Families on the Edge of Care Proceedings:

The operation of the pre-proceedings process and its impact on care proceedings

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Presentation:

• Introduce the pre-proceedings process for care proceedings
• Outline the research
• Main findings
• Points to note
• Policy issues
The Pre-proceedings process in words

- Introduced with Public Law Outline (PLO)

3.3 ‘Before making an application for a care or supervision order a local authority is expected to seek legal advice and to communicate with the parents (and child, if of sufficient age and understanding) the nature and extent of their concerns. Prior to submitting an application to the court, and where the short term safety and welfare of the child permits, the local authority should send a ‘Letter Before Proceedings’ to the parents, the contents of which should also be explained carefully and directly to the parents, taking into account the way in which information is presented in the light of the parents’ cognitive and linguistic abilities. The purpose of such a letter is to enable the parents to obtain legal assistance and advice, prior to a meeting with the local authority, the intention of which is either to deflect proceedings or, at least, to narrow and focus the issues of concern....’
Aims of the process

• Diversion
  – Improving care at home
  – Agreeing alternative care – s.20/ kin care

• Planning intervention
  – Agreeing services/ service use
    (Service use may result in improvement of care)

• Planning proceedings
  – Improvement of LA case preparation
  – ‘narrowing issues’ and obtaining evidence
  – Avoiding court door negotiation and unexpected disputes
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 Boroughs; 2 unitaries

**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**
  - Peer reviewed
The samples

File sample
• Cases identified at legal planning meeting
• ‘Threshold met’
  – Advised to send LbP OR authorised to start proceedings
  – 120 cases where PPP started - of these:
    • 23 sent letter of intent
    • 97 possibility of no proceedings
    • 34 did not enter care proceedings within 6 months
  – 87 ‘court only’ cases

Observation sample
• 33 cases where PPM held during the fieldwork in the LA
Findings 1: the families in the study

• Comparable with MoJ, Care Profiling Study (2008) families
• 207 families with 368 children; 116 (56%) concerned 1 child
  – 105 aged < 1 year 28.5%
  – 104 aged 1-4 years 28.3%
  – 93 aged 5-9 years 19.8%
  – 57 aged 10-14 years 15.5%
  – 9 15 years or over 2.4%
• Only 30% mother’s only child
• 80% families known to children’s services more than 1 year
• Over 60% of sample on child protection plans
  – 81% of pre-proceedings children
Findings 2: the use of the process

- 5/6 LAs in the study were above average users of the PPP
- Routinely considered use of PPP at legal planning meetings
- Used PPP in almost all non-urgent, non-immediate cases
  - Identified a few cases where saw no point in PPP
- Major use with pre-birth assessments: 30% of sample
- Key Aims in using PPP
  - Improving parenting/ avoiding court
  - Planning care at birth
  - Agreeing alternative care
  - Agreeing assessment
  - Agreeing services
Findings 3: Main aim in using the process

- Letters of intent ~ 19% range 7% - 29%
  - ¼ of pre-birth cases all but 1 where children previously removed

- Improving parenting/ avoiding court ~ 38% range 27% - 50%

- Planning care at birth ~ 15% range 6% - 38%

- Agreeing alternative care ~ 12% range 6% - 18%
  - S.20 or care by relatives

- Agreeing assessment ~ 11% range 0% - 47%
  - One LA used PPP to gain co-operation where external assessment commissioned

- Agreeing services ~ 6% range 0% - 12%
Findings 3: LA views of the PPP

• Study LAs generally positive – 1/6 more sceptical
  pre-proceedings was ‘the right way’ to work
  pre-proceedings could be effective as ‘wake up call’
  and to encourage engagement
  a just procedure - not just a procedure

• Recognized danger of adding to delays:
  ‘I think pre-proceedings are good where you have very tight written agreements which you’re reviewing within tight timescales.’ SWM11

• Disillusioned by the court’s response:
  ‘... 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.’ LAS14
Findings 4: Parents’ views

• Letter brought home the seriousness of the concerns
  – The possibility of care proceedings seemed more real
  – But did not mean parents accepted the LA’s concerns

• Positive about having solicitor at the meeting
  – Support, reassurance, advice, encouragement

‘... I think he 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 ...’ Estelle Imlach

• But some still felt pressured to go along with the LA plan

‘Some things I don’t agree with, but I feel pushed to go along with it, because in the past I have 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, I just go along with it.’ Sally Fry
Findings 5: the way the PPP works

CLEAR COMMUNICATION of CONCERNS
A step up from CP Plan another step towards court
LAWYER provides ADVICE, EXPLANATIONS, PARTISAN SUPPORT
‘wake up’ call
EMPOWERS PARENT, ENCOURAGES ENGAGEMENT
LA plan may be tweaked
LEADS TO AGREEMENT
On services, behaviour, substitute care, assessment
Parent complies (or not)
Findings 6: the impact of the PPP

1. Diversion from care proceedings

2. Impact on court proceedings

3. Drift and delay
Diversion

• Through improvement in care
  – But many remained open and on child protection plans
  – Generally improved engagement

• Alternative care arrangements
  – S.20
  – Private law proceedings with local authority support or legal aid

• Case closure

PROCESS DOES WORK TO AVOID CARE PROCEEDINGS

• ¼ cases in file study remained out of proceedings
• Rate for observed cases higher (some shorter follow up)
Impact on court proceedings

- PPP cases were contested at least as much as s.31 only cases
- No difference in case outcome
- No significant difference in case duration

**PROCESS DID NOT LEAD TO SHORTER CARE PROCEEDINGS**

- Reasons
  - Judges did not alter their approach where PPP had been used
  - Judges said they often did not know that the PPP had been used
  - The ‘start again approach’ is normal for courts
  - Parents no more accepting where the PPP resulted in care proceedings

‘[I]t’s so much easier to, say, spend £5,000 doing another assessment and the appeal won’t occur.’ Judge 7
Drift and delay

- **PPP is prone to delays**
  - Sending letters, holding meeting, giving parents an opportunity to engage

- **PPP additional to long proceedings**
  - Average duration between LPM and s.31 application = 24 weeks
  - Range 17 weeks – 31 weeks
  - For ‘court only’ cases = 8 weeks

- **Some cases drifted in PPP**
  - Long-term neglect cases

- **LAs had developed monitoring and review processes**
  - 5/6 held review PPM with parents (and lawyers)
Use of the PPP over 3 years
Child protection plans, care proceedings and Pre-proceedings  (source DfE, Cafcass and LSC)
Future use of the PPP?

Between 2009-10 – 2011-12

• use of PPP declined in 71 LAs in England (47%)
  – 4/5ths were low users

• Use of PPP increased in 33 LAs
  – 2/3rds were already high users

Use has not kept pace with the increase in care proceedings
Points to note

• Operating pre-proceedings is a lot more complex than the Vol 1 Guidance suggests
  – Contributes to, not a substitute for, thoughtful practice
  – Risk of delay

• Responsiveness of courts
  – Why should LAs use resources for PPP?

• How does PPP fit with the Children and Families Bill 2013?
  – Unrealistic to expect proceedings to be even shorter than 26 weeks
Policy issues

• Better use and better practice
  – Skills, guidance or direction?
• Universal or selective use?
• Links with other LA processes (LAC and CPP)
• Reform and implementation processes
• Continued counting of use of the process
Accessing the research:  *Partnership by law?*

www.bristol.ac.uk/law/research/researchpublications/

www.uea.ac.uk/socialwork/research

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