Public law

working group

Recommendations to achieve best practice in the child protection and family justice systems

INTERIM REPORT (JUNE 2019)

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[1] Available online: https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN%20main%20report%20SO%20and%20SGOs%20_%204Mar2019.pdf

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The Honourable Mr. Justice Keehan

June 2019

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Glossary

ASF	Adoption Support Fund
ASP	assessment and support phase
Cafcass	Child and Family Court Advisory and Support Service and Child and Family Court Advisory and Support Service Cymru
CG	children's guardian
CMO	case management order
DfE	Department for Education
DFC	designated family centre
DFJ	designated family judge
EPO	emergency protection order
FGC	family group conference
FJB	family justice board
FJYPB	Family Justice Young People's Board
FPR 2010	Family Procedure Rules 2010
FRG	Family Rights Group
HMCTS	Her Majesty's Courts and Tribunals Service
ICO	interim care order
IRH	issues resolution hearing
IRO	independent reviewing officer
ISW	independent social worker
LAA	Legal Aid Agency
LiP	litigant-in-person

LoI	letter of instruction
MoJ	Ministry of Justice
PLO	public law outline
S 20	section 20 of the Children Act 1989
S 76	section 76 of the Social Services and Well-being (Wales) Act 2014
SDO	standard directions on issue
SG	special guardian
SGO	special guardianship order
SGSP	special guardianship support plan
SWET	social work evidence template

Introduction

1. The President asked me to chair this working group to address the operation of the child protection and family justice systems as a result of the themes he addressed in his speech to the Association of Lawyers for Children in October 2018.

2. In his address the President said,

> *"This additional caseload, alongside the similar rise in private law cases, falls to be dealt with by the same limited number of judges, magistrates, court staff, Cafcass officers, social workers, local authority lawyers, and family lawyers in private practice. These professional human resources are finite. They were just about coping with the workload in the system as it was until two years ago, and were largely meeting the need to complete the cases within reasonable time limits. My view now is that the system, that is each of the professional human beings that I have just listed, is attempting to work at, and often well beyond, capacity. As one designated family judge said to me recently, the workload and the pressure are "remorseless and relentless". I am genuinely concerned about the long-term wellbeing of all those who are over-working at this high and unsustainable level. Some have predicted that, if the current situation continues, the family justice system will "collapse" or "fall over", but, as I have said before, I do not think*

systems collapse in these circumstances. Systems simply grind on; it is people who may "collapse" or "fall over". Indeed, that is already happening and I could give you real examples of this happening now.

It is because of the high level of concern that I have for all of those working in the system that I have made addressing the rise in numbers, as I have said, my Number One priority. Other issues that come, important though they may be, must take second place.

Returning to the rise in public law case numbers, and speaking now for myself, it seems to me obvious that if there has been a very significant and sudden rise in the number of cases coming to court, these "new" cases must, almost by definition, be drawn from the cohort of cases which, in earlier times, would simply have been held by the social services with the families being supported in the community without a court order. The courts have always seen the serious cases of child abuse, where, for example, a baby arrives close to death at an A and E unit following a serious assault, or cases of sexual abuse or cases of serious and obvious neglect. No one suggests that there has been a sudden rise of 25% in the number of children who are being abused in this most serious manner. Further round the spectrum of abuse lie those cases which, whilst nonetheless serious, do not necessarily justify protecting the child by his or her immediate removal from home. These are more

likely to be cases of child neglect and will frequently involve parents whose ability to cope and provide adequate and safe parenting is compromised by drugs, alcohol, learning disability, domestic abuse or, more probably, a combination of each of these. Such families are likely to have been known to social services for months or, more often, years. The need for the social services to protect the children will have been properly met by non-court intervention somewhere on the ascending scale from simple monitoring, through categorizing the child as "a child in need", on to the higher level of a formal child protection plan and up to looking after the child with the agreement of the parents under s 20 [or s 76]*."*

3. The steep rise in the issue of public law proceedings seen in 2016/17 and 2017/18 has eased off in the last year, but there are still a greater number of cases being issued than in earlier years. The far greater volume of cases is, as the President observed, dealt with by the same number of social workers, care professionals, CGs, lawyers and judges, if not fewer, given those who have decided to leave their chosen careers because of the incessant and overwhelming demands of the family justice system.

4. The reasons for this recent steep rise in the issue of public law proceedings are complex and multiple, as suggested by the recent

work of the FRG's *Care Crisis Review: Options for Change* (June 2018)[2] and joint work done by the MoJ and DfE.

5. It may be that some local authorities have, because of recent leading cases, decided to issue proceedings where they have, wrongly, previously considered that court proceedings were not necessary. Equally, it may be that local authorities have experienced a sudden upsurge in cases that ought to be before the courts, or that a risk-averse culture has developed and grown, resulting in cases that would previously have been dealt with by local authorities outside of court proceedings now being brought before the courts.

6. The various reasons for the increase in the number of public law proceedings issued are outside the remit of this working group. We are charged with considering how children and young people may:

   i. safely be diverted from becoming the subject of public law proceedings;

   ii. once they are subject to court proceedings, best have a fully informed decision about their future lives fairly and swiftly made.

7. The terms of reference of the working group are set out on page 28. In broad terms our objectives are to:

[2] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

i. recommend changes to current practice and procedure that may be implemented reasonably swiftly, without the need for primary or secondary legislation;

ii. make recommendations to provide best practice guidance. In doing so we are not suggesting that one size fits all. As a result of demographics, poverty and populations sizes, to name just three matters, different priorities and practices will suit some local authorities and courts better than others. We suggest, however, that there are certain core changes which need to be made to social work practice and the approach of the courts which will enable fairer and speedier decisions to made for the children and young people who are the subject of public law proceedings;

iii. make recommendations that may require primary or secondary legislation (including revisions to statutory guidance) to effect change. These constitute our longer-term goals.

8. The PLATO tool[3] developed by the MoJ, on the basis of data provided by HMCTS, Cafcass and the DfE, analyses the applications made by local authorities in public law proceedings and the orders made at the conclusion of proceedings in the Family Court between 2010 and 2016. It provides an illustration of the wide variation of applications

[3] To read about the PLATO tool: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696108/children-in-family-justice-data-share.pdf

made per 100,000 children by each local authority in England and Wales, as well as of the orders made on those applications by each DFJ area in England and Wales.

9. The variations made can be illustrated by the following examples:

   i. in the Cleveland and South Durham DFJ area the local authorities issued 304.4 applications for care orders per 100,000 children whereas, over the same period, in the Swindon DFJ area there were 44.7 applications per 100,000 children;

   ii. in the North Wales DFJ area 77.8% of all care applications resulted in the making of a care order whereas in the West London DFJ area only 39.8% of cases resulted in a care order;

   iii. in the Bristol DFJ area 1.8% of all care applications resulted in a SGO with a supervision order whereas in the Wolverhampton DFJ area only 0.3% of cases resulted in a SGO with a supervision order;

   iv. in the West London DFJ area 36.1% of all care applications resulted in a supervision order being made and in the Derby DFJ area the figure was 31.6%, whereas in North Wales 6.5% of applications for care orders resulted in a supervision order being made and in the Kingston-upon-Hull DFJ area the figure was 10.1%.

10. A further illustration of regional variation is provided by the recent research paper, Harwin, Alrouh et al, *The Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family*

Justice (March 2019).[4] In the North 70% of SGOs had a supervision order attached whereas in the South the figure was only 30%. It led the authors to suggest that "*court and local authority cultures are more important than the perceived riskiness of the placement*". This paper provides evidence of the poor experience of proposed and approved SGs during the assessment process, during the court proceedings and after the court has appointed them as SGs. We have had close regard to the findings of this paper in making our recommendations.

11. The reasons for these regional variations are undoubtedly multifactorial. It is the suggestion or inference from the research and statistics that differences in culture and approach by the courts and local authorities are significant drivers in the variation in orders and outcomes for children. That leads us to conclude that steps should be taken to achieve a greater uniformity of approach and a stricter adherence to best practice.

12. Where in this report statements, recommendations or guidance are based on published statistics or empirical research, the reference is given in the text or a footnote. In all other instances, statements, recommendations or guidance are based on the combined and extensive professional experience of the practitioners and judges on

[4] Available online: https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN%20main%20report%20SO%20and%20SGOs%20_%204Mar2019.pdf

the working group. It is important to note that the proposed recommendations and best practice guidance are, of course, subject to the current legislative provisions and statutory guidance.

13. We have met with the Family Justice Council's working group on special guardianship orders. We have reached broadly the same conclusions on the guidance for best practice in respect of these orders. It is our joint objective that, in combining the work, research and considerations of the working groups, best practice advice will be given via the recommendations of this working group. That should avoid different or separate guidance being provided to family justice professionals, which may result in confusion.

14. It is our goal to make recommendations for change and to advise on elements of best practice which will permit social workers, senior managers, the legal professions and the judiciary to promote the welfare and protection of children by working in partnership with families to achieve the best outcomes, in a fair and timely manner, for the children and young people with whom we are concerned. Our aim is to assist families to be able to make decisions that, wherever possible, enable children to be safely raised within their family network and avert the need for more intrusive state intervention, including court proceedings.

15. The simple message which has guided our work, and which must guide all those who work in the child protection and family justice

systems, is that the welfare of the children and young people with whom we are concerned must come first and above every other consideration.

The Honourable Mr. Justice Keehan

June 2019

Executive summary

16. The Public Law Working Group has been set up by the President to address the operation of the child protection and family justice systems as result of the themes he addressed in his speech to the Association of Lawyers for Children in October 2018.

17. A particular concern is the steep rise in the issue of public law proceedings seen in 2016/17 and 2017/18. That has eased off in the last year, but there are still a greater number of cases being issued than in earlier years. The far greater volume of cases is, as the President observed, dealt with by the same number of social workers, care professionals, CGs, lawyers and judges, if not fewer, given those who have decided to leave their chosen careers because of the incessant and overwhelming demands of the family justice system.

18. The membership of the working group is drawn from a variety of professionals with considerable experience in the child protection and/or the family justice systems. Our members include seven directors of children's services or senior managers, the CEO and four directors of Cafcass, the CEO and a director of Cafcass Cymru, a family silk, a junior member of the Family Bar, two child care solicitors, two local authority solicitors, representatives of the MoJ, DfE and HMCTS dealing with family justice, a member of the President's Office and four judges and a legal adviser.

19. To complete our work, we have formed six sub-groups, addressing – in turn – local authority decision-making, pre-proceedings and the PLO, the application, case management, special guardianship and s 20 / s 76 accommodation. The membership of the full working group is set out in appendix A and the membership of the sub-groups in appendix B.

20. It is important to emphasise five matters:

i. the recommendations and the best practice guidance are in draft form only and set out our current thinking;

ii. the recommendations made and the best practice guidance suggested are, of course, subject to the consultation process and will be revised and refined in light of responses received. They represent our combined views of how best practice may be achieved more consistently across England and Wales. We seek and welcome responses to the consultation process as to how (1) we may improve the efficacy of the recommendations or (2) one or more of the recommendations will not be effective or practical and should be amended or deleted;

iii. whilst we welcome comments on the full interim report, it would be particularly helpful to the working group if consultees focus their responses on the recommendations we have made;

iv. the recommendations and the best practice guidance are, of course, subject to the current legislative provisions and statutory guidance;

v. we readily acknowledge that there are overlaps between the six sub-groups, for example between the local authority decision-making sub-group and the pre-proceedings and the PLO sub-group. The admittedly artificial division of sub-groups was required to ensure a fair and manageable division of labour between members of the working group. We will seek to remedy this artificial division in the final report when a single and seamless best practice guidance is issued taking account of responses to the consultation.

21. As a working group, we make 57 core recommendations, across the six areas that the sub-groups have examined. We have provided a full explanation for and analysis of these in this report. In broad terms, the recommendations are as follows:

Local authority decision-making

i. sharing good practice;

ii. a shift in culture to one of co-operation and respect that values and equally questions the contribution of all parties;

iii. a renewed focus on pre-proceedings work and managing risk;

iv. develop consideration factors to support decision-making prior to legal gateway meetings;

v. re-focussing the role of local authority legal advisers and the use of the legal gateway meeting;

vi. develop and share good practice in driving positive challenge with the IRO / conference chair.

Pre-proceedings and the PLO

vii. a renewed focus on the central principles in the pre-proceedings phase of the PLO;

viii. drafting of local authority pledges or charters to families;

ix. working with children, including using the FJYPB's *Top Tips*;

x. simplifying letters to parents;

xi. using the pre-proceedings phase of the PLO early (where required) and effectively;

xii. a standard agenda for meetings before action;

xiii. re-focussing the role of local authority legal advisers;

xiv. better use of assessments, services and support and fuller record keeping;

xv. tracking progress of cases pre-proceedings;

xvi. working with family and friends and the use of the FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017);[5]

xvii. greater pre-birth preparation for newborn babies;

xviii. effecting a change in culture, with training in support.

The application

xix. revision of the Form C110A;

xx. greater emphasis on pleading "the grounds for the application" in the Form C110A;

xxi. revision of the Form C110A for urgent cases / use of an "information form" for urgent cases pending roll out of the online form;

xxii. early notification of Cafcass;

xxiii. good practice guidance for courts listing urgent applications and CMHs;

xxiv. working with health services in relation to newborn babies;

xxv. including the child's birth certificate in the bundle;

xxvi. focussed social work evidence / the SWET for urgent applications;

[5] Available online: https://www.frg.org.uk/images/Viability_Assessments/VIABILITY-MASTER-COPY-WHOLE-GUIDE.pdf

xxvii. revision of the SWET generally;

xxviii. a revised template for standard directions on issue;

xxix. introduction of checklists for advocates' meetings and CMHs for practitioners and the court;

xxx. circulation of case summary templates;

xxxi. early and active case management;

xxxii. DFJ focus on wellbeing;

Case management

xxxiii. use of short-form orders;

xxxiv. advocates' meetings: using an agenda and providing a summary;

xxxv. use of new template position statements and case summaries;

xxxvi. renewed emphasis on judicial continuity;

xxxvii. renewed emphasis on effective IRHs;

xxxviii. the misuse of care orders;

xxxix. case management of cases in relation to newborn babies and infants;

xl. experts: a reduction in their use and a renewed focus on "necessity";

xli. experts: a shift in culture and a renewed focus on social workers and CGs;

xlii. judicial extensions of the 26-week time limit;

xliii. a shift in focus on bundles: identifying what is necessary;

xliv. fact-finding hearings: only focus on what is necessary to be determined;

xlv. additional hearings: only where necessary;

xlvi. the promotion nationally of consistency of outcomes;

Special guardianship

xlvii. more robust and more comprehensive special guardianship assessments and special guardianship support plans, including a renewed emphasis on the child-special guardian relationship and special guardians caring for children on an interim basis pre-final decision;

xlviii. better training for special guardians;

xlix. reduction in the use of supervision orders with special guardianship orders;

l. renewed emphasis on parental contact;

S 20 / s 76 accommodation

li. circulation and use of the working group's guides on (1) s 20 / s 76, (2) good practice, (3) a simplified explanatory note for older children and (4) a template s 20 / s 76 agreement;

lii. no time limits on s 20 / s 76 – but agreement at the start of the offer of accommodation on how long it will last;

liii. focus on independent legal advice for those with parental responsibility "signing up to" s 20 / s 76;

liv. local authority implementation of the working group's guides and review of their functioning;

lv. on-going training and education on the proper use of s 20 / s 76;

lvi. a process of feedback and review on the proper use of s 20 / s 76;

lvii. further consideration of and guidance on s 20 / s 76 and significant restrictions on a child's liberty.

22. In addition, we make 16 proposals for longer-term change. These recommendations will require (1) legislative changes to be implemented and/or (2) the approval of additional public spending by the Government. Those are:

Local authority decision-making

i. consideration of pre-birth support for families;

Pre-proceedings and the PLO

ii. reconsidering the role of Cafcass pre-proceedings;

iii. legal aid funding for parents during pre-proceedings;

The application

iv. research into the regional variation in the proportion of urgent applications;

v. research into the frequency and use of police protection and EPOs;

vi. reconsidering planning for newborn babies, including the role of Cafcass pre-proceedings;

vii. the urgent development of a new IT system;

viii. general improvement in the range and quality of data collection and analysis by HMCTS and the MoJ;

ix. a review of the funding of the family justice system;

Case management

x. a review of recruitment and resourcing of the family justice system;

Special guardianship

xi. on-going review of the statutory framework;

xii. further analysis and enquiry into (1) review of the fostering regulations, (2) the possibility of interim special guardianship orders, (3) further duties on local authorities to identify potential carers, (4) the need for greater support for special guardians;

xiii. a review of public funding for proposed special guardians;

xiv. effective pre-proceedings work and the use of the FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017);

S 20 / s 76 accommodation

xv. a review of public funding for those with parental responsibility "signing up to" s 20 / s 76 accommodation;

xvi. investment in the use by local authorities of a multi-disciplinary approach.

23. Finally, we recommend that the best practice guidance in appendices C to H is issued by the President of the Family Division. This guidance is made on the basis that every case turns and must be decided on its own particular facts.

Terms of reference

24. The working group will aim to achieve the following:

i. to consider measures which may be taken to divert those public law applications made by local authorities to the Family Court which could be 'stepped down' with a focus on: (1) the internal processes undertaken by local authorities to determine whether and when to issue an application to the court for public law orders; (2) the extent to which there is compliance with the pre-proceedings protocol; (3) the identification of 'blue water cases' to be contrasted with the 'grey' cases, as considered by the chief social worker: including the increase in the number of children returning home to their parent(s) under care or supervision orders in some local authority areas;

ii. to address the issue of the increase in short-notice applications being made by local authorities when issuing applications for public law orders;

iii. to address the issue of ensuring timely compliance with case management orders;

iv. to consider whether guidance should be given on the appropriate use of s 20 / s 76 accommodation;

v. the voice of the child – when and how can engagement with children be made in the most effective way?

vi. to consider a restructuring of the case management order template;

vii. a real benefit to children – all proposals should be measured against whether they contribute to delivering enhanced benefits and outcomes for children;

viii. to communicate with (a) the Private Law Working Group and (b) the MoJ/HMCTS working group(s) on reform of public law proceedings.

25. The working group is encouraged to make recommendations which can be implemented relatively quickly in terms of making the current system more effective.

26. It will also be encouraged to make recommendations, including a radical re-structuring of the existing system, if this is what the working group considers necessary, which may take longer to implement – perhaps because they require primary legislation or public expenditure which only ministers can approve.

Local authority decision-making

Current issues

27. The focus of the local authority decision-making sub-group has been on how local authorities undertake decision-making leading up to pre-proceedings. The work has included the steps prior to the convening of a legal gateway meeting and the work within said legal gateway meeting. There is inevitably a high degree of overlap with the work of the pre-proceedings sub-group and the sections should be considered together.

28. The practitioners within the sub group brought a breadth of organisational experience and knowledge but recognise the understanding of the group requires discussion and testing within the sector.

29. In line with the current debates emanating from the concern as to the rising numbers of children involved in proceedings, the sub-group has sought to approach local authority decision-making with an expansive approach. In so doing, the sub-group wishes to stress the need for professional knowledge, skill and maturity in the decision-making processes and the management of risk.

30. The group has recognised that local authorities embrace some or indeed all of the points raised in this report and guidance. The purpose is therefore to bring together the core tenets which should

underpin decision-making and inform working with the strengths of families whilst fully acknowledging risks.

31. As with all aspects of work with families, the sub-group acknowledges there are very particular issues pertaining to decision-making immediately prior to birth and with infants.

32. There is an awareness of a sense of an increase in risk-averse practice from all within the family justice system. The drivers for this change are widely accepted as multifactorial and include high-profile cases, criticism of professionals, societal change and shifts in toleration of risk. These drivers were fully explored within the FRG's *Care Crisis Review: Options for Change* (June 2018).[6]

33. Is a focus on a family's compliance being overemphasised to the detriment of an understanding of risk? Any consideration of risks should include an assessment of how those risks may be mitigated through the provision of adequate support for this particular situation. What we are "worried about" and how families can be supported to address those worries should be central to all discussions.

34. Focussing on the impact on **this** child of the risks is not always at the front of discussions, so the risks themselves gain supremacy as opposed to the totality of the lived experience of the child.

35. At times a failure to consider the short, medium and long-term impact for children is evident in decision-making. A lack of

[6] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

consideration of the full outcomes in the context of the wider challenges of placements and support for looked after children risks decision making in a vacuum.

36. While the majority of local authorities have clear pathways and routes for decision-making, there are variations in terms of exactly how they function, the points for decision-making, the status of decision-makers, timing of key meetings and role of legal advisers and social workers/managers within those meetings. The need to strengthen these processes and achieve consistency and coherence would potentially strengthen local authority decision-making.

37. For some local authorities, the balance of inexperienced social worker and managers with well-established and authoritative legal advisers has perhaps created a position where there has been a tilt away from positive strengths-based practice and a move towards a rigid interpretation of threshold and an assumption that if threshold is met the most draconian action is required, even before all support has been adequately explored. In addition, a narrow interpretation of the legal adviser's role detracts from their utility in supporting all to focus on what is needed to prevent escalation to pre-proceedings and/or issuing.

38. It would be helpful to ensure responsibility for escalating through the steps which take cases towards the courts lies with experienced local authority managers. Standing back once the juggernaut is rolling becomes increasingly difficult and does require professional

knowledge, skill and confidence. Setting out who should be making decisions within legal meetings should assist in ensuring suitably senior and experienced managers are at the forefront of local authority decision-making.

39. Effective case management across the social work profession is fundamental to robust decision-making. The purpose of supervision and the emphasis on the need for managers to understand and recognise the full caseload of social workers should be an imperative. A comprehensive overview of cases for all social workers ensures best practice in case supervision.

40. IROs and conference chairs can offer strong and positive challenge to drive good practice. However, this is not always the case and there are continued questions over the effectiveness of IROs and conference chairs in aiding local authority decision-making constructively and their efficacy in consistently holding local authorities to task thus avoiding drift for children. These debates and challenges arise both when they take the role as chairs of child protection conferences and within reviews for looked-after children. It would be beneficial to have further focus on the role of conference chairs where applicable, or the IRO as set out in the IRO handbook, in order to strengthen the understanding of their role as bringing effective and timely challenge to local authorities to prevent unnecessary drift for children. There is a shared responsibility with leaders within local authority social care to encourage robust challenge and to put in place the structures and

culture to allow IROs and conference chairs effectively to fulfil their role.

41. Best practice in the use of s 20 / s 76 is discussed separately in this report but it is worth noting that when used with planning and clear, strong case management, s 20 / s 76 can be a very useful tool in supporting families particularly with older children and disabled children. The reluctance and confusion over the use of s 20 / s 76 detracts from local authorities using it as an effective support mechanism.

42. In addition to the concern in respect of the total number of cases passing through local authorities and leading to issue, there is an additional challenge over the number of urgent applications being presented to the courts. Would a renewed emphasis on the importance and primacy of local authority decision-making lead to a reduction in the number of urgent applications?

