Families on the Edge of Care Proceedings Study:

The pre-proceedings process in practice

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Families on the Edge of Care Proceedings Study

• **Mixed methods:**
  – *quantitative* (case files) and *qualitative* (interviews etc)
  – *retrospective* (file study) and *prospective* (observations)
  – 6 LAs: 2 shire counties; 2 London Boro’s; 2 unitaries *(1 in Wales)*

• **Data sources:**
  – 207 LA solicitor’s files; court case papers/ bundles
  – 69 in-depth interviews with professionals
  – 36 observations of pre-proceedings meetings (+ follow up)
  – 25 in-depth interviews with parents

• **ESRC Funded; 27 months April 2009- June 2012**
The pre-proceedings process

• Introduced as part of PLO April 2008 (piloted Autumn 2007)
  – Not based on evidence; little consultation
  – An expectation in all non urgent cases
    o Not integrated into other LA processes eg CPP of LAC Reviews
• Starting point: legal advice that s.31 threshold is met
  – Letter before proceedings (LbP) sent to parents
  – Parents qualify for legal aid non-means, non-merits (controlled) (L2)
  – Parents contact solicitor for representation/advice at PPM
  – Pre-proceedings meeting (PPM) held
    o Very little in Guidance about the meeting
  – Written agreement between parents and LA.....
Figure 1: A simplified model of the pre-proceedings process

- Service provision with parental co-operation
- s.47 enquiries initial or core assessment
- EPO
- Child protection case conference
- Legal Planning Meeting
- Decision to enter PPP or bring care proceedings
- Letter before proceedings
- Pre-proceedings meeting
- s.31 application
- s.20
- Diversion from proceedings
- Kinship care, private law application
- Improved Parenting
- Subsequent further concern
- LAC Review
- Subsequent further concern
Aims of the process

• Improving parents’ understanding and engagement

• **Diversion: avoiding care proceedings** — (*Guidance, Vol 1, 3.27*)
  - Improving care at home
  - Agreeing alternative care — s.20/ kin care (para 3.32)
  - Private law proceedings

• **Planning intervention** (para 3.32)
  - Agreeing services/ service use
    (Service use may result in improvement of care)

• **Planning proceedings/ ensuring proceedings are better prepared**
  - ‘narrowing issues’ and obtaining evidence
  - Avoiding court door negotiation and unexpected disputes
What the research tells us

• What use LAs are making of the pre-proceedings process
  – How often? How many?

• How LAs are using the Pre-proceedings process
  – What cases? At what point in the case?

• What effect the pre-proceedings process has on cases
  – Without court... and in court

• What local authority staff think about the process

• How the process is viewed by parents ...and their lawyers

• What problems arise in using the process...and how to avoid them
USE OF THE PRE-PROCEEDINGS PROCESS

In Wales, over time, and in the study LAs
N of s.31 Applications by LA (Wales) 2008-2012

- 2008-9 s.31 cases
- 2009-10 s.31 cases
- 2010-11 s.31 cases
- 2011-12 s.31 cases

pre-proceedings process in practice
Cafcass Cymru 5 13
Use of Level 2 09/10- 11/12

Rate per 000 children <16 years

- L2 rate yr 09-10
- L2 rate yr 10-11
- L2 rate yr 11-12
What use are LAs making of the pre-proceedings process?

- **NB Target**
  - 15% parents (rising to 25%) in s.31 received level 2 advice in 90% LAs

- **Rate 1.25 per 1000 children <16 years in Wales**
  - Range <0.25 - 3.5
  - Average in England 0.65

- **Increasing or decreasing?**
  - England and Wales slight decline 2009/10-2011/12
  - Wales almost unchanged overall
  - But 8 LAs decrease use and 7 increase use
  - High users tend to increase, low users decrease
  - Not apparently related to increase in care proceedings
Use in the Study LAs

• 5/6 above average users: rates 0.26 -1.42
• No evidence study LAs avoided using PPP
  – Average 57% of cases that went to legal planning meeting entered PPP
  – Range 43%-73%
• Used in all cases except:
  • No time – emergency and immediate cases
  • No point
  – Use of ‘letters of intent’ 20% of PPP cases
• Staff in low using LA seemed more sceptical
How are LAs using the process?

• **Major use:** **pre-birth assessment** 30% cases
  – 75% of cases referred to LPM pre-birth entered PPP
  – 1/3\textsuperscript{rd} of these ‘letters of intent’

• **80% children already on child protection plan**
  – Referral to PPP where no/ little progress
  – Timing?

