Pre-proceedings processes in children’s social care

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This paper draws on research currently being led by Professor Judith Masson (Bristol University) and Jonathan Dickens (UEA), into the operation of the ‘letter before proceedings’ and the ‘pre-proceedings meeting’. The Family Justice Review interim report commented on the need for research into the letter and meeting, so it is fortunate that a study is already underway. It is funded by the ESRC and runs from April 2010 to July 2012. At the time of writing (July 2011) the fieldwork is about two-thirds of the way through. This paper therefore reflects work in progress. The aim is to offer some preliminary observations and to locate the letter and meeting in the wider context of other work undertaken by local authorities before cases go to court. It is meant to raise questions about what is reasonable to expect of the new process, given the contradictions within it, the nature of the cases, and the pressures in the authorities.

Background

Since April 2008, a local authority considering care proceedings must send the parents a letter before proceedings, stating its concerns and inviting them to a pre-proceedings meeting (unless doing so would be unsafe for the child). These requirements were introduced by revised statutory guidance on court orders under the Children Act 1989 (DCSF, 2008), and by the national implementation of the Public Law Outline (Judiciary, 2008). The meetings are sometimes referred to as ‘PLO meetings’. Parents are entitled to legal aid and can attend the meeting with a legal adviser. The stated aim is to avoid care proceedings, or if not possible to clarify the issues so that proceedings which are brought can be completed more quickly.

The ideas of a letter for parents and pre-proceedings legal help were suggested in the 2006 review of care proceedings (DfES and DCA, 2006, esp. para 5.11), where they were held up as existing good practice. They were included in the consultation draft of the revised statutory guidance (DfES, 2007, para 3.16), but the new system was not piloted prior to national implementation. The final version of the statutory guidance says little about the meeting, but includes a template for the letter. There is more advice on using the letter and meeting in the MoJ/DCSF ‘best practice guide’ on preparing for care proceedings, which was published in August 2009. This was based on two workshops held very soon after implementation, in July 2008 (Care Proceedings Programme, 2009).

Since the launch of the new process, in the aftermath of the ‘Baby Peter’ case, and in the midst of a deep economic recession, there has been a significant and sustained increase in the number of care applications. In 2009-10, there were 8,826 care applications in England, up by 36% from 2008-09 (CAFCASS, 2011: monthly care demand statistics available on the CAFCASS website). The CAFCASS figure is the number of cases, not the number of children, but they have kindly given the data to Professor Masson, who calculates 15,665 children in 2009-10. The increase raises the question of how well the meetings are working. It does not automatically mean they have ‘failed’, but success may have to be measured rather differently to how it was envisaged.

Context

To consider how the letter and meetings are working, it is first necessary to see them in the wider context of all the other work and meetings that local authorities arrange with families in the ‘pre-proceedings’ stage. It is worth noting that for many families there is no question of the case going into proceedings – all the work is done on a family support basis. Other cases, although still outside the court, involve high levels of risk and varying degrees of co-operation; and some agreements are less ‘voluntary’ than others.
A few statistics illustrate what a huge volume of work local authorities are undertaking. In 2009-10 there were just over 600,000 referrals to children’s social care in England, and nearly 400,000 ‘initial assessments’. More than 142,000 ‘core assessments’ were completed, over 70% within the timescale of 35 working days. There were 88,000 enquiries under s. 47 CA 1989, triggered when there is concern that a child may be suffering significant harm. These led to 43,000 initial child protection case conferences. On 31 March 2010 there were 380,000 ‘children in need’ (s. 17), 39,000 children on child protection plans, and 64,400 children ‘looked after’ by local authorities in England (excluding regular respite care). Of those 64,400, 40% were on care orders, and a further 20% on interim care orders (DfE, 2010a, 2010b).

All this work takes place in a highly pressured and proceduralised work environment, often with poor IT and support services, frequent staff changes and increasingly tight budgetary constraints (Social Work Task Force, 2009; Broadhurst and Holt, 2010; McKeigue and Beckett, 2010, Munro, 2011).