Recommendations

43. **Recommendation 1: Sharing good practice.** A good practice guide, developed by all stakeholders, should be drawn, setting out shared expectations and understanding of legal decision-making routes. This would aid coherence and assist in ensuring focus is maintained within the decision-making pathway both for initiating pre-proceedings protocol and commencing proceedings. Formalising the expectations

of how decision-making pathways operate would assist local authority staff.

44. **Recommendation 2: A shift in culture to one of co-operation and respect that values and equally questions the contribution of all parties.** Bringing positive change across the shared cultures of social work, managers, lawyers and the judiciary will require a shift away from the current, often-adversarial milieu and towards a cooperative environment. Ensuring change is passed throughout organisations as well as strong and positive messages from the "leaders" in each area is vital.

45. **Recommendation 3: A renewed focus on pre-proceedings work and managing risk.** A re-focus and acceptance of the imperative to complete all work prior to going to court and to manage risk outside of the court process has the potential to avoid the need to issue – but, if issuing is the only safe option, the court process will benefit from careful and focussed pre-proceedings work having been undertaken.

46. **Recommendation 4: Develop consideration factors to support decision-making prior to legal gateway meetings.** Clarity and confidence in relation to the considerations and factors in order to support families effectively pre-proceedings would ensure consistency across decision-making and potentially create greater confidence in the efficacy of these processes, thus mitigating risk-averse practice across all sectors. We recognise that setting fixed trigger points may increase the number of legal meetings and could increase

proceedings if practice continues unchecked. Hence our emphasis on support for families and social work reflection and informed deliberation.

47. The key is to maintain purposeful movement and to prevent drift as well as aiding common understanding of the sequencing within decision-making pathways. An emphasis on the voice of the child and the parent would aid consistency and support measured decision making throughout the process.

48. Guidance for timing would provide enhanced understanding and agreement for all as to when cases need to be escalated to legal meetings.

49. Within any guidance, defining senior management roles based on the responsibilities of the role would drive the siting of decisions at appropriate levels. The need for those making the key decisions to bring experience and gravitas should be agreed.

50. **Recommendation 5: Re-focussing the role of the local authority legal advisers and the use of the legal gateway meeting.** The role of legal advisers should be defined with an emphasis on the need to work towards staying out of court. The legal adviser should not purely be there to identify threshold but should assist in identifying the key issues and then what work is required. The role of legal advisers should shift from an emphasis on whether threshold is met to a wider question: if threshold is met, how do we then support the family to

come back from that position? The legal gateway meeting should be used to address the following key questions:

i. what support is needed?

ii. who are the "safe" people?

iii. where might alternative and supportive carers from within the family come from?

iv. what will the impact on the child be not just now but in the future?

51. All options should be aired and at each stage all alternatives must be exhausted before the next steps towards court are taken. This type of balancing should be akin to that undertaken within a *Re B-S* analysis.[7]

52. **Recommendation 6: Develop and share good practice in driving positive challenge with the IRO / conference chair.** Ensuring the role of the IRO / conference chair is constructive and avoids a "checklist" approach will assist in consistent and effective decision-making. The current role on occasion seems to increase the grit within the system at the expense of informed, proactive and timely planning. Learning from best practice and an emphasis on the importance of strengthening the quality of IRO / conference chair services will underpin this recommendation. Using the existing guidance and

[7] After the judgments of the Court of Appeal in the eponymous *Re B-S (Children)* [2013] EWCA Civ 1146.

handbooks could be an effective tool in re-emphasising their role in the prevention of drift for children.

Best practice guidance

53. We recommend that the best practice guidance, set out in appendix C, is issued by the President.

Longer-term changes

54. **Recommendation 1: Consideration of pre-birth support for families.** A significant proportion of the cases currently presenting for urgent applications involve newborns and infants. These cases come with a very high degree of distress. They pose significant challenge to all involved in the decision making. The need to issue in such cases may well be evidenced but a measured and planned approach could be achieved pre-birth which may have the potential to avoid the need for proceedings. We would look to the work of the Nuffield Family Justice Observatory report, *Born into Care* (October 2018),[8] to consider support for this group of families and to work in partnership earlier to avoid proceedings.

[8] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

Pre-proceedings and the PLO

Current issues

Context and importance

55. Most work with families is conducted outside of the scrutiny of court proceedings. The work that is done with families when it is clear that there is a real risk that public law proceedings will be necessary to protect children is of critical importance, in diverting families away from the necessity of care proceedings, identifying support within the wider family, and where necessary ensuring that the court has the evidence base needed to make a timely and properly informed decision to provide for the statutory protection of children. This is complex and difficult work which requires social workers with skill and expertise, working in a framework which understands and supports them and the families they serve.

56. Professional agencies working in the field of child protection have developed a greater and different understanding of harm and risk to children over time. Just as the number of referrals to local authorities has increased exponentially in recent years, so has the understanding of areas of harm which may not have been identified in the same way even a few years ago, such as sexual and criminal exploitation of older children. The way in which those risks are identified, assessed, managed and recorded before proceedings become inevitable are

critical to avoid significant (finite) public resources being diverted into court proceedings, or court proceedings which are not conducted with the efficiency which otherwise might have been possible.

57. A brief look across the 174 local authorities in England and Wales readily illustrates varying quality of pre-proceedings work, which is not always determined by the size of the budget or the particular challenges of the areas they serve. There are examples of excellent practice across the country.[9] In the best examples, assessments are multi-disciplinary and thorough, intensive, relationship-based support is offered to the family during the pre-proceedings phase and building on earlier support put in place to avoid issues from escalating. The child's lived experience is at the heart of collective thinking, with parents together with the wider family being involved and supported to bring about necessary changes. Where children require removal from their families, decisions are made in a timely manner, and plans are developed with a real understanding of the needs of the child.

58. In the poorer examples, the pre-proceedings element of the PLO has become a tick-box exercise undertaken late in the day and viewed as a procedural necessity before proceedings can be issued. Those cases, and children, often lack full assessment, or care plans which are tailored to the identified needs of the child and family, wider family

[9] With thanks to the local authorities that provided examples of good practice in the compiling of this report.

and friends are marginalised, and nearly all cases are marked urgent where what is required is a considered decision. The variation seen in practice has in part led to inconsistency across the jurisdiction. Challenges for a significant number of local authorities in the recruitment and retention of skilled staff has compounded these difficulties.

59. Irrespective of whether work is being done in or outside of court proceedings, at all times the welfare and protection of the child with whom services are engaged is paramount and must be prioritised. Nothing in this report and accompanying good practice guidance should detract from that fundamental principle. We recognise the vital importance of care proceedings for suitable cases where the need to protect the child can only be achieved by the initiation of the court process. If the pre-proceedings assessment of the PLO is well deployed, in the context of care proceedings being treated as an option of last resort, it is believed that this may contribute to a reduction in the number of cases in which proceedings are required to secure the best outcome for children.

Working with families: the need for a relationship-based model

60. Social workers are required to provide a significant range of skills and expertise. Of all the skills required perhaps the most important is the skill least able to prescribe by way of rules or process: that of a strong relationship with the families they are working with.

61. The DfE launched *Rethinking Children's Social Work* in 2014. This recognised that *"whilst the level of social complexity that social workers are expected to manage and master is huge, the way that social work is organised and delivered can reduce the time that Social Workers have to work directly with families, reflect on their work and develop their skills and knowledge of the evidence."*[10] FRG's *Care Crisis Review: Options for Change* (June 2018)[11] identified the importance of intensive relationship-based practice, specifically with regard to pre-proceedings work. It emphasised the importance of creating the conditions within the family justice system and child welfare system to allow good relationships to flourish.

62. Recognising that a disproportionate amount of social work time is spent on high-level interventions and, in particular, court work, some councils have transformed the structure of their teams and the way in which their social workers are supported to address the need to create social work capacity to support families to affect change. This has recognised the central importance of forming relationships with children and families to understand and help them.[12] Some authorities

[10] Available onine: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/342053/Rethinking_children_s_social_work.pdf

[11] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

[12] Professor Eileen Munro, *The Munro Review of Child Protection: Final Report: A child-centred system* (May 2011). Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf

have eliminated the transfer points so that families will experience the same social worker from the point that the case is opened to children's services, through to the conclusion of any proceedings and beyond, recognising that a lack of continuity of social worker is a significant barrier for families.

63. Some of the most effective models have been developed by listening to the views and considering the experiences of families and practitioners. An example of this approach can be found at appendix D2.[13]

The voice of the child

64. The voice of the child is often insufficiently distinct in pre-proceedings.

65. When children are living with carers who are considered to pose a risk of harm to their welfare, social workers will need carefully to consider how safely to gain an understanding of the child's needs and experiences and ensure that the child's voice is present in any decision-making meeting.

[13] A detailed report exploring how these changes have been brought about, and the ongoing challenges to implementing the Team Around the Relationship, is available in *'Empathy, tenacity and compassion': An evaluation of relationship-based practice in Brighton & Hove* (July 2017), available online: https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Evaluation%20of%20relationship-based%20practice%20in%20BHCC%20July%202017.pdf

66. The child will not have the benefit of independent legal advice in the pre-proceedings process. The local authority should still ensure that the child is given the opportunity in line with the child's age and maturity to express a view that can be shared with the meeting. In some circumstances, it will be appropriate for the child to attend the meeting but, if not, their views should be shared and taken into account when reaching decisions.

67. It is important when working with children to use jargon-free language which is clear, understandable and age appropriate, and use methods of communication that children and young people are familiar with.

68. Many children have been exposed to domestic abuse. With the assistance of young people, the FJYPB has devised some very helpful top tips for professionals working with children and young people who have experience of and been affected by domestic abuse, at appendix J4.

69. A sibling or 'brother and/or sister' relationship is likely to last longer than any other relationship in our lives. When this relationship is disrupted, or not maintained, the impact on brother and/or sister groups can be considerable. In considering the needs of the whole family, the top tips when working with brothers and/or sister groups which the FJYPB has developed provides a sound foundation, at appendix J5.

Purpose and timing of initiating work under the PLO

70. This phase of the PLO outside of proceedings should have two clear, parallel aims: successfully to divert families away from the need for proceedings; and to identify that proceedings are required for the welfare of the child, and to do so in such a way that the case can be presented in good order, and meet the requirements of justice on day 1.

71. The need to initiate proceedings arises in cases of genuine emergency. However, these cases are rare. The vast majority of public law cases before the courts involve families who have been known to their local services for years. Families should be given the earliest opportunity to benefit from the support and intervention that is put in place. Ideally, the use of the PLO process should not be a response to a crisis that could have been avoided if the support and intervention was put in place at an early stage. That in turn would limit the benefits that a family and children would derive from such services.

Triggering the entitlement to legal advice for parents

72. When local authorities conclude that the case has reached a threshold to trigger the pre-proceedings stage of the PLO, this triggers the parents' entitlement to non-means and merits tested free legal advice. Parents will often not have had access to independent legal advice prior to the letter before proceedings. Wider family often do not have access to free legal advice even at that point, so may not

understand issues concerning the child and parents, the concerns of the local authority or their rights or options.

73. The letter before proceedings provides local authorities and families with an opportunity to utilise the parents' access to independent, specialist, legal advice and advocacy which can help parents more effectively to participate in local authority planning processes from an informed position. Specifically, it can help them to understand their rights and options and how child protection planning and decision-making works; reflect on why social workers are worried about their child; make safe plans for their child (which may include alternative care within the family) within the child's timescale; and, have their voice heard by professionals.

74. It may be helpful for the local authority that the development of plans for assessment and support come under a degree of independent scrutiny, so that they can be refined where necessary to ensure that they withstand scrutiny if the case later goes to court. Where s 20 / s 76 accommodation is being considered access to legal advice for the parent is essential.

75. It is however the case that the legal help available is so poorly remunerated (legal help at a rate of £365[14]) that some firms refuse to engage in the pre-proceedings process, other firms send junior staff,

[14] When undertaken, it is often done so at a loss: https://www.legislation.gov.uk/uksi/2013/422/schedule/1/made/data.xht?view=snippet&wrap=trueb

and many end up effectively offering pro bono advice in a context where some firms are already concerned that legal aid work is not sufficiently profitable to be sustainable. The provision of support and assessment in this phase is a critical part of the process. The family's informed engagement is essential. Appropriate legal experts will provide essential support and guidance for the family properly to engage in this process and to ensure that any evidence that is gathered is relevant and transparent, thereby avoid the duplication of work if proceedings are later issued.

76. It will sometimes be helpful to have a further review meeting with parents and their legal representatives after the outcome of assessments are known, at the stage at which the local authority is likely to be clear about whether court proceedings are necessary. These further meetings can be helpful in diverting cases from proceedings, and are particularly important when discussing plans for newborn babies. The current legal aid regime would appear to place an unsatisfactory burden on parents and legal professionals in terms of the overall lack of funding pre-proceedings.

Quality of communication and letters before proceedings

77. Professional agencies routinely use jargon or professional language which can be off-putting to the families they work with, adding to a culture of "us and them". Some local authorities have started to think carefully about the use of language to try and break down some of

those barriers. One local authority, for example, has agreed with young people and staff on six words that will no longer be used, instead identifying alternatives:

i. *LAC – children and young people in care*

ii. *contact – family time*

iii. *siblings – brothers, sisters, step brothers, etc.*

iv. *respite – short breaks*

v. *case – families or children and young people*

vi. *placements – homes or foster homes, etc.*

78. The template routinely used to send letters before proceedings has created a culture in which those letters can at times be too legalistic and complicated for parents and young people to understand. They may be written in a tone that dissuades families from engaging in the contents. The capitalised sub-headings have been described by some parents as feeling like you are being "shouted at". There is a balance to be struck between ensuring the letter is recognised as a crossroads and acted on, and doing so in a manner which looks closer to a letter from a debt-collecting agency. Appendix J6 provides thought-provoking comment from a parent about how these letters might be better phrased, and what it feels like to receive them.[15]

[15] With thanks to Annie, of Surviving Safeguarding.

79. Local authorities should be mindful to make all of their correspondence understandable, respectful and engaging. Appendix D3 provides recommended general principles which correspondence and letters before proceedings should adhere to.

80. There is a minority of cases in which both parents are not contacted during the pre-proceedings stage of the PLO. Whilst in some cases this may be due to uncertainties about paternity, this does not mean efforts should not be made to establish paternity. Local authorities do not need to wait for court proceedings to start to commission DNA testing.

81. In other cases, difficulties in locating a parent may arise. Local authorities should develop a clear plan to try to identify and locate all parents. This is not a task which should begin in earnest with the issue of proceedings; instead, attempts should be persistent.

Assessment and support

82. This stage of the PLO is not only about assessment; it should be about trying to effect change within the timescales of the child. Provision of focused outreach work to help parents and families to address concerns or make the necessary changes - with social workers working in partnership with families and children seen regularly - is essential.

83. Building strong links with partner agencies, which respond to the needs of children and families in the local area, may have been key for local authorities who have managed to reduce the numbers of children in care. The problem-solving approach in regard to parents of the Family Drug and Alcohol Court is well established; a similar focus on considering the holistic needs of the parents at the pre-proceedings stage is likely to pay dividends. Children's services are only one department in local authorities. Examples of strong practice are seen in authorities who routinely work, where required, in conjunction with adult services, local housing departments, health, and education authorities and schools. This can include direct intervention with other directorates at senior management level and advocating for the needs of the family, sometimes promoting a "spend-to-save" argument.

84. Working with families outside of proceedings needs to be properly resourced. Targeted investment can lead to substantial savings during the court process and in being able to divert cases from court. The importance of access to multi-disciplinary expertise in supporting families and keeping children safe is well established. This may include provision for social workers to access a multi-disciplinary internal assessment service independent of case management including psychologists, family therapists and substance misuse workers. Some authorities provide the opportunity for consultations with other disciplines in order to consider whether a specialist assessment is needed that is beyond the expertise of the social worker, or to assist

in reflective practice in considering the information that is already there.

85. Irrespective of the accessibility of in-house expertise there are issues which if left unresolved will mean that the local authority will be unable to work effectively with parents. These include understanding cognitive functioning, establishing paternity by way of DNA testing, psychiatric issues and the extent of drug and alcohol misuse.

86. Consider sharing resources and, for appropriate local authorities, the commission of assessment services with other agencies. This may include multi-disciplinary practitioners and clinicians. The service is jointly commissioned by adult health and children's social care and mental health budgets; all practitioners and clinicians work within one integrated management protocol and the service is subject to external governance and multi-agency approved, supervisory frameworks. It is the case that, irrespective of joint-commissioning arrangements, local authorities have a degree of leverage and influence with external agencies (such as health services) that are unavailable to parents acting alone.

87. The quality of the assessments and a joint understanding of expectations on local authorities and courts is key to ensuring that assessments undertaken pre-proceedings can then be used effectively in proceedings and not duplicated. Local authorities who do not

commission expert assessment outside of proceedings often lack confidence that the investment will be rewarded.

88. As indicated in the section on case management in this report, it is important that the court properly and consistently applies the legal requirement that expert assessment should only be directed in proceedings if necessary, so as to avoid a return to local authorities not wishing to invest in assessments unless it is within proceedings.

Identifying, utilising and assessing friends and family

89. Establishing the network of family and friends available to the parents and child is an essential task and drawing up a genogram is a routine element of any parenting assessment. However, the extent to which the information about the family network is identified and then utilised is variable, as is the timing of any work that takes place.

90. FGCs[16] are still not routinely offered across the country prior to, during or even subsequent to the pre-proceedings stage. Families should be offered an FGC or equivalent (whether organised "in

[16] A family group conference is a voluntary process led by family members to plan and make decisions for a child who is at risk. Families, including extended family members and the child (supported by an advocate) are assisted by an independent family group conference co-ordinator to prepare for the meeting. Key features of a successful family group conference include: (1) having an independent coordinator to facilitate the involvement of the child, family network and professionals in the family group conference process; (2) allowing the family private time at the family group conference to produce their plans for the child or young person; and (3) agreeing and resourcing the family's plan unless it places the child at risk of significant harm. The use of family group conferences ensures that wider family members understand early the seriousness of the situation and have the opportunity to make contingency plans for alternative care within the family if the parents do not satisfactorily resolve their problems within the child's timescale

house" or conducted by an independent agency), prior to their child being taken into care, except in an emergency.

91. FGCs are a well-established strengths-based approach which enable the family network to set out a plan to address the local authority's identified concerns. As such, they enable the family to be in the driving seat in coming up with tailored solutions, whilst not minimising the local authority's concerns. Family support can be critical in diverting a case from court proceedings.

92. It is the case that some parents simply refuse to provide information to enable social workers to call a FGC or approach family members. Where families refuse to cooperate, social workers sometimes struggle to take the matter any further, or they see this as a priority issue. At this stage, without the availability of court orders, local authorities are extremely cautious about overriding the privacy of parents and contacting family without consent. Some clarity from the Information Commissioner about the circumstances in which it would be acceptable to override lack of consent may be of assistance.

93. The availability of independent legal advice triggered by the pre-proceedings letter will also assist in offering reassurance to parents that this is an appropriate request, which may be resolved at the meeting before proceedings.

94. Where parents refuse to engage, local authorities should be persistent, with the issue revisited and subject to regular review. There

will be some rare cases where there are very good reasons for parents to wish not to share information with wider family and trusting relationships with social workers will allow this to be explored.

95. The quality of initial, or viability, assessments of potential kinship carers varies significantly across the country. The application of the FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017)[17] endorsed by the ADCS, Cafcass and the FJC, amongst others, remains patchy. Viability assessments should be conducted so that all realistic options are explored in a family-focussed way to ensure, where possible, that a child can live safely with her family. Inadequate assessments are open to challenge in court where proceedings are issued. It is essential that they are conducted in such a way that they can be upheld.

96. Whilst it is the case that prior to proceedings being issued some family members will struggle fully to appreciate the seriousness of the situation, and others may find that their loyalties to the parents prevents them putting themselves forward at that stage, this should not prevent local authorities from exploring family alternatives as far as possible. This will include consideration of whether a family placement could be made as an alternative to foster care by strangers,

[17] Available online: https://www.frg.org.uk/images/Viability_Assessments/VIABILITY-MASTER-COPY-WHOLE-GUIDE.pdf

even if care proceedings become necessary. Considerations in relation to the assessments of family and friends, and specifically potential SGs, can be found elsewhere in this report.

Pre-birth assessments and planning for babies

97. The differing rate of the issue of proceedings in relation to newborn babies across the country may in part reflect a considerable variation in practice in relation to the social work conducted prior to birth and the evaluation of whether proceedings are necessary. The contemplation of the removal of a baby from her parents at birth is especially draconian, and the highest standards of evidence, planning, and support should apply.

98. There will only be very rare circumstances in which it will be an appropriate use of s 20 / s 76 accommodation to separate babies from their parents, and this will almost certainly require specialist legal advice as to its lawfulness.

99. Where it is apparent that there is a real risk of care proceedings being necessary upon birth, it is essential that the ASP of the PLO is commenced as soon as possible. It will be crucial to identify family support for parents. In general, local authorities should also be mindful of the special considerations relating to the health of the mother and how quickly it might be thought to be appropriate post-partum to expect her to make sound decisions about her child.

100. Working with parents and their legal representatives to formulate sensible plans for the birth of the child, particularly if proceedings are envisaged, will be to the advantage of everyone. This is likely to involve planning with other agencies, in particular health. This is considered further in the section on case management.

Anticipating records and assessments as evidence

101. A proper understanding that the work done at this stage of the PLO may be required for the purposes of court proceedings requires professionals to replicate the standards of evidence that apply during the court process in pre-proceedings. This approach should mean that there is no disconnect between the quality of material generated during pre-proceedings and that which may in due course be needed in court.

102. Some authorities have developed templates for assessments which are designed to be capable of use in the social work evidence template, and can be transferred into other formats, such as a child placement report (or placement plan) if ultimately needed.

103. It is essential that there is a clear record of:

i. what assessments have taken place and the scope of them;

ii. the information that was available to the assessor and on which the assessment was based (including all documents and records shared);

iii. the outcome of the assessment;

iv. support and interventions offered to the family.

104. A template for the recording of basic information regarding the history, scope and outcome of assessments, support and interventions offered to the family can be found at appendix D4. This can be produced by way of record of the work done with a family if proceedings become necessary, and as importantly be used to ensure in regular reviews (including any meetings before action or PLO meetings) that there is clarity over what is outstanding and what might be needed as the case progresses over time. This will provide the parents with a clear "road map" of what lies ahead and, when completed, it will offer the court and other professionals a clear record of the work that has been undertaken and may negate the need for this work to be repeated during proceedings.

Review and monitoring

105. When the PLO was introduced in 2014 it was recognised that there was a risk that the delay which had been identified as occurring within court proceedings might be diverted to the pre-proceedings phase of the PLO.

106. Local authorities that manage this phase of the PLO well will have a culture of strong case progression, against a framework in which the case is tracked against identified milestones. The assessment and

support offered needs to hold in mind the timetable of the child and be the subject to regular supervision and support from the social work managers. There is a risk that without tracking, things can start to drift. Many local authorities have developed a tracker tool used by children services and their legal departments, not dissimilar to the tracking of cases in proceedings. This mitigates the temptation to treat these cases as having less priority for action than those in court proceedings. In fact, cases outside of court proceedings are often cases in which local authorities are managing greater degrees of risk and uncertainty, in which monitoring is essential.