• **A step up? or another step?**

• **Purpose?**
  – Assessment 10% but almost half cases in one LA
  – Plan care at birth 15% range 5%-38%
  – Agree alternative care 10% range 6%-18%
  – Avoid care 38% range 27% - 50%
IMPACT OF THE PRE-PROCEEDINGS PROCESS

Diversion, delay and the effect on court proceedings
Diversion

• 24% of cases in file study *diverted*; 30 cases
  – Range 12.5% to 33%
  – Lowest diversion rate in lowest using LA

• **File study** - Diversion how?
  – Improvement of care 16/30 – 6 substantial
  – Alternative care 9/30
  – Private law proceedings 3/30
  – Researchers agreed 16/30 cases positive outcome

• No s.31 by LA in 4 other cases where parents moved

• **Observation study** No care proceedings –19/28 at follow up
  – Improvement of care 15/19 – 7 substantial
  – Alternative care 4/19
Delay

• Cases with pre-proceedings took 172 days to reach court after LPM c/w 52 days

• Delays at all stages of the process
  – LPM to letter ~19 days but half within 8 days; letters of intent 25 days
    • Reasons for delay: other work on case; alternative plan (s.20) and?
  – Letter to meeting (PPM) average 18 days range 12-30 days in study LAs
    • Notice periods often short; ¼ re-arranged
    • Some parents found it difficult to find a lawyer
  – PPM to decision to bring proceedings; 14/54 cases PPP lasted over 180 days before application to court
  – Long cases marked by indecisiveness
  – But NB cases without proceedings lasted even longer ~ 279 days
Court proceedings

• no shorter; no less contested; no difference in outcome
  – ~ length of proceedings 51 weeks with PPP
  – ~ without PPP 52 weeks (not significant)
  – ~ 70 weeks total (s.31+PPP) range 59 – 82 weeks for LAs in the sample
• Parents who ‘failed’ at PPP not more likely to accept LA plan
• Not all potential relative carers identified during PPP
  – The Cooke family
• LAs reluctant to commission expensive assessments in PPP
  – 1 study LA stopped commissioning external assessments under PPP
  – No cost sharing
  – Courts ordered further assessments
Local authorities felt courts had failed to respond to PPP

‘... the whole point as we understood it was the judiciary would be a lot firmer on the number of assessments, particularly if we have done them before, because the whole point is to frontload it and to avoid all of that under care proceedings. In theory, care proceedings are meant to be shorter. But what we were finding was that even though we did assessments, and they were agreed by the parents with the letters of instruction, we would get into court and we were asked to re-do certain things ... we were almost back at square one. So maybe in certain cases, if we know we are likely to issue anyway, we might as well do it under care proceedings, we save six months.’ LAS14

‘I think the aim of the pre-proceedings meeting is to make sure also that we’ve got all the assessments in place so that when we go to court, we’re not starting from a blank canvas. We can say to the court, “well, we’ve done all this assessment, we’re quite clear where we’re at, therefore we can progress.” But I think when we get to court, the courts like to start right at the beginning again.’ DSWTM4

A factor in disenchantment with PPP?
Reasons for court approach to PPP

• Judges
  – unaware that PPP had been used!
  
  *My experience is that it’s generally not formally drawn to our attention as part of the proceedings. There’s probably somewhere in the large number of bundles a letter and if we rummage through it, we come across it, and it may be that it’s referred to because it may become something relevant to an issue that arises. But it doesn’t really figure in my mind generally speaking – it doesn’t feature very much.*  
  
  Judge 6

  – Same approach to proceedings as previously (Pearce et al 2011)
  
  *It’s so much easier to, say, spend £5000 doing another assessment and the appeal won’t occur.*  
  
  Judge 7

• Cafcass Guardians
  – Unaware/ uncertain whether PPP used 18% Cafcass 2009 survey
  – Unaware/ uncertain whether PPP used 34% Cafcass 2012 Survey
Key issues for the future (1)

- Achieving case completion in 26 weeks
  ‘work done by the LA in the period pre-proceedings is vital for two quite different reasons…..[it] will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly....’ President of Family Division, May 2013

- How will the courts view parents’ lack of engagement with PP?
- What (external) assessments can and should be made in PP?

- Short proceedings
  – will not allow for parents to demonstrate change
  – Will not give much time for family members to offer care
References

Cafcass (2012) *Three weeks in November... three years on ...* (cafcass)
Cafcass (2009) *The Baby Peter effect and the increase in s.31 care order applications*
http://www.bristol.ac.uk/law/research/researchpublications/
Masson et al (2013) *Partnership by Law? The pre-proceedings process for families on the edge of care proceedings and summary*
http://www.bristol.ac.uk/law/research/researchpublications/2013/partnershipbylaw.pdf
http://www.bris.ac.uk/law/research/researchpublications/2013/summary.pdf
Munby P (2013) *A view from the President’s Chamber*
Pearce et al (2011) *Just Following Instructions? The representation of parents in care proceedings*
http://www.bristol.ac.uk/law/research/researchpublications/