If not, the are time scales for completing this work without delay
 - statements are evidence based with comprehensive analysis
 - chronology has key dates/incidents from past two years unless relying upon earlier incidents in evidence
 - a genogram
 - all relevant social work reports, records and decisions that local authority is relying on are available
- The social worker evidence template was introduced in 2014 as a standardised format for all social worker statements to be used nationally. It includes sections for the care plan and chronology so there is no need for a separate initial care plans or chronology. The social worker evidence template has not been enforced as yet nationally and there are regional variations in its use.

Obligation of LA

- **In *Re W* 2013] EWCA Civ 1227 in a judgment handed down by Ryder LJ the Court of Appeal has once again reiterated what is now expected of local authorities. Local authorities must give evidence as to the services that would be available to support each of the placement options available to the court. Ryder LJ has said that**
- *"It is...not open to a local authority within proceedings to decline to identify the practicable services that it is able to provide to make each of the range of placement options and orders work...Not all services will be practicable and it is for these reasons that the court needs to know what services are practicable in support of each of the placement options ...A local authority cannot refuse to provide lawful and reasonable services that would be necessary to support the court's decision because it disagrees with the decision"*

- Ryder LJ expressed clear concern as to what would happen if only some Local authorities identified and procured all the services available while others failed to do so :
- *"To put it in stark terms, it cannot be right that in one local authority a child would be placed with a parent or other kinship carer with significant support to meet the risk whereas in another local authority the same child would be placed with a view to adoption in the implementation of a plan to meet the same risk. The proportionality of placement and order are for the court. The services that are available are for the authority"*
- In summary, taking *Re B*, *Re B-S* and *Re W* together, Local authorities are expected to provide the court with a proper analysis of all the options available to the court.

Views of Parents

- Integral
- Advocacy Services
- Legal Service