107. Where children are subject to child protection plans there is a role for the independent conference chair, or in the case of looked after children, the IRO, actively to review and monitor the progression and planning of the case, including the need for proceedings. The IRO / conference chair service may be deployed to ensure that there is continuity of IRO / conference chair during the formal child protection stage and then into the pre-proceedings stage, as this helps to ensure a golden thread in the planning for the child throughout this important time. This has proved important in ensuring that the things that need to improve in the child's protection plan are followed through for resolution in the pre-proceedings phase.

Local authority legal departments

108. The focus of local authority legal departments inevitably tends to be to give a higher priority to cases which are in court proceedings. If local authorities are to manage greater risk outside of the court process, it is important that legal departments have clear expectations relating to the service they provide for cases which require consideration in the pre-proceedings stage of the PLO.

109. The reality is that the threshold of significant harm is *not* usually the issue which requires the most skilful and nuanced advice. Skilful legal advice can assist in identifying what areas of support or assessment might be considered outstanding before the case can be properly determined as requiring statutory intervention by way of court proceedings. Additionally, legal advice can be of assistance in ensuring that the work being conducted at this stage is done to a standard which will withstand the court's scrutiny at a later stage. Some local authorities, for example, involve their lawyers in drafting letters of instruction to externally commissioned assessments.

110. Where local authorities are seeking the consent of those with parental responsibility to accommodate children under s 20 / s 76, reference should be had to the good practice guide at appendix H1.

Clarity of expectations

111. Currently, shared expectations between professionals about their role in pre-proceeding can lack clarity, with minimal shared accountability by agencies. Whilst statutory guidance provides the bed rock of what local authorities must do at this stage of the PLO, local authorities should strive to have a clear vision of expectations and an understanding of good practice and promote a consistent approach to cases outside of proceedings.

112. Some authorities and local FJBs have developed clear guidance or protocols about the performance of local authorities. These capture, in a single document, expectations and principles of performance. The reflective process of developing a single protocol can assist in embedding a change in culture and understanding that the work conducted at the pre-proceedings stage of the PLO requires skill and demands priority - and can be key to reducing the need for care proceedings.

Recommendations

113. **Recommendation 7: A renewed focus on the central principles in the pre-proceedings phase of the PLO**. Local FJBs have an important role to play in developing expectations of practice and protocols in regard to the pre-proceedings phase of the PLO. Where there is a real risk that care proceedings may become necessary, professionals

should be guided by the following principles in the pre-proceedings phase of the PLO:

i. the overriding consideration is the welfare of the child;

ii. working in partnership with families with the aim to bring about improvement and change and to avoid the need for care proceedings is key;

iii. understanding the needs and strengths of children, their parents and their wider families is essential;

iv. this is an assessment and support phase that provides a final opportunity to divert cases from proceedings unless necessary;

v. proceedings are an option of last resort if no other intervention protects the outcomes for children;

vi. each decision-making stage of this phase should be subject to regular review and oversight by a senior manager;

vii. unnecessary delay is to be avoided, and the timeliness of the implementation of any plan of support (or plan for care and support) or assessment of a family needs to be monitored;

viii. work should be conducted to the same standards of fairness, transparency, and respect as if it were being conducted subject to the scrutiny of the court process;

ix. access to professional support, including expert legal advice, is essential for professionals and families alike

114. **Recommendation 8: Drafting of local authority pledges or charters to families**. Local authorities which have not already done so should, either individually or via their local FJB, develop a pledge or charter setting out how they intend to work with families. It should be published and accessible. Local authorities are invited to consider adopting the FRG's charter, appendix J7, which aims to promote effective, mutually respectful, partnership working between practitioners and families when children are subject to statutory intervention.

115. Skilled and dedicated social work can be an agent for change. Local authorities should consider the extent to which their current working practices and structures prioritise the need for social workers to develop strong relationships with the families they work with.

116. **Recommendation 9: Working with children, including using the FJYPB's *Top Tips*.** Local FJBs and local authorities should consider promoting the use of the FJYPB's materials, appendices J1 – J5, to all professionals working with young people, including those relating to the consideration of the relationships with brothers and sisters.

117. It would be helpful for the FJYPB to develop top tips specifically for professionals working with young people outside of proceedings in this phase of the PLO.

118. **Recommendation 10: Simplifying letters to parents.** The current template for letters before proceedings contained in the statutory guidance can produce letters which are often overwhelming, difficult for parents to follow and unhelpful in maintaining constructive relationships. Letters to parents need to be less legalistic. It should always be clear what the concerns of the local authority are, what children and families can expect of children's services, what is expected of the family and why - but this should be written in a way that encourages participation moving forward.

119. Local authorities should adopt the general principles relating to correspondence appended to the guide recommended by this report, appendix D3.

120. Local FJBs should work with local authorities, practitioners and other stakeholders, including parents with experience of care proceedings, to develop models of good correspondence.

121. **Recommendation 11: Using the pre-proceedings phase of the PLO early (where required) and effectively.** Where it is clear that families are at real risk of care proceedings to address an identified risk or actual significant harm experienced by the child, local authorities should trigger the PLO early enough to give families the opportunity to address the harm identified and utilise access to legal advice. A review of the current statutory guidance to make this trigger point clearer would be welcome.

122. Families and practitioners should be encouraged to understand that the pre-proceedings phase of the PLO has a dual purpose: to divert families away from proceedings and to identify where proceedings are required for the welfare of the child, and to do so in such a way that the case can be presented in good order, and meet the requirements of justice on day 1.

123. **Recommendation 12: A standard agenda for meetings before action.** Meetings before action (i.e. before issuing proceedings) should have a standard agenda which ensures that core elements are not overlooked. This will be developed in the final report.

124. **Recommendation 13: Re-focussing the role of local authority legal advisers**. In advising their clients, local authority legal departments should be familiar with expectations of good practice contained in the report as well as statutory guidance regarding the pre-proceedings element of the public law outline.

125. Local authority legal departments should develop expectations regarding timescales and tracking of cases outside of proceedings.

126. Legal advice should focus on more than whether the threshold criteria in relation to significant harm is met. It should also consider whether proceedings are necessary and what plans of assessment and support might be appropriate to divert cases from proceedings.

127. **Recommendation 14: Better use of assessments, services and support and fuller record keeping.** It is important that families have clarity about the assessments they are being asked to undertake and

that there are clear records of what is proposed, what has happened and what will happen next. It is also important that timescales are identified for each element. Local authorities should adopt the template assessment record and agreement, appendix D4.

128. All assessments should be recorded in formal reports which can be shared with those subject to the assessment, understanding that they may be required for subsequent proceedings. The assessment report should be to a standard that it will be reliable in court proceedings.

129. Evidence gathered through the PLO process is likely to be relevant to any proceedings if issued, particularly when in dispute, and so comprehensive and accurate record keeping is essential.

130. In working with families, social workers sometimes need access to a range of expertise and services beyond their own social work expertise, either by way of access to an embedded in house multi-disciplinary team, or by way of being able spot purchase services from independent experts with recognised expertise. The commissioning of expert assessment or services should not be restricted to court proceedings.

131. Assessments should be conducted to the same standard as if they were conducted within court proceedings, with letters of instruction and a clear record of the information shared and analysis arising. This will have the advantage of avoiding duplication of work if proceedings are issued.

132. The focus of this phase should not purely be on assessment, but rather support and assessment. Local authorities should work proactively with families and other services to try and address the deficits in parenting identified. In Wales, for example, close regard should be had to the Code of Practice to the Social-Services and Well-being (Wales) Act 2014.

133. Responsibility for the provision of services required to support children and their families does not rest solely with children's services. A multi-agency, problem-solving approach of the sort seen in the Family Drug and Alcohol Court is the key to successful and better outcomes for the children, and this should become the standard rather than the exception. Children's services should, where required, routinely work in conjunction with adult services, housing, health and education authorities, which may sometimes require the intervention, and leverage of senior management involvement.

134. Local authorities should work with those commissioning services from a range of external agencies to address identified needs of parents and children in their area.

135. **Recommendation 15: Tracking progress of cases pre-proceedings.** Unnecessary delay in the receipt of services and decision-making is bad for children and their families. The pre-proceedings stage should be conducted in a timely way, and usually last no longer than six months, unless the facts of the case genuinely demand a longer period.

136. Local authorities should ensure that they are monitoring and reviewing cases, including by way of a tracker tool that should be developed for use in the pre-proceedings phase of the PLO.

137. Local authority legal departments currently routinely monitor progress of a case in proceedings against the requirements of the PLO, including a requirement that cases should conclude within 26 weeks. Legal departments should also ensure that the progress of cases in the pre-proceedings phase of the PLO is subject to ongoing monitoring and review, and that there are clear expectations of the timeliness of the response of the legal department where cases are outside of proceedings. Local authorities should consider adopting the milestones set out in the good practice guide accompanying this report.

138. **Recommendation 16: Working with family and friends and the use of the FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017).**[18] Families should ordinarily be offered a FGC or equivalent prior to their child being taken into care, except in an emergency.

139. Family and friends should be considered as potential sources of support for the parents as well as potential alternative carers for the child.

[18] Available online: https://www.frg.org.uk/images/Viability_Assessments/VIABILITY-MASTER-COPY-WHOLE-GUIDE.pdf

140. The identification of family and friends for support and assessment is a key social work task, which should be considered throughout the pre-proceedings stage of the PLO or earlier.

141. Local authorities are invited to adopt the FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017).

142. **Recommendation 17: Greater pre-birth preparation for newborn babies**. Local authorities need to develop a plan of assessment and support as early as possible in the pregnancy to provide for sufficient time in advance of the birth to have developed a plan for the approach needed when the baby is born.

143. The parents should be made aware of the proposals for intervention and support at the birth at the earliest opportunity, with an opportunity to comment and seek legal advice.

144. If the local authority comes to an early view that proceedings will be issued on birth, then draft documents should be made ready as far as is possible for issuing on the child's birth. Cafcass should be informed of pending proceedings and the expected due date.

145. There should be an identified plan for the care of the baby upon birth which is shared with other agencies as necessary.

146. Use of s 20 / s 76 will only exceptionally be an appropriate vehicle for the separation of a baby from her parents and may only be done in accordance with the guidance given in other parts of this report. It should be the subject of bespoke legal advice by the local authority legal department. Access to legal advice for the parents will be critical.

147. **Recommendation 18: Effecting a change in culture, with training in support.** Adopting the measures referred to in this report and accompanying good practice guide will require varying degrees of changes in culture and practice. It is important for different elements of the family justice system to have a better understanding of the importance of this work and what good practice looks like. The development of a clear strategy for the publication, communication and promotion of the expected standards will be key.

148. This should be complemented by training and education for every level, including every tier of the judiciary, senior management at each local authority, managers and front-line social workers and Cafcass.

Best practice guidance

149. Local authorities should have a clear published protocol or guide, which provides in a single document expectations and standards for the work conducted under the pre-proceedings stage of the PLO. Several local authorities, often in conjunction with local FJBs, have already developed a single comprehensive protocol, but this is still not standard. This report provides best practice guidance which has incorporated the principles of good practice identified.

150. Local authorities, in conjunction with key stakeholders either individually or via their local FJBs should agree a publicly accessible single protocol document setting out the ways in which they will work with families so as to achieve good practice in this stage of the PLO,

either by adopting this guide, or adapting it against the principles recommended. Such a protocol will ensure a more consistent approach and clarity of expectations to the quality of the work conducted at this stage.

151. We recommend that the best practice guidance, set out in appendix D1, is issued by the President.

Longer-term changes

152. **Recommendation 2: Re-considering the role of Cafcass pre-proceedings.** Further consideration should be given to the role of Cafcass pre-proceedings. This would have resource implications as well as requiring clarity as to its role in pre-proceedings, whilst ensuring the independence of its role is preserved. The legality of Cafcass involvement pre-proceedings is still under consideration. One possible model may be based on Cafcass accepting an invitation to provide input at this stage in cases of particular complexity or gravity.

153. **Recommendation 3: Public funding for parents during pre-proceedings.** The available legal aid funding for parents during this process requires urgent review. The funding needs to be at a level that ensures the parents are properly represented by a suitably qualified and experienced legal representative through this process. This is likely to have a significant impact by contributing to the reduction of the number of cases that result in court proceedings and where proceedings are issued, by reducing the cost of those proceedings by

having the best evidence available for the court through the pre-proceedings process.

154. The wider socio-economic benefits will include parents not being the subject of statutory intervention where their needs and difficulties have been addressed at an early stage thus and their children not being the subject of further state intervention when they are adults, thus "breaking the cycle" at multiple opportunities.

The application

Current issues

The increase in urgent / short notice applications

155. The decision whether to remove a child at the start of proceedings is crucial and can play a significant part in determining the ultimate outcome. It is vital that parents and children are afforded the best opportunity for representation at such hearings in the light of the urgency of the application.

156. The PLO provides for urgent ICO hearings or urgent preliminary CMHs before the prescribed first CMH (between day 12 and day 18 following issue). PLO para 2.4 provides the procedure by which an urgent hearing is requested and considered by the court. Cafcass defines short-notice hearings as those which take place less than seven days from the application issue date, which includes emergency hearings (defined as taking place less than three working days from the application issue date) and no-notice hearings (defined as taking place on the day of issue). In the year to end December 2018, Cafcass data records:

i. 44% of all public law cases had short-notice hearings (an increase of 2% on the previous year);

ii. 63% of all care applications had short-notice hearings (an increase of 4% over the previous year);

iii. A 4% rise nationally in short-notice care applications in the last quarter of the year;

iv. The increase in short-notice applications over the last five years is 6% of all public law applications, but 11% of care applications.

157. Some emergency/urgent hearings cannot be avoided (where there is an unexpected precipitating event), but many such applications do not fall into this category. This may reflect a lack of effective pre-proceedings work, as well as the pressure of work on local authority social workers and/or lawyers so that non-urgent cases become urgent. These hearings give limited opportunity for parents to participate fully in the hearing with legal advice and representation. The child is 'behind the curve' as the CG/ children's solicitor is likely to have had little, if any, opportunity to make the necessary enquiries before the hearing. It also puts pressure on the court to find a suitable tribunal to hear the case at short notice. Cafcass data further indicates that short notice cases generally have increased duration and more hearings and tend to involve younger children.

The variation in the incidence of short notice applications between DFCs

158. Cafcass data indicates significant variations in this, ranging from around 40% of cases (Lincoln/Northumbria and North Durham) to over

90% (North Yorkshire/South Yorkshire). The reason for this difference (if accurately recorded) is not clear. There is the potential to learn from good practice to reduce the proportion of emergency/short notice applications.

The different approach nationally to use of police protection, EPOs and urgent ICOs

159. Anecdotally, different areas rely to very varied extents on the use of police protection (s 46, CA 1989), applications for EPOs (s 44, CA 1989) and for urgent ICOs (s 38, CA 1989) to manage emergency situations.

160. The MoJ reports on a quarterly basis on the volume of EPOs made. HMCTS holds internal data on the orders made by DFC area and further work will be undertaken to analyse the data. Cafcass does not record EPO applications and orders.

161. Police protection permits the removal and accommodation of a child by police in cases of emergency, where there is reasonable cause to believe a child would otherwise be likely to suffer significant harm. This permits a child's removal without proceedings and, therefore, without any court scrutiny. Police protection powers are a vital part of framework for protecting and safeguarding children, but it is important to understand whether and, if so, why the exercise of police protection powers varies nationally. There is also a need for clarity about the circumstances in which police protection powers should (and should

not) be relied upon. There is no national data recording the use of police protection overall or in different force areas.

162. EPOs and ICOs both necessitate a court application, but require the application of different legal provisions and have different consequences (including, importantly, the absence of any appeal against the grant/refusal to grant an EPO). While individual cases may lend themselves to one application rather than the other, there are differing judicial and professional views as to which is the more appropriate form of application more generally in urgent/emergency situations.

163. Anecdotally, there are cases in which EPOs are made but care proceedings do not follow (and where police protection powers are exercised but no proceedings follow). Bearing in mind the draconian nature of removal of a child using police powers or an EPO, it is important to understand:

i. whether/how often this is happening and the reasons;

ii. any correlation between the use of police protection and applications for EPOs/urgent ICOs.

Managing urgent applications

164. On issue, the application and statement in support frequently provide insufficient evidence of the urgency, together with the steps taken by the local authority to avoid the need for the application being

made on an urgent basis. This has been addressed in various areas by the formulation of an information sheet which should be completed and accompany every application where an urgent hearing is sought. This sheet is designed to provide the necessary information to enable the gate-keeper to assess the urgency and list the case appropriately. It includes: information relating to the child's status (subject to police protection or s 20/ s 76 accommodation); the circumstances if the child is in hospital; when this information became known to the local authority; the notice given/proposed to those with parental responsibility and the arrangements for them to attend a hearing; the reason an urgent hearing is required; if appropriate, why the child's safety requires removal; the likely duration of the hearing. The HMCTS Family Public Law and Adoption Reform Project have introduced a revised online C110a application, which is currently being piloted and includes changes to how urgent information is provided, to test with pilot users. This report recommends that the pilot continues with this testing to ensure the right information is provided in cases where an urgent hearing is sought. Pending national rollout of the online application, a template information sheet is proposed.

165. In most areas, Cafcass only learns about an application (urgent or otherwise) at the time of issue. Local arrangements in some areas, however, provide for the local authority to inform Cafcass in advance when it is known an application is to be made, whether the decision to issue is made in a planned way (days before issue) or in an

emergency (hours before issue). It is particularly valuable for Cafcass to be informed of any previous proceedings, including the name of a previously allocated CG and the children's solicitor. This allows Cafcass to manage its resources more effectively and set in train arrangements for representation of the child or children (where practicable, with continuity). The report recommends a protocol to establish this good practice nationally.

166. In some cases, courts list interim care applications sooner than requested to fill available time in court lists. Although this may maximise the court's resources, it reduces the opportunity for the parents and children to participate fully in the hearing with any/sufficiently prepared representation.

The documentation in support of applications

167. Completion of the application, statement in support and interim care plan is time-consuming for local authority solicitors and social workers. This working group provides an opportunity to revisit the form and content of these documents to avoid repetition and focus on the information required by the court to determine the issues at each stage.

Form C110A

168. The current paper-based form is unwieldy and fails to prioritise the most relevant information. Since January 2019 the HMCTS Family

Public Law and Adoption Reform Project has been piloting an online C110A in four areas (Portsmouth, Stoke, Swansea and West London). The initial feedback is positive, with the opportunity for further adjustment/revision of the online C110A application following feedback from the pilot users and others (specifically including the working group).

169. The basic details of the child are not consistently recorded accurately (names, date of birth and who has parental responsibility). Apart from the importance of this to the family, the court needs to know at the earliest opportunity who has parental responsibility for the child. The starting point for these details is the child's birth certificate, which should be obtained by the local authority in advance of the issue of proceedings (or as soon as possible thereafter, where there has been no local authority involvement pre-proceedings).

170. The 'grounds for the application' are not completed consistently in providing an initial statement of threshold findings which allows the respondents and the court to understand the local authority's case at the start of the proceedings. Generalised/discursive 'grounds' (ranging from scant to prolix) are common.

The social work evidence in support

171. The SWET is now widely but not universally used. It has been amended locally in some areas. It is recognised that there has been considerable work done in many local authorities to improve the

overall quality of the evidence provided to the court and that statements in many cases are of a high standard. The areas in which shortcomings are identified in the paragraphs that follow highlight gaps which are seen in practice.

172. The SWET/other initial social work statement in support of an urgent application seeking removal frequently contains little or insufficient evidence of the urgency and why/how the legal test for removal is met. Where an urgent application is made, the focus should be on these issues. We recommend a separate short SWET for completion in support of an urgent application, addressing these crucial issues. This would not replace or obviate the need for the full SWET to be completed for the CMH. Where an urgent application is supported by a full SWET, the issues relevant to the urgent application should be addressed in detail.

173. Information is often repeated as between the SWET, assessment reports and a separate chronology. Common gaps in the SWET/initial social work statement include evidence of:

i. the pre-proceedings assessments undertaken, with analysis of the local authority's position in consequence (rather than repetition of the content of the assessment);

ii. the support provided to the family and why they have not achieved their goal;

iii. whether an FGC or equivalent has taken place (including the plan arising from the meeting), with the reason if not;

iv. previous proceedings concerning the child;

v. where a child has been the subject of s 20 / s 76 accommodation, an explanation of the circumstances (including the duration, how agreement was given and the actions taken by the local authority during the period of accommodation);

vi. the view of the IRO (which is reported by the social worker rather than provided directly by the IRO);

vii. in respect of newborn babies: (1) the work done with the family pre-birth; (2) the basis upon which any other children have been removed and why the circumstances remain relevant; (3) the placement options considered to keep mother and/or father and baby together, and (4) why separation of mother and/or father and baby is necessary.

174. The working group recommends revision of the SWET generally and to address these shortcomings.

The care plan/interim care plan

175. S 31A, CA 1989 places a statutory duty on a local authority to prepare a care plan in every case in which it seeks a care order. The contents of a final care plan are prescribed by regulation. In Wales, close regard should be had to the Code of Practice to the Social-

Services and Well-being (Wales) Act 2014, in particular on s 31, CA 1989 care plans.

176. There are differing views about the value of a separate interim care plan. Care plans (interim and final) are rarely completed in a focussed and informative way. At an interim stage, the crucial issues for the court are:

i. where and with whom the child is to live;

ii. the proposed contact arrangements;

iii. whether the interim plan will involve a change in school/nursery etc.;

iv. the services to be provided to the child/family;

177. Interim arrangements may change during the course of proceedings. A separate interim care plan has the advantage of providing an easily located reference point in the court bundle for the current arrangements for the child. We recommend a short form template interim care plan limited to the issues relevant to the interim planning.

178. The child's final care plan is an important document which confirms the court-approved plan and informs those implementing it. Improvements are required in social work training to include the relevant information about the current and anticipated plan for the child.

Gatekeeping/ allocation

179. Gatekeeping and allocation arrangements vary according to local need. Some areas have formulated local guidance to supplement statutory guidance. It is not considered appropriate for this to be standardised because of the wide-ranging differences in resources in local areas. Such local guides may, however, provide consistency locally as well as additional support for less experienced judges / legal advisers.

Standard directions on issue

180. The SDO have been amended locally by some DFCs, a number of which have been considered. Inevitably, these reflect local practice. The working group provides an opportunity to draw together good practice of more general application to provide a revised template form for the SDO, to include a timetable for applications for special measures/participation directions, interpreters, production orders/video links and provision for details of previous proceedings to be provided by the local authority/other parties.

Case management at ICO hearings

181. In many cases, case management directions can be given at an interim care hearing to progress the proceedings at the earliest opportunity and without any prejudice to the respondents. This is not consistently done so that time is lost in identifying issues, seeking

disclosure and starting assessments. Consideration of early case management directions should be a standard part of urgent hearings (subject to the time available).