The children and their families will be involved in a large number of meetings. Families receiving services under s. 17 will be involved in ‘child in need’ meetings about the plan for their children. The parents of children on child protection plans will be involved in periodic child protection case conferences (potentially involving a large number of professionals and agencies, chaired by an independent chair), and more frequent ‘core group meetings’. The parents of looked after children (and the children themselves) will be involved in regular ‘LAC reviews’, led by an independent reviewing officer. At any stage along the line, parents may be offered the chance of a Family Group Conference, to help families discuss the situation between themselves to see what help can be offered to the child and parent(s), and who the child should live with (Morris et al, 2009). The point is that the cases which do come to court are those with the most severe and enduring difficulties, where many previous efforts to engage the parents in sustaining the necessary changes for this child and/or previous children have proved unsuccessful (Masson et al, 2008; Broadhurst et al, 2011).

The new pre-proceedings stage brings yet another meeting to an already complex pattern of meetings (Masson, 2010). All are demanding for parents and other family members (and practitioners), and the overlaps and differences potentially confusing.

The research project

The project is examining practice in six local authorities in England and Wales by studying local authority legal department case files, observing meetings and interviewing local authority social work and legal staff, lawyers in private practice, and parents.

1. The file survey involves analysis of approximately 30 cases per authority where care proceedings were started in a 6 month period in 2009 (these may or may not have had the letter and meeting); and analysis of a further 10 cases in each authority in that period where letters were sent but proceedings were not started.
2. There is observation of 5 or 6 pre-proceedings meetings per authority.
3. There are interviews with parents attending those meetings, and further interviews with LA managers, social workers and lawyers, and with parents' lawyers.

The six authorities comprise two county councils, two unitary authorities serving smaller areas and two urban boroughs – an inner-city one and an outer-city one. Some are high users of the letters and care proceedings, others are less so. There is a good variety of demographic characteristics.

The Bristol and UEA teams are doing the fieldwork in three areas each. At the time of writing, fieldwork in the first four authorities has been completed, and we are just starting the final pair. The researchers, Kay Bader (Bristol) and Julie Young (UEA), have studied almost 150 files (mostly care proceedings cases, but about 15% of them pre-proceedings only), observed over 20 meetings, and conducted more than 30 interviews.
Emerging Findings

It is still too early to draw any firm conclusions, but already some striking patterns have emerged:
• variations between authorities in the way that they use the process;
• generally positive working relationships between the different professionals involved, trying to find common ground to help the parents engage with children’s services;
• considerable frustration from children’s services about the way that their pre-court work is treated if/when cases do go to court.

The file survey of cases starting in 2009 shows differences between the authorities in their use of the pre-proceedings process (see table below). In Authority 1, over two-thirds of the cases in the sample had a letter first, but in Authority 4 it was the other way round, with two-thirds not having a letter. Inter- (and even intra-) authority variation is a widespread finding of research into child and family social work, with differences in an area’s level of poverty being a major variable (notably linked to different rates of children becoming looked after); but poverty is not the only factor, and differences of local practice and organisational culture are also highly significant (Dickens et al., 2007). Variation is not necessarily a bad thing, as long as basic standards are met. It can be a sign of flexibility, leading to innovation and better outcomes.

<table>
<thead>
<tr>
<th>Sample of cases starting care proceedings in 2009</th>
<th>Authority 1</th>
<th>Authority 2</th>
<th>Authority 3</th>
<th>Authority 4</th>
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<tr>
<td>How many had LBP?</td>
<td>21 (70%)</td>
<td>17 (59%)</td>
<td>11 (42%)</td>
<td>12 (36%)</td>
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As for the observed meetings, 10 (just under half of them so far) involved newly born or unborn babies (in some cases, along with older siblings). A quarter involved children aged ten or over. The families tend to be well-known to the local authority. Even if the meeting is about a new baby, they are likely to have been involved before because of older siblings. The children are nearly always the subjects of child protection plans. The families face many difficulties, including domestic violence, parents with learning disabilities or mental health problems, drug misuse and homelessness.