Ineffective first CMHs

182. There can be many different reasons for this, including the CMH being listed too early in the CMH window (with insufficient time for the CG and children's solicitor to make enquiries), the parents not having met their representatives before the hearing and the advocates' meeting failing to distil the issues before the CMH.

183. Legal representatives report that the current volume of work together with the circumstances/characteristics of many of the parents in care proceedings are such that they are commonly unable to take any/full instructions from the parent before the CMH. In such cases, the advocates' meeting will necessarily take place before the advocate has any/full instructions. In consequence, parental response documents are either not available or do not contain the prescribed information; reliable information relating to potential alternative kinship carers (their identity and willingness to be assessed) may well not be available for the CMH. Listing the CMH appropriately (and nearer to the end of the CMH window) is likely to improve the effectiveness of the CMH.

184. The SDO includes a direction for an advocates' meeting to be held in advance of the CMH. In some areas, an advocates' meeting agenda

template is in use with a view to ensuring the relevant issues are addressed in each case and/or a minute of the advocates' meeting is filed as a matter of course/direction. An advocates' meeting agenda template provides a useful aid to ensuring the CMH is effective. An agreed minute of the meeting should be filed as a core document before the CMH (to inform the hearing and ensure there is no disconnect where the meeting is attended by a different representative to the advocate appearing at the hearing).

185. An advocates' meeting agenda template can usefully be replicated in a CMH checklist. While some judges (and legal advisers) are highly experienced in case management and find such a checklist otiose, others may well be assisted by this (particularly in the light of the pressure on court lists).

186. There are wide-ranging differences in the content and usefulness of case summaries and position statements provided by advocates at hearings. We commend the template case summary documents, appendix I, as models of good practice which merit adoption as approved national templates.

Applications in respect of newborn babies

187. We have already recorded the significance of interim care decisions for/against removal at the outset of proceedings. The impact of these decisions is all the starker in relation to newborn babies. Quite apart from the separation of a newborn baby from her mother, the court is

frequently asked to decide the issue within hours or days of the baby's birth when the mother will be in a highly vulnerable state. The court is frequently faced with applications seeking removal of newborns from a maternity setting.

188. The Nuffield Family Justice Observatory report, *Born into Care* (October 2018),[19] provided the first estimate and profile of cases of what was in that report defined as "newborns" (aged less than seven days) subject to care proceedings in the context of proceedings concerning "infants" (aged less than one year). The findings included the following:

i. in 2007/08, 32% of all care proceedings issued for infants were for newborns, by 2016/17 the percentage increased to 42%;

ii. an increase in the volume from 1,039 (2007/08) to 2,447 (2016/17);

iii. the likelihood (incidence) of newborns in the general population becoming subject to care proceedings more than doubled from 15 per 10,000 live births (2008) to 35 per 10,000 in 2016;

iv. marked differences in the rates of care proceedings issued for newborns between regions;

[19] Available online: https://www.nuffieldfjo.org.uk/report/born-into-care-newborns-in-care-proceedings-in-england-summary-report-oct-2018

v. marked differences in the proportional increases in different areas with unexpected fluctuation in the percentage changes for all regions over time;

vi. 47% of newborns between 2012/13 and 2016/17 were 'subsequent infants' (so 53% were not).

189. The report records the existence of limited statutory practice guidance and research in this area.

190. In all but a small number of cases (where the mother gives birth in an area where she is not known or where there has been a concealed pregnancy, by way of example), the local authority should have been involved with the family pre-proceedings. This is addressed further in the pre-proceedings section of the report, but should include assessment of the parents and other alternative family placements, ensuring parents have had the opportunity for legal advice prior to birth and, where possible, agreement about what will happen to the baby at birth and the timescale for the issue of proceedings. Where proceedings are planned in advance of birth, local authorities need to ensure the application and supporting documents are drafted in advance to prevent avoidable delay in the issue of proceedings.

191. Some local initiatives/protocols have led to better planning in advance of births where proceedings are anticipated, so there is a clear plan in place regarding the arrangements for the birth at hospital and an agreed period for the baby to remain in hospital to allow the

application to be made to court in a timelier way. In many cases, however, the court is faced with an application on the day of birth and informed the baby is ready for discharge from hospital and must be discharged that day. In the short to medium term, there is clear potential for shared learning to develop local arrangements to avoid or reduce the number of applications made within hours of birth. While this has the potential to ameliorate the trauma associated with removal of newborns, this difficult issue needs to be tackled in a wider context.

192. The *Born into Care* report includes reference to past initiatives undertaken by the NSPCC (developing a systematic approach to social work assessment during pregnancy) and Cafcass (through Cafcass Plus, with joint working between the CG and local authority pre-birth) and highlights the need for more to be done in this area. The current legal framework only permits an application to be made following the birth of the child. The incidence and impact of applications seeking removal of newborns is such that this issue merits further debate: whether there should be a means by which a plan for removal at birth is considered in advance by the court; and what other steps could and should be taken pre-birth (including consideration of any role for Cafcass). It is recognised that these are fundamental, difficult and potentially contentious areas, but that should not prevent the debate.

Inadequate resources to manage current caseloads

193. The last five years have been an astonishing story of absorption of pressure through the skill, commitment and goodwill of the tens of thousands of professionals who work in the family justice system. The increasing strategic threat is systemic insufficiency – shortages of just about everything: of court time, leading to delays in listing; the late production and distribution of court orders; shortages of judges, social workers and experts; and a shortage of positive options for children. The significant increase in care applications over recent years has not been matched by an increase in resources for local authorities, Cafcass or the Family Court. In many areas, there are insufficient experienced legal representatives to meet demand, which is exacerbated by the restrictions on legal aid funding for advocates' travel. Recruiting and retaining practitioners into this area of law is an increasing challenge for the reasons outlined. A comprehensive review by Government is required of the funding needed by all parts of the family justice system and this should form a key part of planning for the next spending review.

194. Many local authorities are working under extreme pressure. While budgets have reduced significantly over the last ten years, initial referrals to children's social care have increased by 22% and children subject to a child protection plan have increased by 87%. There are now 24% more looked-after children than there were ten years ago.

As well as adequate resources, shared learning is required from authorities that have been able to develop successful services for children on the edge of care, to prevent family breakdown and reduce care applications.

195. The demand generated by care applications has a consequent impact on the resources of Cafcass and the court. This is further exacerbated by the 23% increase in private law demand since 2014. While the focus of this report is public law, Cafcass research has shown that at least a quarter of private law cases have no child protection or welfare concerns. These cases could be safely diverted from court to free up capacity in the system to manage care demand. The interim report of the Private Law Working Group makes recommendations to address this.

196. If decisions are to be taken for each child in an appropriate timescale, there must be sufficient capacity for cases to be listed with sufficient time allowed for effective case management and hearing, properly reflecting the workload in each area. Additional judicial resources (whether salaried or fee paid) and administrative staff should be resourced as required. Many courts have lost experienced HMCTS staff (a situation exacerbated by the significant disparity in incomes between Government departments and the response of staff to the Reform Programme) which is having a very real impact on the ability to service the level of work the Family Court is experiencing.

197. IT should be fit for purpose and reliable. The Family Court urgently needs a nationwide reliable system which equates to DCS (operating in the Crown Court). Family courts around the country are presently working digitally/electronically in different ways and to differing extents. The HMCTS Family Public Law and Adoption Reform Project has started work in this area, but is at an early stage. Until a unified and efficient system is in place, the anticipated significant savings in time and money will be not be realised.

Wellbeing

198. It is important to record the high level of stress currently being experienced by many of those involved in the family justice system as a result of the current working arrangements (which can, in turn, exacerbate the negative experience of family members involved in care proceedings). The pressures are severe and unsustainable, despite the commitment of the family judiciary, legal advisers, court staff, together with legal and social work family practitioners in all areas.

199. With the encouragement of the President of the Family Division, many areas have formulated or are in the process of formulating wellbeing guidance, addressing reasonable working practices in the light of the circumstances and pressures in that area. These typically include sitting hours, expectations relating to sending/replying to emails and lodging of draft orders, as well as arrangements for

advocates' meeting and the attendance of social workers and CGs at court. We recognise the advantage of such protocols developing locally, to reflect the arrangements and issues in each area and to encourage local "ownership" of the working practices.

200. Advice designed to improve wellbeing will only be effective (particularly in the light of this commitment of those involved in the family justice system) if there are sufficient resources to meet the volume and complexity of the public law care work. This should be properly considered when funding decisions are taken and in formulating and implementing changes to current working arrangements.

Recommendations

201. **Recommendation 19: Revision of the Form C110A.** To be achieved through the current pilot, to include the views of the working group as part of the feedback for further revision.

202. **Recommendation 20: Greater emphasis on pleading "the grounds for the application" in the Form C110A.** The application to specify the need for this to be completed by way of findings in concise paragraph form, setting out the case against the respondents at the start of proceedings. This can be incorporated in the revisions to the C110A. Pending the national rollout of the online application, we propose it is

included as part of the good practice guidance which accompanies this report.

203. **Recommendation 21: Revision of the Form C110A for urgent cases/ use of an "information form" for urgent cases pending roll out of the online form**. The application requires revision to include the necessary information to inform listing arrangements wherever an application requests an urgent hearing. Pending the roll-out of the pilot nationally, the use of an "information form" template, appendix E2, is proposed as part of the good practice guidance accompanying this report.

204. **Recommendation 22: Early notification of Cafcass.** A protocol issued by Cafcass and the ADCS (or the local FJB) providing for advance notification of all care/EPO applications, so Cafcass can make advance/preliminary arrangements for representation of the child. Until a protocol is agreed, this requirement is included as part of our good practice guidance.

205. **Recommendation 23: Good practice guidance for courts listing urgent applications and CMHs.** Good practice guidance that (1) urgent applications are not listed before the date/time requested by the local authority to give the best opportunity for representation of the other parties and (2) CMHs are listed appropriately (and not necessarily on the earliest available date) within the CMH window to allow effective case management.

206. **Recommendation 24: Working with health services in relation to newborn babies.** Sharing of existing protocols/local agreements with health services to promote similar arrangements on a national basis.

207. **Recommendation 25: Including the child's birth certificate in the bundle.** The child's birth certificate to be a core document in care proceedings and included as part of the bundle for the first CMH. This is proposed as part of our good practice guidance.

208. **Recommendation 26: Focussed social work evidence / the SWET for urgent applications.** A separate additional short SWET which may be completed in support of an urgent application, addressing the reasons for the urgency and the legal test for removal (in advance of the full SWET, to then be completed for the CMH), together with a short form template interim care plan.

209. **Recommendation 27: Revision of the SWET generally.** General revision of the SWET template to avoid repetition of other documents and in accordance with our SWET proposals above.

210. **Recommendation 28: A revised template for standard directions on issue.** A revised template order will be introduced by the HMCTS Family Public Law and Adoption Reform Project.

211. **Recommendation 29: Introduction of checklists for advocates' meetings and CMHs for practitioners and the court.** Advocates' meeting/CMH checklists for use by practitioners/courts with good

practice guidance for a minute of the advocates' meeting to be provided to the court, appendix E3 – E5.

212. **Recommendation 30: Circulation of case summary templates.** A national rollout of the template case summary documents, appendix I, with their adoption included as part of our good practice guidance.

213. **Recommendation 31: Early and active case management.** Recommended good practice for early case management directions to be considered at all urgent hearings (assisted by a checklist of the most likely areas for early case management directions), appendix E6. Similar checklists – if considered of use more generally (and particularly for less experienced judges) – can be provided for CMH/IRH.

214. **Recommendation 32: DFJ focus on wellbeing.** Each DFJ should formulate a local wellbeing protocol in consultation with local court users. The impact of current working practices and pressures and of any changes on all those working in the family justice system should be considered as an integral part of our recommendations.

Best practice guidance

215. We recommend that the best practice guidance, set out in appendix E1 – E6, is issued by the President.

Longer-term changes

216. **Recommendation 4: Research into the regional variation in the proportion of urgent applications.** Research is required into the reasons for the differing incidence of urgent applications between different areas with a view to good practice guidance to reduce the frequency of urgent applications where appropriate. This is an important and urgent area for research which could form an early part of the work of the Nuffield Family Justice Observatory.

217. **Recommendation 5: Research into the frequency and use of police protection and EPOs.** Compilation of reliable data is required about (i) the number and proportion of EPO applications/orders made in each DFC and (ii) the number and proportion of EPOs which do not result in care applications.

218. This data should be followed by (i) research into the reasons for difference in approach to the use of police powers/EPO applications in different areas and the circumstances in which police protection/EPOs are not followed by care proceedings, together with (ii) good practice guidance on the circumstances in which police protection and EPO applications are appropriate. This is an area in which the evidence is presently limited and (at least some) is unverified. The importance of this issue and lack of other evidence/research also merits early consideration by the Nuffield Family Justice Observatory.

219. **Recommendation 6: Reconsidering planning for newborn babies, including the role of Cafcass pre-proceedings.** Consideration of the means by which planning for newborns can be improved, including the potential role of Cafcass pre-birth.

220. **Recommendation 7: New IT system.** Urgent development of the early work of the HMCTS Family Public Law and Adoption reform project is required to provide a unified system of digital/electronic working (with IT support) in the Family Court.

221. **Recommendation 8: An improvement in the range and quality of data collection/ analysis by HMCTS / MoJ.** The range and quality of data collection/ analysis by HMCTS and MoJ should be addressed to provide a reliable evidence-base.

222. **Recommendation 9: A review of the funding of the family justice system.** To be undertaken by Government and address the resourcing of all areas of the family justice system. Within the Family Court, there should be a realistic analysis by MoJ/ HMCTS of caseloads to ensure the judicial/administrative resources reflect the comparative workloads in each area.

Case Management

Current issues

Case management issues

223. The current CMO contains a great deal of useful information which needs to be included in the order for the first case management hearing. Thereafter, for all subsequent hearings, it is not fit for purpose and it is often difficult, even for the judge who made the order, to find the orders and directions which have been made. For all subsequent hearings, a short form of the CMO should be used. This will have, at least, three benefits:

i. it will enable the judge, the lawyers, the parties and the professionals more easily to identify the orders made and what a party is required to do or must not do;

ii. it will reduce the time taken by (1) the advocates to draft the order, (2) the judge to approve the same and (3) the court staff to process and produce a sealed order;

iii. it will assist litigants in person in understanding what they must do, or must not do, and enable them to receive a copy of the sealed order in a timelier fashion.

224. There is a lack of uniformity across England and Wales as to the judicial requirements and expectations of the form and content of case management orders. There is a need for standard approach to be

adopted as to the contents of the orders and when they must be drafted.

225. There is a diversity of practice across England and Wales as to whether the final hearing is only listed at the IRH or it is listed at an earlier hearing. The experience of courts which have adopted both practices favours the former approach which enables a court to list a case when the issues to be determined are identified and are clear.

Care order with child at home

226. There is increase/significant regional variation in the numbers of children returning home under a full care order, which is of very real concern. There is as yet a lack of clarity as to why, in some areas, this practice is so common and elsewhere so rare.

227. The making of a care order should not be used as a vehicle to achieve the provision of support and/or services after the conclusion of proceedings. Unless a final care order is necessary for the protection of the child, an alternative means/route should be made available to provide these necessary support and/or services without the need to make a care order. This will include clarity as to the legal status of the child following the proceedings, in terms of whether they will be the subject of a child protection plan, or treated as a child in need, with accompanying reviews and services. In Wales, the current statutory guidance is set out in para 116 of the Code of Practice to the Social-Services and Well-being (Wales) Act 2014.

228. The making instead of a supervision order to support reunification of the family may be appropriate. However, there are many concerning issues regarding their use. They have the highest (20%) risk of breakdown and return to court for further care proceedings within five years and there are widespread professional concerns that supervision orders "lack teeth" as well as significant regional variation in their use and variability in the provision of support services.[20]

229. A final care order should also not be used as a method prematurely to end proceedings within 26 weeks artificially to alleviate concerns that the children will be at continuing risk of harm. Any such order should only be made where the local authority can demonstrate that the assessment of any carer of a looked after child meets the criteria of the Care Planning Placement and Care Reviews (Wales) Regulations 2015 or the Care Planning, Placement and Case Review (England) Regulations 2010. This provides that any such placement has to be approved by a senior nominated officer, and can only be approved if, in all the circumstances, and taking into account the services to be provided by the responsible authority, the placement will safeguard and promote the child's welfare and meet their needs.

[20] Harwin, Alrouh et al, *The Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice* (March 2019). Available online: Available online: https://www.cfj-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN%20main%20report%20SO%20and%20SGOs%20_%204Mar2019.pdf

230. The making of a final care order must be a necessary and proportionate interference in the life of the family. A care order has a very intrusive effect of state intervention, with ongoing mandatory statutory interference not only in the lives of the parents, but in the life of the child, who will have the status in law as a looked after child and all that goes with this. It can only be justified if it is necessary and proportionate to the risk of harm to the child. Where such an order is made there will be a real prospect of further litigation in the future, because the responsible local authority should regularly review whether the care of the child is such that the order is no longer necessary, and if so an application to discharge the order should be made. In an appropriate case, consideration should be given to the making of a supervision order.

Newborn babies

231. Applications for the removal into care of newborn babies are frequently made on an urgent basis and either without notice to the parents or, more usually, on very short notice. These applications account for a substantial number of urgent and short notice hearings in the Family Court. Whilst there are some cases where an emergency application is unavoidable, an application made on short notice, often less than 24 hours, invariably causes unfairness to the parents (and indeed their wider family), particularly post-partum, who may have difficulties securing legal representation or do not have the opportunity to give full and informed instructions to their lawyers.

Short-notice applications may also lead to the children's guardian being placed in a disadvantageous position.

232. Proceedings where babies are unknown to authorities prior to birth are rare. Planning in advance of a birth where proceedings are determined as required is essential. Further detail of recommended good practice can be found in the pre-proceedings section of this report, but should include ensuring parents have had the opportunity for legal advice prior to birth; the offer of a family group conference; that where possible there is an agreement developed as to both what will happen to the baby upon birth prior to issue and timescales for issue; and that notification to Cafcass is made of the likelihood of proceedings.

233. In planned proceedings, except in extremis where it is unsafe to do so, parents should be made aware of the proposed care plan for the baby prior to the birth, so that this can be the subject of clarification and negotiation outside of the court process, and that there is an early opportunity to consider family alternatives to care, or family support which might avert the need for emergency or short notice proceedings.

234. In addition, where proceedings are planned in advance of the birth, local authorities need make provision for the drafting of the application and supporting documents in advance, so that short notice is not required by default as a result of avoidable delay in lodging the documents for issue. Applications in respect of newborn babies and

young infants should be the subject of strict case management directions and time limits. It is especially important that proceedings in respect of these children have the developmental timetable of the child in mind, and are concluded, whenever possible, within the 26-week limit.

235. There will however be some cases, particularly relating to first time parents, where parents are demonstrating their ability to respond in a sustainable manner to the advice and treatment provided to address concerns about their parenting, and where therefore proceedings may need to be extended. This may be particularly relevant in cases where parents are receiving and responding to treatment for drug and alcohol abuse, or young first-time parents who have been placed in parent and baby foster placements.

Experts

236. Once more there is an increase in the number of experts being approved by the courts in public law proceedings. The issue is most acute in relation to the instruction of ISWs and psychologists.

237. The experience of Cafcass is that there are wide regional variations in (1) the numbers of applications made for the instruction of an expert (2) the field of the expert sought to be instructed (3) the party making or leading the application for the instruction of an expert and (4) the reason(s) for the application. It is vital that applications are not made unless the opinion of an expert is necessary, and it is vital that the court does not grant the application unless it is satisfied that there are

cogent reasons to conclude that the instruction of an expert is necessary. A lack of confidence on the part of professionals involved in the case and/or their onerous workloads will rarely constitute cogent reasons.

The 26-week limit

238. In some areas of the country and in some family courts, an overly strict adherence to the 26-week statutory limit is resulting in final orders being made when insufficient evidence is available to the court which results in a conclusion to the proceedings which are neither just nor fair to the child, nor to the parents/carers.

239. Whilst there is a statutory requirement to conclude care proceedings within 26 weeks, there may be a significant, albeit small, number of cases where it would be necessary to achieve a just outcome in the welfare best interests of the child that extension may be sought, as provided for in legislation, to the 26-week limit (e.g. the way forward is clear, the parents have been excluded as carers but more time is needed for a robust assessment of, or support plan for, connected persons and/or potential SGs). The emphasis here should be on necessity with clear, well-reasoned applications for extension being presented which in turn can be fully considered by the court, rather than an extension of time becoming or being seen as a norm.

240. If these changes are accepted, the cases which are affected by such a judicial approval of an extension of the time limit should be recorded separately from the 'usual' cases. A failure to do may lead to the

judiciary being risk adverse to sanction the same out of fear of skewing their local performance statistics.

Increased number of hearings per case

241. An increase in the number of hearings per case is a prime reason cases exceed the 26-week time limit often without any good reason.

242. There are too many unnecessary hearings which inevitably leads to a case concluding beyond the 26-week time limit.

243. There should be an increase in the number of consensual and court approved applications which are dealt with by a judge on paper or, now more usually, by email application. Clear guidance will need to be given on how and when this is an appropriate way of proceeding and how this will be managed where one or more party to the proceedings is not legally represented.

244. The mere fact the parties agree to an extension of time for compliance with an order is not a basis, of itself, for a judge to acquiesce to the same or to deal with a consent application administratively.

245. Consideration should be given to the greater use of video or telephone hearings. Appropriate consideration of how unrepresented parties are to participate will be required.

Bundles

246. There must be compliance with the provisions of FPR PD27A.

247. However, a considerable amount of time and expense is devoted to the production of and trimming of court bundles. This time and expense could be better focussed on (a) the identification of the issues/facts the court needs to determine the findings of fact sought; (b) the evidence required to prove or contest the same; (c) the extent to which, if at all, the findings made would establish the threshold criteria of s.31(2); (d) the principal issues necessary to resolve the proceedings; (e) the relevant issues in dispute at the hearing and (f) the reading list for the judge to determine these issues. A clear route to navigate the bundle is key – whether a paper or electronic bundle is used.

Public funding

248. The adverse impact of the LAA seeking to reduce the funding available for the efficient administration justice in care cases and for a fair disposal of proceedings in the welfare best interests of the child should and must be recognised.

249. The reversal of successive cuts in the funding available to those representing the parents and/or carers in care cases would enable far more productive means to be established to avert the need for public law proceedings to be issued, at great public expense, in respect of a child and/or enable the proceedings to conducted and concluded in a far more efficient and cost-effective manner. The goal should be to ensure that parents/carers who are the subject of proposed/actual state intervention in their family life have sufficient adequate means to

be able to challenge the need for the same. Further there should be adequate advice (e.g. about the content of SG support plans) available to those who are considering assuming the long- term care of a child to enable them to make informed decisions.

Recommendations

250. **Recommendation 33: Use of short-form orders**. We recommend that after the CMO has been drawn and approved for the first hearing, thereafter a short form of order is used which in the main body of the order consists of:

i. the name of the judge, time and place of the hearing;
ii. who appeared for each party or they were a litigant appearing in person;
iii. if required, a penal notice (which must appear on the first page of the order);
iv. the basis of the court's jurisdiction;
v. the recitals relevant to the hearing; and,
vi. the directions and orders at the hearing;

251. All other matters (e.g. names of solicitors, parties' positions etc.) should appear as an annexe or schedule to the order. These changes are especially important to enable LiPs to understand the orders made against and/or requiring action by them.

252. Further, whilst the direction for the instruction of an expert and the date for filing the report should appear in the order, the remainder of

the directions for an expert (e.g. letters of instruction and division of cost etc.) should appear in the annexe/schedule.

253. The timeline for the case and compliance with the same should be contained within the annexe/schedule.

254. The short-form orders, if not drafted before or after the hearing, should be drafted within 24 hours of the hearing with heads of agreement being noted at court. The appendix should be updated, where possible, by parties prior to the court hearing, with each party sending in a short note of their client's position for inclusion on that appendix before leaving court.

255. The new short form orders and appendices are to be strictly applied in all court centres.

256. **Recommendation 34: Advocates' meetings: using an agenda and providing a summary**. Advocates' meeting should take place no less than two working days before a listed hearing. Advocates should agree at the meetings the core reading list, the schedule of issues and list of agreed matters. One sheet of A4 containing those matters, should be produced following each advocates meeting for the judge, and to be provided to the judge by 4pm the working day before the hearing.

257. The timetable for filing and serving should take account of the date fixed/proposed for the advocates' meeting.

258. **Recommendation 35: Use of new template position statements and case summaries.** Position statements need only be short documents,

providing the judge with key issues, responses to the same and draft proposed directions/orders where they are sought. The case summary, respondent's position statements and the CG's position statement should be in the form of the templates set out in appendix I. Where an advocates' meeting has taken place before a hearing and the parties are agreed on the way forward and the orders the court will be invited to make, a composite document setting out the core reading for the judge, the draft orders proposed, and a summary of the parties' positions and issues shall be provided to the court by the local authority by no later than 4pm the working day before the hearing.

259. Local authority case summaries should not repeat all background information, in particular where earlier summaries are included in the core bundle and highlighted in the reading list. A short updating position statement with issues clearly identified should be lodged by no later than 4pm on the working day before the hearing.

260. Cases should not be adjourned for want of position statements: it is rarely, if ever, in the child's welfare best interests.

261. **Recommendation 36: Renewed emphasis on judicial continuity**. It is vital for the effective case management of a matter that there is judicial continuity. The full-time judiciary and HMCTS should give a high priority to ensuring that a case is dealt with by one identified judge and, at most, two identified judges.

262. **Recommendation 37: Renewed emphasis on effective IRHs.** The final hearing should not be listed before an effective IRH has taken place unless there are, unusually, cogent reasons in a particular case for departing from this practice.

263. An IRH needs to be allocated sufficient time. The timetabling for evidence in advance needs to provide for an advocates' meeting at least two days in advance, and the advocates need to be properly briefed with full instructions for that meeting.

264. For an IRH to be effective, the following is required:

i. final evidence from the local authority, respondents and CG (exceptionally, an IRH may be held with a position statement setting out the CG's recommendation before the final analysis is completed);

ii. the parents/other respondent(s) attend the hearing;

iii. the position in relation to threshold/welfare findings is crystallised so the court is aware of the extent to which findings are in issue and determines which outstanding findings/issues are to be determined;

iv. the court determines any application for an expert to give oral evidence at the final hearing;

v. the court determines and the CMO records which witnesses are to give evidence at the final hearing (all current witness availability should be known);

vi. the court determines the time estimate;

vii. a final hearing date is set;

viii. where there is a delay before the final hearing date, directions are given for updating evidence and a further IRH before the final hearing.

265. **Recommendation 38: The misuse of care orders.** A care order should not be made solely or principally as a vehicle for the provision of support and/or services. In Wales, the current statutory guidance is set out in para 116 of the Code of Practice to the Social-Services and Well-being (Wales) Act 2014. In an appropriate case, consideration should be given to the making of a supervision order which may be an appropriate order to support reunification of the family.

266. **Recommendation 39: Case management of cases in relation to newborn babies and infants.** Applications in respect of newborn babies and infants should be the subject of strict case management directions and time limits. It is especially important that proceedings in respect of these children are concluded, whenever possible, within the 26-week limit. There will however be some cases, particularly relating to first time parents, where parents are demonstrating their ability to respond in a sustainable manner to the advice and treatment provided to address concerns about their parenting, and where therefore proceedings may need to be extended.

267. **Recommendation 40: Experts: a reduction in their use and a renewed emphasis on "necessity"**. The number of permissions to instruct an expert (especially an ISW and/or psychologist) are high and

should be reduced when seeking an expert is not necessary to the case. The instruction of an expert is not a neutral exercise: it incurs expense and potentially causes delay.

268. The judiciary and members of the legal and social work professions need to be reminded of the provisions of Part 25 FPR and the requirement that permission to seek an expert opinion should only be made and granted where it is necessary. The fact all parties consent to the instruction of an expert does not alleviate the duty of the court to be satisfied that it is necessary.

269. **Recommendation 41: Experts: a shift in culture and a renewed focus on social workers and CGs**. There should be shift in culture and practice away from early instruction within proceedings of experts. Social workers and CGs are expected to have the expertise to make professional judgments and assessments generally but particularly, in relation to the assessment of sibling and parental relationships/bonds and commenting upon attachments.

270. **Recommendation 42: Judicial extensions of the 26-week limit**. Where the way forward for the child is clear (for example, a return to the care of the parents has been excluded by the court) but further time is required to determine the plan or placement which in the best welfare interests of the child, consideration should be given to permitting the case to exceed the 26-week statutory time limit.

271. If this recommendation is accepted, it is essential that the judicially approved extension and the consequential length of the proceedings are recorded separately from conventional proceedings.

272. **Recommendation 43: A shift in focus on bundles: identifying what is necessary**. There must be compliance with the provisions of FPR PD27A, but we recommend, with the increasing availability of electronic bundles, that the focus should shift to the parties, the advocates and the judiciary concentrating on (1) the principal issues necessary to resolve the proceedings (2) the relevant issues in dispute at the hearing and (3) the reading list for the judge to determine these issues. A clear route to navigate the bundle is key – whether a paper or electronic bundle.

273. **Recommendation 44: Fact-finding hearings: only focus on what is necessary to be determined.** There needs to be a culture shift in acknowledging that only those issues which inform the ultimate welfare outcome for the child need to be and should be the subject of a fact-finding hearing by the court. It should be rare for more than six issues to be relevant.

274. **Recommendation 45: Additional hearings: only where necessary**. The judiciary and practitioners need to be more acutely aware of whether (1) a further hearing is necessary and, if so, why; and (2) the directions proposed to be made are necessary for the fair conduct of the proceedings and are proportionate to the identified issues in the case. Mere inactivity, oversight or delay is never a just cause for a

further hearing and a concomitant delay in concluding proceedings. Thus, it should be recognised by all, including the LAA, that advocates' meetings, which should include LIPs, play a vital role in ensuring a case is concluded expeditiously and fairly.

275. In order to reduce the number of hearings and to ensure compliance with the 26-week limit it is important that the following issues are addressed at the earliest possible stage of the proceedings:

i. the identity and whereabouts of the father and whether he has parental responsibility for the child;
ii. the potential need for DNA testing;
iii. whether a family group conference has been held, and with what outcome;
iv. the need to identify at an early stage those family or friend carers who are a realistic option to care for the child (thus avoiding scenarios where significant resources are devoted to lengthy assessment of numerous individuals who are not a realistic option for the child); and,
v. the disclosure of a limited number of documents from the court bundle to family and friends who are to be the subject of viability assessments in order to ensure the same are undertaken on an informed basis.

276. **Recommendation 46: The promotion nationally of consistency of outcomes.** Whilst recognising the constitutional importance of judicial independence, consideration should be given to the means by which

a greater degree of consistency can be achieved to the judicial approach to case management and the nature of the orders made at the conclusion of the proceedings.

Best practice guidance

277. We recommend that the best practice guidance, set out in appendix F1 – F5, is issued by the President.

Longer-term changes

278. **Recommendation 10: A review of recruitment and resourcing of the family justice system.** To be undertaken by the Government. Within the family court there should be more effective systems for recruitment and long-term planning by MoJ/HMCTS to ensure the right level of juridical and administrative resources are in place to reflect the comparative workloads in each area.

Special guardianship orders

Current issues

279. SGOs are being made in respect of people who have close/other prior connections with the child, but also in favour of individuals who have no, or little prior connection with the child. Good practice in the assessment of prospective special guardians, in the preparation of support plans, and in how the family court considers plans for a child to be raised by a special guardian presently seems to be insufficiently tailored to respond to these very different scenarios.

280. There are concerns about the quality of some SG assessments and SGSPs. Where assessment and support planning is poor and insufficiently robust the risks which may arise include: carers and children struggling to manage in the face of inadequate preparation and inadequate short and longer-term support; the breakdown of SGO placements; and in extreme cases, the risks to the child in a proposed placement being unassessed leading to the death of a child.

281. There is a notable variation in the quality of the assessments filed with the court and the evidence base of the recommendations. All assessments/suitability reports should comply with the schedule set out in Regulation 21 of the Special Guardianship Regulations 2005, as amended,[21] or, in Wales, with Regulation 2 of the Special Guardianship

[21] The Special Guardianship (Amendment) Regulations 2016 amends the Schedule to the 2005 Regulations prescribing the matters to be dealt with by local authorities in preparing these reports.

(Wales) Regulations 2005.[22] In the event local authorities commission assessments from independent social workers it is essential that there is clarity about the standard of the assessment commissioned before it is filed.

282. There is an increase in the number of supervision orders being made alongside SGOs. The making of a supervision order alongside a SGO is a 'red flag' where this is a result of the assessment and/or the SGSP not being sufficiently clear, thorough or robust to give confidence that either the placement is in the welfare best interests of the child or the support plan will meet the needs of the proposed placement. A proposal to make a supervision order is likely to signify a lack of confidence in the making of a SGO at that time and/or results from the inadequacy of the support and services provided for in the SGSP. The cases where it would be appropriate/necessary to make a supervision order alongside a SGO are likely to be, in our view, very small in number.

283. In order to ensure the assessments and support plans are of a sufficiently high quality and to ensure the court is able to make a fully informed welfare decision, the following will need to be addressed:

i. SGOs were established to be more comparable to adoption orders in terms of permanence and as such potential carers should be thoroughly assessed to ensure they can meet the child's needs in her immediate childhood and through adolescence. The

[22] As amended by the Special Guardianship (Wales) (Amendment) Regulations 2018.

assessment of a potential SG must fulfil all elements of the statutory guidance which means that SG's should be well prepared and offered the opportunity for training and preparation akin to a prospective foster carer. An effective support plan will address immediate needs and potential areas for help in the longer term. The gravity of the task suggests such an assessment will take a significant number of weeks similar to a fostering or adoption assessment;

ii. whether there has been adequate attention paid to/time taken to build relationships and develop (and observe) contact between the child and the proposed SG. This may well be a vital component of a rigorous SGO assessment if the initial phases of the assessment are sufficiently positive to indicate such contact is in the welfare interests of the child and where the court is satisfied that such a step is not prejudicial to the fairness of proceedings.

284. Careful consideration needs to be given to the arrangements for contact proposed between a child who is the subject of a SGO and a parent, including what support arrangements need to be put in place. Anecdotal evidence suggests that insufficient planning as well as short term or inadequate ongoing support in relation to contact can have a significant impact on placement stability.

285. Under the current statutory framework, save in emergencies for strictly limited time periods, local authorities can only place children who are the subject to an ICO or care order with approved foster

carers. This raises real difficulties finding an appropriate legal vehicle by which to place children with proposed SGs prior to a final order being made. Some consider that the power of the court to make an interim SGO may be a helpful tool in the judicial armoury: there are, however, a range of views as to whether this is an appropriate and helpful way forward or not. Those in favour consider this would enable the court to approve, on an interim basis, the placement of a child with a proposed SG(s) and may provide a basis to circumvent the issue of a local authority seeking to place the child under an ICO or a careorder with a proposed SG but being unable, for all manner of appropriate reasons, to approve the placement under the fostering regulations. Those expressing concern or opposition, suggest that interim SGOs do not provide an appropriate response and highlight ways in which a range of difficulties, as well as tensions within the legal and practice framework, result.

Recommendations

286. **Recommendation 47: SGO assessments and SGSPs**. SGO assessments and SGSPs should be robust and comprehensive and compliant with regulations. Timetabling for the provision of such assessments should be realistic to provide for this.

287. The assessments and support plans must comply with and address all of the statutory requirements and consider all matters both in the short term and in the long term.

288. In order to ensure the assessments and support plans are of a sufficiently high quality and to ensure the court is able to make a fully informed welfare decision, the following will need to be addressed:

i. whether there has been adequate attention paid to/time taken to build relationships and develop (and observe) contact between the child and the proposed SG. This may well be a vital component of a rigorous SGO assessment if the initial phases of the assessment are sufficiently positive to indicate such contact is in the welfare interests of the child and where the court is satisfied that such a step is not prejudicial to the fairness of proceedings;

ii. where such relationship-building work has not (for whatever reason) formed part of the assessment process itself, it is likely that further time will be needed to allow this work to be carried out before proceedings are concluded (e.g. through extension of the 26-week time limit). This may particularly arise as necessary where early work to identify prospective carers and begin assessment prior to proceedings was not carried out;

iii. where there is little, or no, prior connection/relationship between the child and the prospective special guardian and after an the analysis of all the available evidence and of child's best interests, it is very likely to be in the child's best interests that the child is cared for on an interim basis by the prospective special guardian (e.g. under an ICO) before any final consideration is given to the making of any SGO. There is a debate amongst professionals and the

judiciary about whether (i) care proceedings should be extended beyond the 26 week timetable to enable the court to allow further time and assessments before deciding to make a SGO or (ii) where a lengthy period of time is likely to be required before the court could consider making a SGO, the proceedings are concluded with the making of a care order on the basis that the LA will assist the proposed SGs in making a future application for a SGO. One important benefit of this approach is that the provisions of the SGSP will be informed by the needs on the ground of the child and of the SGs rather than on assumptions and expectations of what will be required to achieve a successful long-term placement;

iv. where a party proposes the court should make an SGO, consideration should be given at an early stage to the issue of joining the proposed special guardian as a party to the proceedings and if joined consideration should be given to the funding of legal representation for the proposed special guardian.

289. Recommendation 48: Better training for SGs. Consideration should be given by local authorities to providing training to proposed special guardians, and to take adequate steps to prepare them for caring for the child. We have regard to the training and preparation afforded to prospective adopters. This should include consideration of the DfE publishing regular data analysis on the number of approved applications made by local authorities that provide funding from the

ASF at national and local level including the amount approved and the focus of the intervention.

290. **Recommendation 49: A reduction in supervision orders with SGOs**. Save for cogent reasons, a supervision order should not need to be made alongside an SGO. Where cogent reasons are found to exist, the order should contain a recital setting out the same. A supervision order should not need to be used as a vehicle by which support and/or services are provided by the local authority. All support and/or services to be provided to the special guardian and/or to the child by the local authority or other organisations should be set out in the SGSP. The SGSP should be attached as an appendix to the order making the SGO. For the avoidance of doubt, this recommendation is made to effect a culture shift and to ensure there is a focus on (1) a SGO only being made when there is cogent evidence that it is in the welfare best interests of the child and (2) the support and/or services to be provided by the local authority to the child and/or to the special guardian are clearly, comprehensively and globally set out in the SGSP.

291. **Recommendation 50: Renewed emphasis on parental contact**. Prior to the making of a SGO, the issue of parental contact with the child who may be made the subject of a SGO should be given careful consideration, in terms of (1) the purpose(s) of contact; (2) the factors which are relevant in determining the form of contact, direct or indirect, and the frequency of contact; (3) the professional input

required to support and facilitate the same and (4) the planning and support required to ensure the stability of the placement in the context of ongoing contact.

Best practice guidance

292. We recommend that the best practice guidance, set out in appendix G1, is issued by the President.

Longer-term changes

293. **Recommendation 11: On-going review of the statutory framework.** Guidance and regulations relating to fostering and adoption are regularly reviewed and have evolved over time. It is essential that the same attention and care is paid to special guardianship, drawing on the views and expertise of those working within the child welfare and family justice systems as well as the children and families impacted. Review of primary and secondary statutory provisions relating to SGSPs seems particularly important to prioritise and strengthen.

294. The Government should undertake regular reviews of the primary and second statutory provisions relating to SGSPs to ensure the same are meeting the needs of children and young people and the SGs; in Wales, the secondary legislation and accompanying guidance (or codes) require review by the Welsh Government. This should include a review of the placement regulations to consider whether an option

for local authorities to place with prospective special guardians under a care order might be an appropriate development.

295. **Recommendation 12: Further analysis and enquiry.** Further detailed analysis and enquiry should be undertaken (for example, by the MoJ DfE and Welsh Government in discussion with relevant stakeholders) in relation to the placement of children with special guardians to include (1) whether the fostering regulations require review and revision in relation to family and friends carers and (2) whether the Children Act 1989 should be amended to provide the court with the power to make an interim SGO (we note the concept of an interim SGO does not accord with the position of FRG) (3) whether to impose a further duty on a local authority to explore whether there are potential carers who could be appointed a SG for the child accompanying statutory provisions to further support local authorities to gather this information and (4) improved national support provisions for special guardians and the children they are raising (including, in line with recommendations from the FRG's *Care Crisis Review: Options for Change* (June 2018),[23] a right a period of paid leave from work for the child to settle in, akin to paid leave following the making of an adoption order; that the household is exempted from the benefit cap and the spare room subsidy; the same entitlement to support provisions including Pupil Premium Plus and access to the ASF,

[23] Available online: https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

regardless of whether or not the child has previously been looked after).

296. **Recommendation 13: A review of public funding for proposed SGs.** The Government should review the need for increased expenditure to provide public funding for proposed SG(s) who may seek to assume the long-term care of a child and whose assessment as SGs has been approved by the court; in Wales, the secondary legislation and accompanying guidance (or codes) require review by the Welsh Government.

297. **Recommendation 14: FGCs.** Effective pre-proceedings work, including FGCs, or a similar model for engaging with the family, being offered as a matter of routine and the use of the FRG's *Initial Family and Friends Care Assessment: A good practice guide*, should enable early identification of those family or friend carers who are a realistic option to care for the child. This should avoid scenarios where significant resources are devoted to lengthy assessment of numerous individuals who are not a realistic option for the child.

S 20/ s 76 accommodation

Current issues

298. It is widely perceived that the judgment in *Re N* (2016) 1 FLR 621 has had a significant contribution to a decline in the appropriate use of s 20 / s 76 across England and Wales. The guidance for the use of s 20 / s 76 provisions is contained in different sources. The varying interpretation and application of the current guidance has led to an inconsistency in approach to the use of these important statutory provision. In some areas, these provisions are no longer used.

299. In recent work by the MoJ and the DfE, many social workers have reported being unclear on when it was appropriate to use s 20 / s 76 and were cautious of being criticised by managers and the judiciary. This was the case even when they believed that s 20 / s 76 accommodation was the most appropriate option for the children. Some felt this was leading to a "disproportionate use" of court proceedings and subsequently to more children becoming looked after when it was not necessarily in their best interests.[24]

300. National published data shows the use of s 20 / s 76 has fallen in recent years, while the number of care orders has risen. The total number of children looked after under s 20 / s 76 in 2017/18 has fallen

[24] Unpublished, qualitative fieldwork as part of joint work by the MoJ and the DfE with selected local family justice boards.

by 10% compared to the previous year (2016/17) with numbers declining from 2015/16 onwards. Conversely, the number of children looked after under a care order has increased by 9% in 2017/18 compared with the previous year (2016/17). The proportion of all children looked after under a care order has increased from 58% in 2013/14 to 73% in 2017/18 while the proportion of all children looked after under voluntary agreement (s 20 / s 76) has fallen from 27% in 2013/14 to 19% in 2017/18.[25]

301. In summary s 20 / s 76 are important statutory provisions and their appropriate use has sharply declined. This may have contributed to the increase in public law cases that are issued in circumstances where the use of these provisions may have better met the needs of the subject children and their families. There is an identified urgent need to reverse the trend in decline of the appropriate use of these provisions.

Recommendations

302. **Recommendation 51: Appended guides.** We have produced (1) a good practice guide, appendix H1, (2) a flowchart of good practice, appendix H2, (3) a simplified explanatory note for older children, appendix H3 and (4) a template s 20 / s 76 agreement, appendix H4.

[25] Department for Education (2018) Statistical First Release: Looked after children including adoption (2017/18).

Our primary recommendation is that these guides be circulated and used.

303. **Recommendation 52: No time limits on s 20 / s 76 – but agreement at the start.** There should be no imposition of time limits for the use of s 20 / s 76. There are no legal time limits in place. The imposition of time limits will be counterproductive. However, it is recommended that where possible the purpose and the duration of any s 20 / s 76 accommodation is agreed at the outset and regularly reviewed.

304. **Recommendation 53: Focus on independent legal advice.** Where possible, those agreeing (or not objecting) to s 20 / s 76 accommodation should do so after receiving independent legal advice. This is equally important for older children, i.e. 16 and older.

305. **Recommendation 54: Local authority implementation of the good practice guide and a review of their functioning.** Each local authority is encouraged to put in place such measures as are necessary to implement the good practice guide and to ensure that social workers are supported in making the best use of this important statutory provision. It is further recommended that each local authority has in place such measures as are necessary to ensure that each s 20 / s 76 accommodation is registered and that senior managers (or persons nominated by the senior manager) access and regularly review the progress and compliance of each accommodation with the good practice guide.

306. **Recommendation 55: On-going training / education on the proper use of s 20 / s 76.** After publication of the good practice guides, a programme of education is necessary to ensure that all of the relevant professionals understand an apply the guide correctly. It is recommended that:

i. each DFJ area should distribute the guides to the judges, local authorities and local practitioners;

ii. each local authority to provide training to senior staff and front-line staff within a prescribed time frame;

iii. each local family justice board to provide and meet any further identified need for training;

iv. training and the material for training should have a national oversight and coordination to ensure consistency. This may be achieved through or in consultation with the FJB.

307. **Recommendation 56: A process of feedback and review on the proper use of s 20 / s 76.** Set up a structure through which a subgroup of the working group (or of another body, such as the FJB) can receive feedback on the operation of the good practice guides in practice. It is recommended that feedback be given by the judiciary, practitioners, front line social workers, families and children who are involved in the process. Also, review the guides in 24 months to identify any need for revision or further guidance. Further consideration can be given to a

national assessment and accreditation system to include training for the use of s 20 / s 76 and to consider expanding any proposed training on permanence to include s 20 / s 76.