From the meetings we have observed so far, only six, about a quarter, looked likely to go straight into proceedings; but four of these were from Authority 4. This suggests that it has a different approach to the other three, tending to hold the meetings later, when there is less opportunity for work to be undertaken outside proceedings. The emphasis in later meetings is different, for example on reaching agreement about where the child should live, rather than arranging a renewed programme of preventive work and out-of-court assessment. We cannot conclude from this data that the authority does not do such work, just that it seems less likely to use the pre-proceedings meetings to structure it. We hope to get a clearer picture from the interviews and our study of the case files.

In nearly half the observed cases, review pre-proceedings meetings were booked. But again, there are differences between the authorities – specific pre-proceedings reviews were much more common in Authority 1 than the other three. (Progress can be reviewed in other ways, notably via child protection case conferences or LAC reviews). We shall follow-up the observed cases over time, to see what happens and whether or not they go into care proceedings.

Do the meetings divert cases from court? So far the evidence is mixed. In the interviews, one team manager said that they did about half the time, but another (from the same authority) said that over time, nearly all end up in court. The issue then to be addressed is whether this pre-proceedings delay is harmful to the child, or whether there are sufficient safeguards and support to ensure it has some benefits in itself, and helps to reduce the duration of subsequent proceedings.
If the process does not divert cases, does it reduce delay once the case is in court? Again, the evidence so far is mixed and we have not yet analysed the quantitative data. In the interviews, one team manager described a case where pre-proceedings work had speeded up the court case, but then said this was unusual. A local authority lawyer said ‘… my feeling is that because it isn’t done in the eyes of the court, it’s not really given the status that it should be’. One of the major frustrations for the local authority interviewees is their sense that the courts ignore the pre-proceedings work, except to criticise them for not doing it, and routinely order further assessments, adding to cost and delay.

Despite the misgivings, there seems to be general agreement from all sides that it is better to have the meetings than not. The lawyers (from both sides) are often silent in the meetings, but there is a perception that their presence underscores the seriousness of the meeting and can be a lever for change. As one team manager put it:

This meeting is special because it’s more formal, it’s more formal because parents see it as a legal meeting rather than a social work meeting … so that’s what’s special. It’s a legal meeting, they’ve got their legal representatives there who are able to give them advice and support, and we are able to give them a very clear plan with just a few points.

One of the parents spoke of how helpful it was to have their own lawyer with them in the meeting:

… it always makes me nervous, so many people. I mean, I know most of them anyway now, but it feels really weird – you know, everyone’s there to talk about me and my baby. It’s a lot easier having a solicitor with me actually … it is a lot easier with someone that you know is completely on your side.

Underneath this general agreement, however, the two quotations also expose some of the conflicting expectations about the meetings. The social work side is looking to ‘give a very clear plan’, usually with restricted room for negotiation, and sees the lawyer(s) as contributing to that process. The parent may have rather different expectations of the meeting and their lawyer’s role in it, wanting more of a discussion and defence.

**Conclusion**

The major difficulty for the pre-proceedings meetings is the conflicting and unrealistic expectations of them. The two quotations above show the tensions between parental and local authority expectations. There are also tensions between the goals of diversion and not adding to delay, and between the authorities and the courts, in how the pre-proceedings work is treated. Above all, it seems unrealistic to expect one more meeting to achieve dramatic change for families whose difficulties are usually deep-rooted and who have already been through a long process of meetings and attempts to work with them. That is not to dismiss the effort, or to deny that change can sometimes happen, even at the last moment. The letter and meeting do bring an added openness and sense of fairness, but are clearly not a solution, in themselves and at such a late stage, to the very great needs of children and families on the edge of care.

There is always a temptation to try to standardise and improve practice by adding more regulations or requirements, but simply shouting more loudly at local authorities will not address the challenges of limited resources and increasing demand, solve the families’ problems or iron out the contradictions of the pre-proceedings process. More regulations are likely to bring more complications and delays to a system that is already complex and prone to delay. To be most effective, the meetings should be kept straightforward, and expectations of them realistic. Plans arising from them should also be realistic, and managed carefully to ensure they do not create unnecessary delay and cost. The potential and the limitations must be understood by all sides.

**References**


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