308. **Recommendation 57: Further consideration of and guidance on s 20 / s 76 and significant restrictions on a child's liberty.** There is a need for clear guidance in relation to placements that place significant restrictions on a child's liberty. That needs to address, in particular, s 20 accommodation.

Best practice guidance

309. We recommend that the best practice guidance, set out in appendix H1 – H4, is issued by the President.

Longer-term changes

310. **Recommendation 15: A review of public funding for those with parental responsibility "signing up to" s 20 / s 76.** Review of the availability of legal aid for parents who are considering s 20 / s 76 accommodation is strongly recommended. The decision to agree to or not to object to accommodation of a child is a significant step. The leading judgments in this area demonstrate the real issues that can arise from such agreements. The proper use of these provisions can be very important in achieving the best outcome for the relevant child that may continue to benefit his/her into adulthood and beyond.

311. The provision of legal advice on this limited issue will be a highly cost-effective investment as it is most likely to contribute to a reduction in the number of proceedings that are issued.

312. This should be considered in the context of the varied applications of these important statutory provisions. The provision of legal advice will help to ensure compliance with the relevant rules and avoid primary and possible satellite litigation (for example, judicial review or claims for compensation).

313. Looking ahead, in the longer term, achieving more favourable outcomes for children outside the proceedings can also lead to breaking the cycle of care when those children are adults. Not only will this bring enormous social benefits, it will also assist in saving on expenses of litigation.

314. It is recommended that a review considers necessary amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations (2013) to enable parents and older children access to independent legal advice when asked to sign an agreement to accommodate under s 20 / s 76, under reg 5(1)(e).

315. **Recommendation 16: Investment in the use by local authorities of a multidisciplinary approach.** Investment in the multidisciplinary approach is essential to the success of these recommendations and those made in other parts of this document. This will require better coordination between local authorities, health authorities and

education. Such an investment will assist in diverting appropriate cases away from court proceedings and where resorting to court proceedings is necessary, it will ensure that the appropriate evidence is readily available to the court to progress the matter to a conclusion.

Conclusion

316. The working group commends these recommendations and proposed best practice guidance to the President.

317. We are of the view that the implementation of the recommendations and the best practice guidance will lead to a better outcome for the children and young people who are involved with local authority children's services departments and/or are the subject of care proceedings. Our focus throughout has been on seeking to put the welfare best interests of these children and young people at the forefront of all considerations.

318. We welcome the views and observations of all interested stakeholders in our recommendations and proposed best practice guidance. It is important to emphasise five matters:

i. the recommendations and the best practice guidance are in draft form only and set out our current thinking;

ii. the recommendations made and the best practice guidance suggested are, of course, subject to the consultation process and will be revised and refined in light of responses received. They represent our combined views of how best practice may be achieved more consistently across England and Wales. We seek and welcome responses to the consultation process as to how (1) we may improve the efficacy of the recommendations or (2) one or

more of the recommendations will not be effective or practical and should be amended or deleted;

iii. whilst we welcome comments on the full interim report, it would be particularly helpful to the working group if consultees focus their responses on the recommendations we have made;

iv. the recommendations and the best practice guidance are, of course, subject to the current legislative provisions and statutory guidance;

v. we readily acknowledge that there are overlaps between the six sub-groups, for example between the local authority decision-making sub-group and the pre-proceedings and the PLO sub-group. The admittedly artificial division of sub-groups was required to ensure a fair and manageable division of labour between members of the working group. We will seek to remedy this artificial division in the final report when a single and seamless best practice guidance is issued taking account of responses to the consultation.

Once received, we will collate all of the responses and publish a summary of the consultation exercise. Thereafter, we propose to produce a final report which we aim to deliver to the President in the fourth quarter of this year.

319. We wish to pay tribute to the invaluable contribution made to this working group by Anthony Douglas, formerly the CEO of Cafcass, who

retired in April and was replaced by Christine Banim, the Cafcass National Service Director, and to Caroline Lynch, of the Family Rights Group, who began extended leave in April and was replaced by Jessica Johnston, a legal adviser to the FRG.

Appendix A: membership of the working group

The Hon. Mr. Justice Keehan (Chair of the Working Group) (Sub-chair, Case Management; Sub-chair Special Guardianship Orders) (High Court judge)

Sarah Alexander (Assistant Director, Bolton Council)

Iram Anwar (Legal Adviser, Nottingham)

Christine Banim (Cafcass National Service Director)

Kate Berry (Department for Education)

Helen Blackman (Director of Children's Social Care, Nottingham CC)

Nigel Brown (CEO, Cafcass Cymru)

Stuart Carlton (Director of Children's Services, North Yorkshire)

Anthony Douglas (CEO, Cafcass)

Rob Edwards (Legal Adviser, Cafcass Cymru)

Cath Farrugia (Department for Education)

Shona Gallagher (Head of Children and Families Social Care, South Tyneside Council)

HHJ Rachel Hudson (Sub-chair, The Application) (DFJ, Northumbria and North Durham)

Gareth Jenkins (ADSS Cymru; Director of Children's Services, Caerphilly)

Sally-Ann Jenkins (Sub-chair, Local Authority Decision-Making) (ADSS Cymru; Director of Children's Services, Newport)

Helen Johnston (Assistant Director for Policy, Cafcass)

Jessica Johnston (Legal Adviser, Family Rights Group)[26]

[26] The Family Rights Group does not sign up to the interim report as currently drafted. It remains, however, an active participant in the working group and will respond in full during the consultation process.

Andrew Jones (Head of Public Family Justice Policy, MoJ)

Alexander Laing (Secretary to the Working Group) (Barrister)

DJ Martin Leech (District Judge, Plymouth)

Caroline Lynch (Principal Legal Adviser, Family Rights Group)[27]

Simon Manseri (Principal Social Worker, Bolton Council)

Hannah Markham QC (Barrister)

Jo McGuinness (Child care solicitor, Stoke)

Lucy Moore (Local authority solicitor, Swansea Council)

HHJ Kambiz Moradifar (Sub-chair, Pre-Proceedings and PLO Assessments; Sub-chair, S 20 / S76 accommodation) (DFJ, Berkshire)

Richard Morris (Assistant Director, Cafcass)

Ifeyinwa Okoye (Department for Education)

Emma Petty (Family Justice Reform, HMCTS)

Adrian Sayles (President's Office)

Natasha Watson (Local authority solicitor, Brighton and Hove Council)

Teresa Williams (Director of Strategy, Cafcass)

Kevin Woods (Department for Education)

Hannah Yates (Department for Education)

[27] As above.

Appendix B: membership of the working group's sub-groups

Local authority decision-making

Sally Jenkins (sub-chair)

Michael Keehan

Stuart Carlton

Nigel Brown

Lucy Moore

Kate Berry

Ifeyinwa Okoye

Sarah Alexander

Shona Gallagher

Helen Blackman

Pre-proceedings and the PLO

Kambiz Moradifar (sub-chair)

Anthony Douglas (replaced by Christine Banim)

Gareth Jenkins

Caroline Lynch (replaced by Jessica Johnston)[28]

Natasha Watson

Rob Edwards

Lucy Moore

Adrian Sayles

Hannah Yates

Simon Manseri

The application

Rachel Hudson (sub-chair)

Iram Anwar

Jo McGuinness

Martin Leech

Emma Petty

Helen Johnston

Lucy Moore

Case management

Michael Keehan (sub-chair)

[28] The Family Rights Group does not sign up to the interim report as currently drafted. It remains, however, an active participant in the working group and will respond in full during the consultation process.

Rachel Hudson

Hannah Markham

Richard Morris

Caroline Lynch (replaced by Jessica Johnston)[29]

Natasha Watson

Shona Gallagher

Helen Blackman

Special guardianship orders

Michael Keehan (sub-chair)

Rachel Hudson

Hannah Markham

Richard Morris

Caroline Lynch (replaced by Jessica Johnston)

Natasha Watson

Shona Gallagher

Helen Blackman

[29] As above.

S 20/ s 76 accommodation

Kambiz Moradifar (sub-chair)

Alex Laing

Teresa Williams

Stuart Carlton

Lucy Moore

Andrew Jones

Kevin Woods

Cath Farrugia

Appendix C: best practice guidance for local authority decision-making

1. The purpose of this document is to provide guidance to support local authorities to make consistent, timely and balanced decisions as to whether to initiate pre-proceedings. Decision-making should be underpinned by principles of partnership working, and relationship-based practice. Local authorities should offer support/help and build on family strengths when working to safely manage risk. Key to local authority decision-making is the ability to safely hold risk while building on family strengths. Encouraging all throughout the processes of decision-making to embrace early intervention as opposed to embarking on the steps towards proceedings should drive the thinking.
2. Throughout the steps of local authority decision-making the fact that the legal threshold has been met does not mean it is necessarily right or necessary to arrange a legal gateway meeting, proceed to pre-proceedings or instigate care proceedings.

When should consideration of initiating pre-proceedings take place?

3. A balance needs to be struck between providing time to work supportively with the family to address the concerns of the local authority against damaging delay for the child and the case escalating to crisis when there is no alternative other than to issue care proceedings.

4. Local authorities may wish to work towards an appropriate internal process with consideration of a range of factors. The suggested are areas for reflection and deliberation as opposed to rigid indicators:
    - when a pre-birth conference decides that a child is to be subject to a child protection plan or her name is to be entered onto the child protection register at birth;
    - when a child is to be subject to a child protection plan/a child's name remains on the child protection register at the second review conference and there has been no progress or the identified concerns have increased. Care should be taken to recognise change takes time particularly when families have experienced many years of challenge;
    - when a child aged 11 or under has been subject to s 20 / s 76 care and the team manager or the IRO identifies the need for a legal gateway meeting
    - cases that have previously been through the pre-proceeding process and the same child protection concerns emerge within 12 months;
    - where care proceedings have concluded within the last 24 months with the removal of children from the parental care and the mother is pregnant;
    - high-risk cases where it is likely that the matter will proceed to court.

Who should consider the case?

5. It is the responsibility of the team manager to identify a case that should be considered for pre-proceedings following discussion with the social worker who is working with the child and family. The decision to initiate pre-proceedings for a case should be taken by a manager with knowledge and experience. Local Authorities when considering their decision makers may wish to reflect on the definition of senior manager as the line manager of the team manager responsible for the management of the case.
6. In addition to team managers, the IROs/chairs of the child protection conference may wish to consider at child protection conference and looked-after child reviews whether to make a recommendation that the case should be considered for pre-proceedings by the senior manager. Child protection conferences and looked after child reviews are set points within the current system at which a child's journey will be reviewed and so bring consistency to the decision-making timetable.

What the senior manager may consider?

7. The senior manager should reflect if the case is appropriate to be considered by a legal gateway meeting with a view to instigating pre-proceedings. In reaching that decision, it would be useful to deliberate on the following points:
    - what are the concerns of the local authority and other relevant agencies?

- how do the concerns of the local authority and other relevant agencies affect the child? How is the wellbeing of the child impaired by the concerns?
- has an FGC or equivalent been held to consider the concerns of the local authority, as well as the family's views and any support needs? If so, what does the arising plan look like and where might it need amending? Does the plan fully incorporate working in partnership with the family? If not, steps should be taken to convene before the decision to initiate the pre-proceedings process;
- have any changes been made within the family to address those concerns?
- what support services have been offered to the family?
- how has the family engaged with support services and what has been the impact / outcome?
- is the local authority's position that the concerns remain high and is there a possibility that care proceedings will be issued?

8. Following consideration of the above points the senior manager should either identify that further work is required with the family or the matter should be considered by a legal gateway meeting.
9. Best practice would suggest the senior manager keeps a written record, clearly setting out the reasons for her/his decision.

Legal gateway meetings

10. A legal gateway meeting is a decision-making forum that is made up of (at least) the following professionals: child's social worker,

relevant social work managers and the local authority lawyer. A senior manager may usefully attend to bring additional knowledge, experience and skill to the decision making.

11. In order to allow a full discussion to take place the following documents are suggested as useful:

- any direct work with the child;
- any relevant assessment genogram;
- a chronology, if available;
- the most recent child protection conference minutes;
- the most recent looked-after child review minutes;
- any previous expert assessments if there have been previous care proceedings.

12. The purpose of the legal gateway meeting is to consider all of the available information and decide if the threshold is met to commence the PLO or to issue immediate care proceedings or whether the family can continue to be supported outside of these statutory frameworks. The role of the chair of the legal gateway meeting is to consider all available information and advice and make a decision as to the most effective course of action in order to promote and protect the safety and well-being of the child. It may be helpful for the meeting to be chaired by a senior manager and it is her decision whether to instigate the PLO or immediately to issue care proceedings. The decision and reasons for the decisions will be minuted. In coming to its decision,

members of the legal gateway meeting may wish to consider the following points

- identify direct work to be undertaken and what support should be offered to the child;
- identify the specific issues and concerns of relevance at this time;
- identify how the local authority will continue to assess the concerns;
- specify further support the local authority could offer the family to address concerns – in particular, the social worker should seek the family's views before the legal gateway meeting as to whether there is specific support that could be put in place that the family considers would help them to make positive change;
- identify any expert assessments that are required;
- identify family members who are to be consulted either to offer support or be assessed as alternative carers;
- if appropriate, timetable the case with a return date for the legal gateway meeting to consider the assessments completed in pre-proceedings and make subsequent decisions.

Appendix D: best practice guidance for pre-proceedings and the PLO

D1. Best practice guidance: assessment and support

Introduction

1. The PLO's pre-proceedings phase provides a series of expectations for professionals working with children and their families. The work that is done with families when it is clear that there is a real risk that public law proceedings is of critical importance.
2. Engagement in this element of the PLO does not represent the inevitability of proceedings. The fundamental purpose of the pre-proceedings process is not purely one of assessment, but also to create another opportunity to work closely with families by addressing their recognised needs, to identify and provide support, including the support of the wider family, attempting to negate the need to issue proceedings. Care proceedings are the option of last resort, but by working to an appropriate standard under the PLO professionals will also ensure that if it becomes necessary to issue proceedings the court will have the evidence base needed to make a timely and properly informed decision to provide for the statutory protection of a child.
3. This document provides best practice guidance in core areas, with the aim to achieving the best outcome for children and their

families. The guide must be read and interpreted consistently with all relevant statutory guidance. For ease of reference and in recognition of its true purpose, the pre-proceedings element of the PLO will be referred to as the Assessment and Support Phase ("ASP") in this document.

General principles

4. The guide should be applied and interpreted against the following founding principles:

Core Principles
a. The overriding consideration is the welfare of the child
b. Working in partnership with families with an aim of bringing about improvement and change and to avoid the need for care proceedings is key
c. Understanding the needs and strengths of children, their parents and their wider families is essential
d. This is an assessment and support phase and not a procedural step to issuing proceedings
e. Proceedings are an option of last resort if no other intervention protects the outcomes for children.
f. Each decision-making stage of this phase should be the subject of regular review and oversight by a senior manager (or person nominated by the senior manager)

g. Unnecessary delay is to be avoided, and the timeliness of the implementation of any plan of support or assessment of a family needs to be monitored

h. Work should be conducted to the same standards of fairness, transparency, and respect as if it were being conducted subject to the scrutiny of the court process

i. Access to professional support, including expert legal advice, is essential for professionals and families alike

5. Each of the stages described below should be overseen and regularly reviewed by a senior manager of sufficient seniority at the relevant local authority. Each local authority should put in place such measures as are necessary to support its social workers to comply with the best practice guide.

Mutual expectations

6. Throughout this phase local authorities and families will attempt to form a respectful, strong relationship with parents and their children, working towards a common set of goals.
7. The expectations of the relationship are as set out in the FRG Charter, appendix J7.
8. Social workers need to develop a strong working relationship with the families they serve. They should share with parents a pledge which sets out how they will do this.

Correspondence and communication with families

9. Professional agencies routinely use jargon or professional language which can be off putting to the families they work with, adding to a culture of "us and them". Think about the language being used so that it avoids this.
10. The letter before proceedings should be drafted with care, recognising that this will be stressful and frightening for parents to receive, who may require support to digest it and act upon it.
11. Local authorities should be mindful about making all their correspondence, understandable, respectful and engaging, adhering to the general principles found at appendix D3.

Stage one: Identifying when the ASP of the PLO is required

12. Where the allocated social worker or her team manger come to a view that child protection concerns have reached a level that issuing proceedings may be a realistic option, they shall seek and attend a legal planning meeting to consider whether issuing proceedings is appropriate or whether the ASP should be engaged.
13. Issuing legal proceedings must be the option of last resort and the children's welfare must demand it. The ASP is an opportunity to support and assess the family to see if proceedings are really required. Whenever possible the assessment and support phase of the PLO should be deployed early enough to be able to use the process as a lever to either divert children away from the

need for care, and or ensure that proceedings which are needed have a solid evidence base which will be accepted by the court at the point of issue.

14. Importantly by triggering this phase of the PLO the requirement to send a "letter before proceedings" provides an opportunity to utilise the access of the parent to independent free legal advice, which will help parents to participate more effectively in local authority planning processes. Specifically, it can help them to understand their rights and options and how child protection planning and decision-making works; reflect on why social workers are worried about their child; make safe plans for their child (which may include alternative care within the family) within the child's timescale; and have their voice heard by professionals. Where s 20 / s 76 accommodation for a child is being considered, access to legal advice for the parent is essential. S 20 / s 76 accommodation may be used during the ASP.

Legal gateway meetings

15. When senior management have determined that this phase of the PLO is likely to be needed, the social work team will need to take specialist legal advice, and arrange a legal gateway meeting, which should be offered in a timely way.

16. In order to provide proper advice, the lawyer will require basic information including a chronology, and key reports of the case to

date, including any information which was presented to approve the need for a legal gateway meeting.

17. A record of advice should be created with agreed timescales on what will happen next. This should not be isolated to the issue of the threshold of significant harm, it should include advice regarding assessment and support of the parents.

Newborns and babies

18. In this context, the timing for the commencement of the ASP is critical and requires special consideration. If the local authority is already involved with the expectant mother and would be father, the ASP should commence as early as possible. Depending on the circumstances of the parents, the ASP may not compete prior to birth. This may be a continuing process post-birth if proceedings are not issued. The sharing of information and allowing sufficient time for the expectant parents to digest and act on the information is one of the keys to having an effective ASP.

Stage 2: Identifying the proposals for assessment and support

19. Before embarking on the ASP, the social work team, with the benefit of legal advice, is advised to prepare a draft assessment plan. This should include:

- the names of the children, their parents and at this early stage, other significant family members or friends who may

be able to support a plan, either in the short term or a longer-term solution;

- the key needs of each child;
- the key areas that are to be assessed;
- who is being assessed;
- who is undertaking the assessment. Choose your assessors in advance so you have a realistic idea of timescales;
- how long the assessment will last for;
- when and how many review meetings will be held with the parents during the ASP;
- how the outcome will be communicated to the persons who are being assessed.

Developing a plan for interventions and support

20. Consider if this phase should include referral to or provision of therapy. The costs of such therapy are often far less than issuing proceedings and the outcomes may be more favourable for the children.

21. A multidisciplinary problem-solving approach can bring about better outcomes for the children. Consider involving adult services, housing, health and education authorities, and use the leverage of senior management intervention where necessary.

22. Provision of independent legal advice for the parents can be very important when making decision about the use and identity of any experts in this ASP. Remember, this will be essential evidence

that will help you make important decisions at the end of this stage and may also be used in any proceedings. If the parents have access to legal advice, ensure that they are involved in the decisions about the use and identity of experts. If proceedings are issued, any expert evidence may be the key evidence that the local authority relies on and may inform the other parties and the court of the best outcome for the subject children.

Planning for babies

23. The identification of needs and the provision of support should occur as soon as possible. This may include but not limited to support from the family, grants and housing.

24. Consider if specialist advice is required as to the timing of certain assessments such as psychological assessments.

Parallel planning

25. If there is an alternative path, plan for all alternatives concurrently (twin-tracking) and make sure that this path is maintained alongside of your assessment plan. It is key that alternative plans are not abandoned until it clear that the alternative plan is no longer relevant.

Signing off the plan

26. Discuss the draft document with and seek the approval of your manager. The progress of this phase should be reviewed by

you and a manager of sufficient seniority. The frequency of such reviews will depend on the needs of each child. Agree this with your manager when discussing the draft assessment plan.

Stage 3: Agreeing the plan with the family

27. Hold a meeting with the persons who are being assessed/supported. This may be held individually, as a group or both. The aim of this meeting is to:
    - explain the content and the purpose of the assessment plan;
    - seek the parents (or other significant adult's) views and input in the assessment plan;
    - finalise and agree the dates of the assessment plan including the dates of appointments.
28. Keep a record of what has been proposed, what has happened, and what the outcomes are. A template document for recording assessment and interventions is attached at appendix D4.
29. Where the need has been identified, please ensure that the parents are supported by an advocate or an intermediary. You may have already identified and addressed the need for advocacy or intermediary support before the ASP. If so, where possible, ensure that the parents are able to use the same advocate or intermediary.
30. If the parents are legally represented, ensure that where possible the identity and the letter of instructions to any experts are

discussed at the meeting before proceedings, and contents and agreed by them.

The voice of the child

31. It is crucial that children who are of sufficient maturity have a clear understanding of this process and what is expected of them. It is equally important that they have a clear understanding of what to expect from you.
32. Older children will also need to be supported through this process, to gain an understanding of why such a process has been embarked upon and what it will involve.
33. Social workers will need to carefully consider how to safely gain an understanding of the child's needs and experiences, and ensure that the child's voice is present in any decision-making meeting.
34. Social workers should pay regard to the tips developed by the FJYPB in their work and assessments.

Identifying family and friends as sources of support or alternative carers

35. Whilst respecting the family's privacy, encourage an open and honest dialogue between the parents and those who provide support for them or who may have considered as alternative carers.
36. Family support can be critical in diverting a case away from the need for proceedings. FGCs enable the family network to set out a plan to address the local authority's identified concerns,

coming up with tailored solutions, whilst not minimising the local authority's concerns.

37. Where parents refuse to identify a wider support network be persistent and reassuring about why this is needed. Keep the issue under review and don't give up on it. There will be some rare cases where there are very good reasons for parents not to wish to share information with wider family, and trusting relationships with social workers will allow this to be explored

38. As part of parallel planning, wherever possible complete viability assessments to establish the potential for a child to be placed in the wider network as an alternative to stranger foster care. Assessments should be completed to the standards set out in FRG's *Initial Family and Friends Care Assessment: A good practice guide* (2017).

Stage 4: Working to the plan, reviewing, and monitoring progress

Record keeping

39. Keeping an accurate record of the agreed assessment plan, the assessments and the outcome of the same is crucial. The agreed assessment plan is a very important record that can inform future decision-making processes. The template plan attached provides such a record.

40. Where it is the case that expert assessment is needed care should be taken to ensure that the assessment commissioned is

conducted to a standard which is acceptable and capable of being relied on by the court. This will help to avoid duplication if proceedings are issued.

41. All assessments should be recorded in formal reports. The ASP will also produce crucial evidence that may be used if any proceedings are issued. It is essential that the evidence is accurately recorded, relevant and is up to date.

42. Where court proceedings are contemplated, it would be best practice for the record of assessment and interventions, appendix D4, to be served with the application to the court.

Tracking timescales

43. The duration of the ASP will be dictated by many factors that include the children's need, level and type of support that is needed, the issues being assessed, and the number of professionals involved. There is no statutory guide that places time limits upon this phase. The duration should be agreed in advance of commencing the ASP. Consider and record the reasons why the ASP may need longer than six months.

44. Ensure that all dates for appointments are agreed and kept. Missed assessment appointments can impact on the quality of the assessment or cause delay.

Stage 5: Reviewing outcomes and determining next steps

45. When the outcome of assessments or interventions are known, arrange a final or a second legal planning meeting to discuss the next step.

46. The outcome of the ASP should be clearly and succinctly summarised at the end of the assessment and intervention plan document. Make sure that this draft is available to discuss with your manager at before the second or final legal planning meeting.

47. Once a final draft has been agreed and a legal planning meeting held, the parents should be invited to attend a meeting in which the outcome and the next steps are discussed. Their lawyer should be invited if they are legally represented.

Where proceedings are determined as necessary

48. If proceedings are to be issued, the letter that informs the parents should not be legalistic and be easy to understand. It should comply with the guidance attached at appendix D3.

49. As described above to be in compliance with the expectations of disclosure and standards of social work evidence under the PLO it will be essential that the local authority can provide a clear record of:

- what assessments have taken place and the scope of the;

- the information that was available to the assessor, upon which the assessment was based (including all documents and records shared);
- the outcome of the assessment;
- support and interventions offered to the family

50. Special consideration should be given to expectant parents. Involve the parents, the family and any support at the earliest possible stage. Give the would-be parents as much time as possible to fully consider their options and to seek independent legal advice. If the local authority comes to an early view that proceedings will be issued on birth, then draft documents should be ready for issuing upon the child's birth. Consider if approved draft documents can be served on the parents before issue so that they have sufficient time to consider those documents, seek independent legal advice and prepare a response.

D2. Relationship-based practice model

Brighton & Hove's model of practice and its impact

1. In October 2015 Brighton & Hove City Council implemented relationship-based practice as a whole system change across Children's Social Work Services. The new model of practice, the Team Around the Relationship, involved a move to small social work teams, or pods, which support children from the assessment stage through the whole of their journey across social work services. The model was developed with families and practitioners and based on the specifics of Brighton & Hove, both in terms of the demographics of the city, which for instance has high rates of both adult and child substance misuse and mental health issues,[30] and how we were performing as a children's service in 2014. At that time social workers were telling us that administrative demands prevented them building relationships and that they did not get the support they needed, families were telling us that they were fed up of changing social worker and we were aware that we were not performing as we should in terms of key performance indicators. The model of practice also considered learning from the wider national context. For example, a key recommendation of the Munro review in 2011 was:

[30] https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Director%20of%20Public%20Health%20AR%202017%20%28PDF%209MB%29.pdf

"*The level of increased prescription for social workers, while intended to improve the quality of practice, has created an imbalance. Complying with prescription and keeping records to demonstrate compliance has become too dominant.* ***The centrality of forming relationships with children and families to understand and help them has become obscured.*** *The review is making recommendations to enable social workers to exercise more professional judgment but is also concerned to improve their expertise."*[31]

2. The Department for Education launched *Rethinking Children's Social Work* in 2014 and this also recognised that:

   "*whilst the level of social complexity that Social Workers are expected to manage and master is huge, the way that social work is organised and delivered can reduce the time that Social Workers have to work directly with families, reflect on their work and develop their skills and knowledge of the evidence.*"[32]

3. Relationship-based practice is not about a specific intervention or way of thinking. It is about prioritising direct work with families and social workers applying a range of skills and interventions in a thoughtful and purposeful way - which of these skills and interventions will be most effective will depend on the individual worker and the family that they

[31] Munro, E. (2011) The Munro Review of Child Protection: Final Report: A child-centred system, DfE pp7-8

[32] Department of Education (2014a) *Children's Services Innovation Programme: What Do We Mean by Rethinking Children's Social Work*, DfE p1

are supporting. The model of practice is supported by six key principles:

- **continuity** of relationships between social workers and families – so families have the same social worker throughout social work processes;
- **consistency** of relationships between social work teams and families – so families know other members of the pod, including the business support officer and manager, and know who to contact;
- **collaboration** between practitioners – so social workers share skills and develop their own expertise in supporting families;
- social workers being **purposeful partners in change with families –** so social workers focus on working with families to support change not just completing assessments to collect evidence;
- the organisation supporting **a learning culture**, and;
- **a transformation of the organisational culture** from a blame culture to a relationship-based one that inspires trust and confidence - 'creating the conditions that allow good relationships to grow' (*Care Crisis Review*[33]).

4. The Team Around the Relationship is premised on the idea that, if social workers feel safe and contained, they can build relationships

[33] https://www.frg.org.uk/images/Care_Crisis/CCR-FINAL.pdf

with families and use these relationships to affect change. The model of practice, therefore, incorporates group supervision, reflective practice groups and a new model of relationship-based assessment and recording, One Story, as key processes to support whole system change, as well as new posts such as Lead Practitioners and Partners in Change Practitioners (specialist practitioners in mental health and substance misuse from key agencies) who drive good social work practice and a whole family approach. The practice system is supported by a cultural transformation towards becoming a relationship-based organisation, which is underpinned by a new style of relationship-based leadership and management. The kind of culture we are trying to create is illustrated by this feedback from an academic who spent time shadowing a pod manager and their pod:

> *"First of all, I was blown away by the quality of practice I was observing … Next, your sense of team-ness. It was lovely to watch your team interacting and supporting each other. When one struggled with a task there was always another there to listen and provide support… What I think it all speaks to, though, in particular is your style of management. You have created an environment where your team clearly look to you and trust you… They told me that they go home on time and don't come in early – and that you model that for them – so they have a good work/life balance… They seem very in touch with the emotional and relational side of their practice, forming real relationships with family members and*

managing to balance their authority and task-centredness with warmth and compassion… But best of all it absolutely inspired me and reminded me of why I came into social work. As a social work educator, I worry at times about sending our newly qualified SWs out into a career where stress and burnout is so high. Your team showed how the job can be structured to meet the needs of children and families in a way that is safe and manageable for staff."

5. A disproportionate amount of the social work system's time is spent on high-level interventions and, in particular, court work. This drains social work capacity to support families to affect change and so the experience of children in need worsens, demand increases and a cycle is perpetuated. The model of practice with its focus on continuous relationships, working with families and specialist posts such as Lead Practitioners and Partners in Change Practitioners helps to shift the system to work differently with families and, crucially, earlier. The Lead Practitioners and Partners in Change practitioners provide ongoing support to social workers in their direct work with families, discussing obstacles to change and strategies that may help, and contribute to assessments or complete discrete pieces of intervention where indicated. This creates a virtuous circle, shifting the focus of social work to children with the most complex problems but before they have suffered significant harm, or require the most costly interventions, and when families are most open to help. These changes also support the

recommendations of the *Family Justice Review*[34] regarding the need to rely on the local authority's assessments and support the enhancement of the quality of these assessments and that, when an independent assessment is required, it is clear why and to answer what question.

6. To measure the impact of the Team Around the Relationship we are undertaking an ongoing evaluation based on a targeted consultation to test our theory of change. The evaluation focuses on the context, mechanisms and outcomes of the model of practice. The evaluation has found that, in general:
    - families have a better experience of social work – for instance, the number of complaints from families decreased from 112 in 2015-6 to 44 in 2018-9;
    - social workers feel more supported and more able to make a difference for families – for example, in *Your Voice: social work survey 2019* (our version of the social work health check) 89% of social workers said they felt safe and supported, up from 64% in 2016, and 86% said they felt confident to be agents of change with families, up from 70% in 2016; we have not used agency social workers since September 2017 and

[34]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf

Ofsted concluded in 2018 that 'social workers' morale is high and they enjoy working for Brighton & Hove';[35]

- relationship-based practice seems to be supporting safe and stable family lives for children and appears to have decreased demand for social work and high-level interventions during a time of increasing national demand, for instance, while it is difficult to measure causal links between outcomes for families and changes to systems, the proxy indicators commonly used, namely the numbers of child protection plans and children in care, decreased by 17% and 21% respectively between October 2015 and January 2019.

7. An example of the potential impact of this change in approach to practice is that the number of applications for care proceedings made by Brighton & Hove has decreased to 15 a quarter in 2018-9 from a rate of 26 applications per quarter in 2016-7.
8. A detailed report exploring how these changes have been brought about, and the ongoing challenges to implementing the Team Around the Relationship, is included in Empathy, tenacity & compassion: an evaluation of relationship-based practice in Brighton & Hove. The positive impact of the model of practice was recognised by Ofsted in their report of their ILACS inspection in August 2018, which rated our

[35] https://files.api.ofsted.gov.uk/v1/file/50014166

services as ‘good’ overall, for the first time, and noted the improvements since 2015.

D3. Correspondence with families: general principles

1. The principles set out below will assist each local FJB, local practitioners and parents who have experienced care proceedings to draft and adopt a template letter that encapsulates the following general principles.
2. **When writing a letter to families the letter should:**
    - be expressed in plain language;
    - in a language or format the recipient can understand;
    - be honest and respectful;
    - be written clearly, and in language which is jargon-free;
    - avoid abbreviations
    - try to engage rather than alienate.
3. **A letter identifying the risk of care proceedings and initiating the PLO should:**
    - locate, identify and be sent to all the parents of all the relevant children;
    - be clear about the seriousness of the matter;
    - provide sufficient detail to inform the parents and their lawyers of the concerns, but be succinct;
    - invite the parents to a pre-proceedings meeting, with reasonable notice of the meeting;
    - identify what the meeting will talk about including the offer to work with the parents to address the identified concerns;

- provide the date, time and location of the meeting (with a map);
- advise the parent to take the letter to a solicitor for free advice via entitlement to legal aid;
- provide the parents with a list of appropriately qualified local solicitors;
- invite the parent to bring a lawyer to the meeting;
- attach an up to date list of children law accredited solicitors in the local area.

4. For important correspondence to be effective and understood social workers should also consider:
    - is the letter better hand delivered or sent by a form of tracked delivery?
    - will the parent need some support (professional or via family) to read or understand it? This may include advocacy or intermediary services. If so, consider whether you need to take advice as to how to present the information to the parents;
    - is English or Welsh the parents' first language? If not, does the letter need to be translated?
    - do the parents, children or relevant family members have any disabilities that may impact on where the meeting should be held?

- should the delivery of the letter be accompanied by a social work visit before any formal meeting to explain the contents, ensure the recipient understands what they need to do next, and to try to maintain the relationship with the family?

D4. Sample assessment agreement[36]

[Name of Local Authority] Assessment Plan Dated ….

The Family	
The children	
	Born
	Born
	Born

The parents
Mother
Father

Other people important to the children	Relationship
1.	

[36] This template is included on the basis that social workers and team managers may consider it to be a useful tool in the preparation for and conduct of assessments.

2.	

The Professionals
1. Children's social worker: `
2. Assistant Team/ Team Manager:
3. Health visitor:
4. School:
5. Support workers:
6. Advocates/intermediary:

Duration of the Assessment Phase *The duration should be agreed and set at the first meeting. This is bespoke timeframe for the family and may not last longer than sixteen weeks*	
First PLO Meeting	…….. 20XX
First PLO Review Meeting	…….. 20XX
Second PLO Review Meeting	…….. 20XX
Target Finish Date	…….. 20XX
Date of decision to extend the pre-proceedings process and reasons	…….. 20XX

Concerns

Please clearly state the main concerns that need to be addressed. This should identify who the concern relates to.

Please ensure that any concern about capacity of cognitive functioning are identified as soon as possible.

These were discussed at the first PLO meeting and any changes are recorded below

1. …
2. …

Expectations

These were discussed at the first PLO meeting and any changes are recorded below.

1. …
2. …

Family Group Conference

At the first PLO meeting the children's mother put forward the following people

1.
2.
3.

At the first PLO meeting the children's father put forward the following people
1.
2.
3.

The social worker will make the referral for a FGC by…… 20XX
Outcome of the FGC
Reasons why a FGC has not been held:

Agreed Assessments		**Date entry was created**
Type of Assessment: Hair Strand Testing		
To be test for [*specify substances]* for three months on a month by month basis to include Liver Function Testing if testing for alcohol		
To be completed by	……20XX	

Type of Assessment: Expert Assessment is necessary/ not necessary		
Name and type of expert agreed		
Letter of Instruction by	…… 20XX	
To be completed by	……..20XX	

Type of Assessment: Parenting Assessment		
Name of Parenting Assessor		
The first session will take place on	…… 20XX	
To be completed by	……..20XX	

Type of Assessment: Sibling Assessment is necessary/ not necessary. This will be completed by the children's social worker		
To be completed by	……..20XX	

Type of Assessment: Viability Assessments		
Names of Family & Friends put forward by the parents		
To be completed by	……..20XX	

<u>Supports/ Interventions</u> *e.g. therapy, domestic abuse work, drug and alcohol service*		Date entry was created
Type of Support/ Intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected Completion date	…….. 20XX	
Who will provide the service	….	

Which parent will engage	….	

Type of Support/ Intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected Completion date	…….. 20XX	
Who will provide the service	….	
Which parent will engage	….	

Type of Support/ Intervention: …… Referral made on……. 20XX		
Start date	…….. 20XX	
Expected Completion date	…….. 20XX	
Who will provide the service	….	
Which parent will engage	….	

What may lead to proceedings being issued *Please identify what may lead to the local authority issuing proceedings. This may include lack of engagement by a parent or persons being assessed, issues of safety etc.*
1. If the child(ren)'s safety demands it. 2. If the parents do not work with professionals to make positive changes

Signatures		
Signature	Print name	Date
Mother		
Father		
Social Worker		
Team Manager		
Advocate/intermediary on behalf of mother/father		

Record of the outcome of the Assessment (pre-proceedings) process		Date entry was created
Proceedings to be issued:	YES/NO	

Record of the outcome of the Assessment Phase *Please record detail of the outcome of the AP and the next steps that will be taken*

Appendix E: best practice guidance for the application

E1. General

The application

1. Pending national rollout of the online C110A application:
    - the "grounds for the application" should be completed by way of numbered paragraphs, setting out the threshold findings sought by the local authority;
    - in every case in which the local authority seeks an emergency/urgent hearing, the template 'urgent application information sheet' should be filed with the completed application.
2. The local authority shall provide Cafcass with advance notification of the proposed issue of proceedings at the time the decision to issue is taken.

Core documentation

3. The child's birth certificate shall be included as a core document in the court bundle at issue or, where it is not available at issue, in the court bundle for the first CMH.

Listing of urgent applications / CMHs

4. To avoid reducing the time available for the parties to obtain legal advice and representation, urgent applications are only to be listed for

hearing by the court on shorter notice than requested in exceptional circumstances.

5. First CMHs are to be listed within the CMH window with sufficient time for effective preparation for the hearing in each case (and not, therefore, necessarily on the earliest available date).

Case management

6. Use of the advocates' meeting template agendas for urgent and non-urgent hearings is recommended.
7. An agreed minute of the advocates' meeting shall be filed as part of the case management documentation in advance of the CMH.
8. The template case summary/position statements are adopted as approved standard documents for use in all cases and at all hearings, unless otherwise directed.
9. Early case management directions are considered and, where appropriate, given at all urgent hearings.

Wellbeing

10. A continuing focus on the wellbeing of those involved in the family justice system is required. Every DFJ area is encouraged to formulate a protocol of the reasonable expectations of those operating in that area.

E2. Information sheet for emergency / urgent applications[37]

This form should be completed by the local authority solicitor and sent to the court with any application in which the local authority seeks an emergency/urgent hearing.

1.	Name/DOB of the child/children	
2.	Order sought – EPO/ICO/other	
3	Suggested tier of judiciary	
4.	How urgently is a hearing sought? ○ Same day ○ Within 24 hours ○ Within 48 hours ○ Other	
5.	Time estimate for hearing	
6.	Notice to parents: ○ Have the parents been notified of the application? ○ If not, what attempts have been made to notify them? ○ Provide the reasons if a hearing without notice is sought	
6.	Have the police exercised police protection powers? If so, when does the PPO expire?	
7.	Has s.20/s.76 accommodation been agreed? If so: ○ Is there a signed agreement? ○ Has agreement been withdrawn (either with immediate effect or at a date/time in the future)?	
8.	Is the child in hospital? ○ If so, when is the child ready for discharge? ○ Is the hospital willing to keep the child beyond this date/time and, if so, for how long?	

[37] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

9	Is the mother in hospital? If so, when is she expected to be fit for discharge?	
10.	Are there any known/likely capacity issues?	
11.	Why is an emergency/urgent hearing required in the timescale requested? *(set out the reasons in brief*	

E3. Advocates' meeting minute: urgent / short-notice hearing[38]

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

Local Authority
Mother
Father
Child(ren)

The agenda items appear in bold and are numbered.

1. **Current placement(s) / contact arrangements**

2. **Local Authority's interim plan**

3. **Position of the parents**

- **Paternity**
- **HMRC/DWP orders**
- **Immigration issues**
- **Capacity; cognitive functioning**
- **Drug/alcohol testing**
- **Assessments**
- **Participation directions**

[38] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

- Connected persons, current relationship with the child

4. Position of the children's guardian
- Separate representation required?

5. Contested interim hearing (if sought upon issue)

i. All parties served as required / notice provided

ii. Is contested hearing still required?

iii. To be dealt with on submissions/ witness requirements

iv. Issues for the hearing

v. Interim threshold

vi. Required reading

6. Allocation

7. Threshold

8. Timetable for the child

9. International elements – jurisdiction; assessments out of the jurisdiction

10. Part 25 applications

11. Additional disclosure sought by parties

12. Checklist documents to be filed within proceedings

13. Further case management directions

Representation for the parties at the hearing will be:

E4. Advocates' meeting minute: CMH / FCMH[39]

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

Local Authority

Mother

Father

Other parties

Child(ren)

The agenda items appear in bold and are numbered.

1. Update re placements/contact/child(ren's) progress

2. Local Authority's interim care plan

[39] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

3. Position of the parents

- Paternity
- HMRC/DWP orders
- Immigration issues
- Capacity; cognitive functioning
- Drug/alcohol testing
- Assessments
- Participation directions
- Connected persons assessments proposed and proceeding, current relationship with the child

4. Position of the children's guardian

- Issues re separate representation?

5. What are the overall / complex issues?

6. Threshold

7. Timetable for the child

8. International elements – jurisdiction; assessments out of the jurisdiction

9. Part 25 applications required / proposed

10. Additional disclosure sought by parties

11. Compliance with previous CMOs

12. Any arising timetable / case management issues

13. Checklist documents to be filed within proceedings

14. Issues for the hearing
15. Witnesses required for contested/final hearing

16. Draft CMO MUST be completed by all parties

17. Bundle content and size

Representation for the parties at the hearing will be:

E5. Advocates' meeting minute: IRH[40]

Case Number:

Name of child(ren):

Date of meeting:

Date of hearing:

In Attendance / By Telephone:

Local Authority

Mother

Father

Child(ren)

The agenda items appear in bold and are numbered.

1. **Threshold**

2. **Local Authority's plan**

[40] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

3. Position of the parents

4. Position of the children's guardian

5. What are the remaining issues in the case?

6. Compliance with previous CMOs

7. Witness template

8. Time estimate for final hearing

9. Required reading

10. Bundle content and size

Representation for the parties at the hearing will be:

E6. ICO checklist[41]

THE INTERIM CARE DECISION	
JURISDICTION	
Is there any issue about jurisdiction (based on HR)? If so, the court can make emergency orders under Art 20 BIIA.	
URGENCY	
Is the ICO sought on the day of issue/short notice? If so, has the LA provided evidence of the urgency? Can the hearing safely be delayed to give the parties more time? If an ICO is made, should the order be short term (with a further hearing)?	
ISSUES RELATING TO PARTIES	
The parents: • Does the LA know who has PR for the child? • Have parents/others with PR been served with the proceedings?	

[41] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

• Has a parent without PR been notified of the proceedings? • If not, is it appropriate to proceed without service/notice? • Are the respondents (parents/others with PR) present at court and represented? • If not, is it appropriate to proceed?	
Representation of the child: • Has a Children's Guardian/solicitor been allocated? • If a Guardian has not yet been appointed, does the child's solicitor have instructions from a duty CG/Cafcass management?	
FORM OF HEARING	
Can the hearing proceed on submissions or is oral evidence required? *NB: see CA in Re G (Children: Fair Hearing) [2019] EWCA Civ 126*	
THRESHOLD	
• Has the LA provided a schedule of threshold findings?	

• Do the respondents make any concessions? • If not, are there 'reasonable grounds' in accordance with s.38(1)? *NB – findings of fact should rarely be made at an ICO hearing (Re G above)*	
WELFARE DETERMINATION	
If interim threshold is established, applying s.1 (including s.1(3)): • What order, if any, is required? • Has the LA met the test for immediate removal of the child?	
INTERIM CARE PLAN	
Does this reflect the order made/arrangements approved – direct further CP if required.	

CASE MANAGEMENT DIRECTIONS TO CONSIDER AT ICO HEARING	
JURISDICTION	
If there is/may be an issue about jurisdiction: • Direct statements and skeleton arguments; • If the case is allocated to magistrates/DJ, refer the issue to the DFJ.	
ALLOCATION	
Cases should not be reallocated at the ICO hearing without good reason.	
PARENTAGE	
Is the birth certificate available? If not, direct it to be filed. Is the identity/whereabouts of the child's parents known? Make an HMRC order if required. If paternity is in issue, direct DNA testing (with Pt. 25 application to follow if necessary) before joining a putative father.	
APPOINTMENT OF CHILDREN'S GUARDIAN	

Can the name of the allocated Guardian be confirmed in the order?	
CAPACITY	
Consider whether a capacity assessment is required. If so, give directions ASAP (with Pt. 25 application to follow if required).	
INTERNATIONAL ISSUES	
Where any party is a foreign national: • Direct the LA to give notice of the proceedings/CMH date to the relevant Embassy; • Make an EX660 order where immigration status is unclear.	
NARRATIVE STATEMENTS	
Direct statements relating to significant factual issues (eg circumstances surrounding alleged NAI) ASAP – 7 days generally appropriate.	
VIABILITY ASSESSMENTS	

Can directions be given (whether for short term/long term carers)?	
PART 25 APPLICATIONS	
Direct date for filing in advance of CMH.	
POLICE DISCLOSURE	
Record whether the Protocol has been/will be invoked. Is a TPO required?	
MEDICAL RECORDS	
Ensure the relevant parent(s) have given written consent (and record that they have done so). Record who is to obtain the records. Consider whether a TPO is required.	
CASE MANAGEMENT HEARING	
Has a date been fixed in the standard directions? Is this the most appropriate date for the CMH (confirm/re-list accordingly); Confirm dates for filing of parental responses/CG initial analysis.	
PARTICIPATION DIRECTIONS	

Are any required?	

Appendix F: best practice guidance for case management

F1. Case management orders; advocates' meetings; case summaries and position statements

11. The CMO should be drawn and approved for the first hearing, thereafter a short-form order should be used which, in the main body of the order, consists of:
    - the name of the judge, time and place of the hearing;
    - who appeared for each party or they were a litigant appearing in person;
    - if required, a penal notice (which must appear on the first page of the order);
    - the basis of the court's jurisdiction;
    - the recitals relevant to the hearing;
    - the directions and orders at the hearing.
12. All other matters (e.g. names of solicitors, parties' positions etc.) should appear as an annexe or schedule to the order. These changes are especially important to enable LiPs to understand the orders made against and/or requiring action by them.
13. Further, whilst the direction for the instruction of an expert and the date for filing the report should appear in the order, the remainder of the directions for an expert (for example, letters of instruction and division of cost etc.) should appear in the annexe/schedule.

14. The timeline for the case and compliance with the same should be contained within the annexe/schedule.

15. The short-form orders, if not drafted before or after the hearing, should be drafted within 24 hours of the hearing with heads of agreement being noted at court. The appendix should be updated, where possible, by parties prior to the court hearing, with each party sending in a short note of their client's position for inclusion on that appendix before leaving court.

16. Advocates' meeting should take place no less than 2 working days before a listed hearing. Advocates should agree at the meetings the core reading list, the schedule of issues and list of agreed matters. One sheet of A4 containing those matters, should be produced following each advocates meeting for the judge, and to be provided to the judge by 4pm the working day before the hearing.

17. The timetable for the filing and serving of service should take account of the date fixed/proposed for the advocates' meeting.

18. The case summary, respondent's position statements and the CG's position statement should be in the form of the templates set out in appendix I. Where an advocates' meeting has taken place before a hearing and the parties are agreed on the way forward and the orders the court will be invited to make, a composite document setting out the core reading for the judge, the draft orders proposed, and a summary of the parties' positions and issues shall be provided to the

court by the local authority by no later than 4pm the working day before the hearing.

19. Local authority case summaries should not repeat all of the background information. A short updating position statement with issues clearly identified should be lodged by no later than 4pm on the working day before the hearing.

20. Cases should not be adjourned for want of position statements: it is rarely, if ever, in the child's welfare best interests.

F2. The 26-week limit

21. Where the way forward for the child is clear (for example, a return to the care of the parents has been excluded by the court) but further time is required to determine the plan or placement which in the best welfare interests of the child, consideration should be given to extending the 26-week time limit, using the flexibility in the legislation.

F3. Experts

22. The court may only grant permission for the instruction of an expert if it is determined to be necessary for a just and fair determination of the proceedings.

23. There are certain categories of expert evidence where the court may more readily find that expert evidence is necessary to ensure the just and fair conduct and/or determination of the proceedings:

- DNA tests and evidence to establish paternity;

- hair-strand and blood tests and evidence to determine alcohol consumption and/or drug use;
- cognitive assessments to advise on (1) the capacity of a parent to conduct litigation and/or (2) to participate effectively in the proceedings (i.e. the need to instruct an intermediary);
- in a case of alleged non-accidental injury to instruct forensic medical experts on causation.

24. In all other applications for permission to instruct any expert (for example, a ISW or a psychologist) the court should scrutinise the application with rigour to assess whether or not the expert assessment is necessary, especially where the parties are agreed on the instruction of an expert.

F4. Hearings

25. Only those issues which inform the ultimate welfare outcome for the child need to be and should be the subject of a fact-finding hearing by the court. It should rare for more than 6 issues to be relevant.

26. The judiciary and practitioners need to be more acutely aware of whether (1) a further hearing is necessary and, if so, why; and (2) the directions proposed to be made are necessary for the fair conduct of the proceedings and are proportionate to the identified issues in the case. Mere inactivity, oversight or delay is never a just cause for a further hearing and a concomitant delay in concluding proceedings.

27. In order to reduce the number of hearings and to ensure compliance with the 26-week limit it is important that the following issues are addressed at the earliest possible stage of the proceedings:
    - the identity and whereabouts of the father and whether he has parental responsibility for the child; the potential need for DNA testing;
    - the obtaining of DBS checks;
    - the disclosure of a limited number of documents from the court bundle to family and friends who are to be the subject of viability assessments in order to ensure the same are undertaken on an informed basis;
    - the need to identify at an early stage those family or friend carers who are a realistic option to care for the child (thus avoiding scenarios where significant resources are devoted to lengthy assessment of numerous individuals who are not a realistic option for the child).
28. It is vital for the effective case management of a matter that there is judicial continuity. The full-time judiciary and HMCTS should give a high priority to ensuring that a case is dealt with by one identified judge and, at most, by two identified judges.
29. The final hearing should not be listed before an effective IRH has taken place unless there are, unusually, cogent reasons in a particular case for departing from this practice.

30. An IRH needs to be allocated sufficient time. The timetabling for evidence in advance needs to provide for an advocates' meeting at least two days in advance, and the advocates need to be properly briefed with full instructions for that meeting.

31. For an IRH to be effective, the following is required:

- final evidence from the local authority, respondents and CG (exceptionally, an IRH may be held with a position statement setting out the CG's recommendation before the final analysis is completed);
- the parents/other respondent(s) attend the hearing;
- the position in relation to threshold/welfare findings is crystallised so the court is aware of the extent to which findings are in issue and determines which outstanding findings/issues are to be determined;
- the court determines any application for an expert to give oral evidence at the final hearing;
- the court determines and the CMO records which witnesses are to give evidence at the final hearing (all current witness availability should be known);
- the court determines the time estimate;
- a final hearing date is set;
- where there is a delay before the final hearing date, directions are given for updating evidence and a further IRH before the final hearing.

F5. Care order on a care plan of the child remaining at home

32. There may be good reasons at the inception of care proceedings for a child to remain in the care of her parents/carers/family members and subject to an ICO pending the completion of assessments.

33. The making of a care order on the basis of a plan for the child to remain in the care of her parents/carers is a different matter. There should be exceptional reasons for a court to make a care order on the basis of such a plan.

34. If the making of a care order is intended to be used a vehicle for the provision of support and/or services, this is wrong. A means/route should be devised to provide these necessary support and/or services without the need to make a care order. Consideration should be given to the making of a supervision order, which may be an appropriate order to support the reunification of the family.

35. The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers or some lesser legal order and regime is required. Any placement with parents under an interim or final order should be evidenced to comply with the statutory regulations for placement at home.

36. It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed

with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of their respective Art 8 rights. This can only be justified if it is necessary and proportionate to the risks of harm of the child.

Appendix G: best practice guidance for special guardianship orders

G1. Best practice guidance

1. A SGO is intended to provide a permanent stable placement for a child in which the child will thrive and is enabled to achieve a happy and fulfilling life as a child and into adulthood.
2. It is not an order to be made without the most intense scrutiny, including in relation to any harm that the child may have suffered and the capacity of the proposed SGs to enable the child's developmental recovery from that harm.[42]
3. A thorough and comprehensive assessment of the proposed SGs should be undertaken by the local authority. Such an assessment will ordinarily require a period of 16 weeks, including an initial viability assessment to see if the matter needs to proceed to a full assessment. Family Rights Group has produced comprehensive guidance as to timetabling and timescales for full family and friends' assessments, setting out the various elements required to determine whether family and friends are potentially a realistic option to care for the child until they reach adulthood. This guidance is endorsed by both the Family

[42] Special Guardianship (Amendment) Regulations 2016, which were enacted following concerns included those expressed by the then-Minister for Children and Families, Edward Timpson MP, in his December 2015 report.

Justice Council and Cafcass.[43] Assessments must comply with the requirements of statutory guidance and regulations, including the completion of checks such as DBS checks on all members of the household.[44]

4. If more time is required by a local authority to complete a thorough and comprehensive assessment, absent compelling reasons to the contrary, the time should be granted by the court even if it results in the 26-week statutory time-limit for the completion of public law proceedings being exceeded. In these cases, the court should approve an extension of the proceedings.
5. Conversely, where it becomes apparent part way through a full assessment that the local authority already has sufficient information to reach an evidenced conclusion that the proposed SGs are unsuitable for a positive recommendation, the authority should inform the court with a view to reviewing the timetable for the proceedings, to avoid unnecessary delay. An assessment report will need to be provided to the proposed SGs, and an opportunity given to them to consider whether they wish to seek to challenge the report, and seek leave of the court for ongoing assessment. It is recommended that in

[43] https://www.frg.org.uk/images/Viability_Assessments/VIABILITY-MASTER-COPY-WHOLE-GUIDE.pdf

[44] The statutory guidance for local authorities in England is the 2017 statutory guidance for local authorities on the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016); in Wales, it is the July 2018 Code of Practice on Special Guardianship.

any event it is good practice for local authorities review the progress of a full assessment at eight weeks.

6. Where a child has a pre-existing close attachment to and close relationship with a proposed special guardian (for example, a positively assessed grandparent(s)) a SGO may be made even though the child has not previously lived with the proposed SG. Where, however, the child does not have a close attachment to and a close relationship with the proposed SG(s), further to analysis of all of the available evidence and of the child's best interests, it is very likely to be in the child's best interests for there to be an opportunity for the child to have lived with the proposed SG(s) for a period of time which is assessed on the evidence before the court to be appropriate, before any SGO is made. In Wales, particular reference should be made to Chapter 2 of the Code of Practice to the Social-Services and Well-being (Wales) Act 2014.
7. Every SGO must be supported by a robust and informed special guardianship support plan ("SGSP").
8. It is likely that a SGSP will be more readily prepared and informed if it is based on the realities on the ground of the child living with the proposed SG(s), rather than relying or being based on what it is assumed the child and/or the SG will need to support the placement of the child with them.
9. The mere fact that the parties consent to the making of a SGO in respect of a child on the basis of an agreed SGSP does not alleviate

the duty on the court from nor justify the court in not undertaking a meaningful analysis and determination of whether this order and this plan is in the long-term welfare best interests of the child: to the age of 18 and beyond.

10. If it is clear that within the 26-week time limit or relatively shortly thereafter, the court is likely to have all the necessary information to determine whether it should make a SGO in respect of the child, it may be appropriate to continue or to extend the proceedings to enable the court to consider making a SGO in respect of the child.

11. Where it is clear that this cannot be achieved and a considerable further period of time is likely to be required to determine whether it is in the welfare best interests of a child to make a SGO in favour of the proposed SG(s), the court may consider it appropriate to conclude the care proceedings on the basis of a care order being made in favour of the local authority on an approved care plan of placing or maintaining the placement of the child with the proposed SG(s) on the premise that if it is ultimately decided by the local authority that a SGO should be made in favour of the proposed SG(s), the local authority will support/fund the proposed SG(s) making an application to the court for a SGO.

12. Prior to the making of a SGO, the issue of parental contact with the child who may be made the subject of a SGO should be given careful consideration, in terms of (1) the purpose(s) of contact; (2) the factors which are relevant in determining the form of contact, direct or

indirect, and the frequency of contact; (3) the professional input required to support and facilitate the same over time and (4) the planning and support required to ensure the stability of the placement in the context of ongoing contact.

13. The purpose of a SGO is to provide a firm foundation on which to build a lifelong permanent relationship between the child and her carer. The cases where it would be appropriate or necessary to make a supervision order alongside a SGO will be rare, and very small in number. A proposal to make a supervision order is likely to signify a lack of confidence in the making of a final SGO at that time, and/or results from concern as to the inadequacy of the support and services that will be provided for and delivered in the SGSP, following the conclusion of proceedings.

14. A supervision order should not need to be used as a vehicle by which support and/or services are provided by the local authority. Under s 14F, CA 1989 (as amended), the local authority must make arrangements for the provision of special guardianship support services. These include counselling, advice, information and such other services (including financial support) as are prescribed in the Regulations.[45]

[45] In England, the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016); in Wales, the Special Guardianship (Wales) Regulations 2005 (as amended by the Special Guardianship (Amendment) (Wales) Regulations 2018).

15. All support and/or services to be provided to the special guardian and/or to the child by the local authority or other organisations should be set out in the SGSP, including their eligibility for funding from the ASF, if the child was previously in care immediately before the making of a SGO. [46] The SGSP should be reviewed and updated by the responsible local authority in accordance with the Special Guardianship Regulations (if there is any change in the person's circumstances, when the local authority considers appropriate and, in any event, at least annually). This will always need to be informed by the lived experience of the child and her carers.

16. The updated SGSO should be reviewed by the court prior to the making of a final order. There should be clarity as to how the SGs can access support following the making of a final order, as their need for advice and support changes over time

17. The final SGSP should be attached as an appendix to the order making the SGO.

[46] In England, local authorities and regional adoption agencies can apply for therapeutic funding for eligible adoptive and special guardianship order families. https://www.gov.uk/guidance/adoption-support-fund-asf

G2. FJC's interim guidance on SGOs

1. This interim guidance is in response to some of the issues identified in *Re P-S (Children)* [2018] EWCA Civ 1407. Its primary purpose is to address cases where an extension to the statutory 26-week time limit is sought in order to assess potential special guardians more fully within public law proceedings.
2. As a general proposition, alternative potential carers should be identified at an early stage and, where possible pre-proceedings, by adherence to good practice including convening a GVP at an early stage. This will require the agreement of the parents/holders of parental responsibility as will the release of confidential information. Assessments should be commenced promptly and be evidence based, balanced and child-centred. In the event that a full assessment is undertaken it will usually require a 3-month timescale: see *Timetabling and timescales for full family and friends' assessments*, appendix G3, and the FRG template.[47] Both are models of good practice and in the absence of any exceptional features, the process and criteria identified should be standard to any special guardianship assessment.
3. Where proceedings have commenced, all parties (including the CG) should file and serve position statements in advance of the first

[47] Available online: https://www.frg.org.uk/images/e-publications/fgc-principles-and-practice-guidance-english.pdf

CMH to include the details of proposed carers for assessment by the local authority. In the social work statement, potential carers should be clearly identified by reference to a genogram or otherwise and the CG's initial analysis should explicitly address the identification of carers and their contact details. These SHOULD NOT be governed by the parents' approval or disapproval but must be focused on the child's interests. If the whereabouts of prospective carers are unknown, the family or, if appropriate, other agencies should be invited to assist in locating them. If the viability assessment is negative, the local authority should notify the subject of the assessment of the procedure to challenge the assessment including the procedure for any application to the court either seeking leave pursuant to s 10(9), CA 1989 or to be joined as a party. Any challenge should be pursued promptly within a short timescale. The application should be referred on issue to the allocated judge or (if not available) another public law ticketed judge for urgent directions.

4. In most cases, compliance with good practice will ensure that any prospective SG has been identified at an early stage and the assessment completed within the statutory timescale. Issues of non-compliance/litigation failure fall outside of this guidance.
5. It is recognised, however, that there are cases where possible carers are identified late in the proceedings or for other reasons further

time is required to assess the relationship between the child/ren and the carer(s) fully:

a. the issue of later identification of potential carers was addressed by Sir James Munby in *Re S (A Child)* [2014] EWCC B44 (Fam) at paragraph 33 (ii)(c). In summary, a proposal for assessment of a late entrant to the proceedings should be realistic and not merely a trawl though all possible options, however unlikely. If the application has a sound basis, an extension beyond 26 weeks should be permitted if it is, "necessary to enable the court to resolve the proceedings justly" [section 32(5) Children Act 1989] and as such will be readily justified as required by section 32(7) of the Act;

   wWhere the proposed carers appear to be viable, the assessment of carers living in another country will also justify an extension of 26 weeks. In these circumstances time may be needed for CFAB to carry out an assessment and there may unavoidable delays which will, quite properly, take the case beyond 26 weeks;

b. where more time is needed to assess the quality of the relationship between the child and proposed carer. This is likely to arise after the court has undertaken the welfare evaluation in terms of the possible arrangements for the child/ren but further time is required to ensure the stability of the placement. Whilst circumstances vary widely, it is likely

that this will lead to an extension of the timetable, particularly if the court has indicated that this is the preferred placement. The extension period will depend on the individual features of the case but any delay should be proportionate to the welfare criteria set out at sections 1(3) and 1(4) of the Act.

6. Where a viability assessment is positive, the parties and the court should, when making directions for a full SG assessment, consider, and if necessary make orders relating to, the time the children will spend with the proposed carers. An evidence-based assessment which does not include any assessment of the proposed carers relationship with the child is likely to be regarded as incomplete.
7. If the court approves an extension, consideration will need to be given to the legal framework. It may not be possible for the child to be placed pursuant to an interim care order under the current regime imposed by Regulation 24 of The Care Planning, Placement and Case Review (England) Regulations 2010 or in the case of Wales, Regulation 26 of the Care Planning, Placement and Case Review (Wales) Regulations 2015. In these circumstances, an alternative approach would be placement pursuant to section 8, CA 1989: a child arrangements order and an interim supervision order to provide support for the placement, particularly during any transition period.

G3. Timetabling and timescales for full family and friends' assessments, Brighton and Hove City Council

Introduction[48]

1. It has become evident that directions are being made for the completion of full family and friends' assessments in unachievably short timescales, sometimes between six to eight weeks, in the mistaken belief that compliance with the 26-week timescale is the determinative priority in the management of a case. This document serves to remind social workers, Guardians, lawyers, and the judiciary regarding the process required to be incorporated into any timescales for a full family and friends' assessment to be done to an appropriate standard, so as to provide for a sufficient (usually a 12-week) assessment period to undertake the complex requirements inherent in any full assessment. Delay for children is always to be avoided, but nothing in the PLO, primary legislation, or jurisprudence requires corners to be cut in coming to a safe evidenced conclusion, that places the welfare of the child at the heart of any recommendation or decision.
2. When children can no longer remain in the care of either or both of their birth parents, recognising the importance for children of their pre-existing relationships with family members and friends is an

[48] With thanks to Natasha Watson and the family and friends social work team of Brighton and Hove City Council.

essential component in planning for a permanent alternative home. The overwhelming majority of children in public law proceedings requiring substitute care will have suffered significant harm and relational trauma, and as such their need is to receive reparative care. Before the option of placement with family or friends can be sanctioned by the court the completion of comprehensive and robust assessments is essential.

3. Any assessments will need to carefully balance the strength of a pre-existing relationship and the meaning for a child of remaining within her family of origin against the risks and vulnerabilities of the prospective carer's capacity to meet and understand the assessed needs of the individual child, throughout her minority. This document sets out core requirements for this to be done, against which any timetable for assessment should be informed. This may mean in some cases that the requirements of justice mean it will be necessary for the timetable for proceedings to be extended beyond 26 weeks.

Timescales to reflect the need of the complexity of the assessment reqiured

4. Care by family and friends is often the epitome of unplanned parenthood. Whilst some prospective carers will have been aware for some time of concerns about children in their family network, the challenging reality of either assuming the care of a relative's child in an emergency or considering looking after someone's else's child for the rest of their childhood, cannot be underestimated.

5. The complexity of family and friends' assessments is reflected in the 2016 amendments to the Special Guardianship Regulations in England and the 2018 amendments to the Special Guardianship (Wales) Regulations 2005. These make explicit the need to consider the carers capacity to provide reparative care, the nature of their relationship with the child and their ability to care for the child throughout her minority. Assessments are required by regulation to consider:
    - an assessment of the nature of the prospective special guardian's current and past relationship with the child;
    - an assessment of the prospective special guardian's parenting capacity, including:
        i. their understanding of, and ability to meet the child's current and likely future needs, particularly, any needs the child may have arising from harm that the child has suffered;
        ii. their understanding of, and ability to protect the child from any current or future risk of harm posed by the child's parents, relatives or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
        iii. their ability and suitability to bring up the child until the child reaches the age of eighteen.

The process of assessment

Format

6. In order to avoid delay in achieving interim placement options with connected persons some local authorities present their full assessments in a format which serves as both a report to fostering panel, if needed, as well as the significant component of a SGO report. This avoids duplication of work, and can avoid delay in realising recommendations as to placement with prospective carers.

Essential requirements for a full assessment

7. Final recommendations and orders should not be made without the completion of the essential tasks and activities required for a full family and friends' assessment identified by regulation and statute. In addition, this guidance sets out elements of assessments which are recognised good practice, arising from research and serious case reviews.
8. Before embarking on a period of assessment prospective carers should be provided with information about what the assessment will entail, and the time commitment needed from them. A letter followed by a meeting explaining what will be expected of carers and what they will need to think about throughout the process, will be of assistance.

Provision for mandatory checks and reading

9. The following elements require some time to be completed by external agencies and so should be commissioned as a priority as soon as it is identified a full assessment is required. Specifically:

- enhanced DBS checks on all household members over 16 years of age, to check their criminal record, including cautions, non-convictions and on occasion intelligence from the Police if it relates to persons known to pose a risk to children. Once applied for, the Disclosure and Barring Service do not currently permit local authorities to chase outstanding checks until they have been in progress for 60 days (8 ½ weeks). The completion of the paperwork for DBS checks should be prioritised at the initial visit so as to ensure these are processed as efficiently as possible. This should include establishing if prospective carers are able to provide sufficient documents to verify their identity, as without this the checks cannot proceed causing delay. If results are positive time will be needed to consider the implications;
- medical assessments on all prospective carers. Good practice includes self- completion of a medical assessment form, attendance at a comprehensive medical assessment appointment with their GP, and interpretation and analysis of the information by the agency medical adviser;
- local authority checks on all household members over the age of 16 years and their children. This is relatively straightforward when the carers and any household members have always lived in the assessing local authority, but there can be significant delay when information is required from other local authorities;

- **reading court documents and social work files in relation to all relevant persons as well as the prospective carers**. Specifically, all family members subject to proceedings, on all children of the prospective carers, on the prospective carers themselves and of any other significant family members in the network. Any assessing social worker will need to understand the assessed needs of the child and those already in the household before assessing the capacity of a connected person to meet them;
- **written reference from schools or nursery/childminder** for any children in the household;
- **written reference from employers** on all prospective carers;
- **health and safety checks** within the home and of any animals.

Provision for sufficient meetings with prospective carers and referees

10. The completion of a family and friends' assessment cannot merely be an information-gathering exercise, to be effective it has to be a process that occurs over time that supports and allows the family to make the necessary shifts within family relationships that enable the roles in respect of the child to all change. In contrast to the timescales sometimes suggested for these assessments Care Planning, Placement and Case Review Regulations allow 16 weeks to assess prospective Family and Friends Foster Carers under Regulation 24, (Regulation 26 of the Care Planning, Placement and Case Review (Wales) Regulations 2015 in Wales).

11. Unlike foster carers and prospective adopters, family and friends carers do not have the opportunity to attend preparation courses before approval, and as such the assessment period also serves as their preparation time. The assessment process can be considered as an opportunity for change and an intervention in its own right. Without sufficient time for these changes to occur, carers are left at best unprepared and overly optimistic, and at worst unable to meet the child's needs or pose a risk to the child, and who will be likely to struggle to prioritise the needs of the child over other adult family relationships.
12. The assessment often occurs at a time of heightened emotion, stress and rapid change, and therefore prospective carers require flexible, creative and relationship-based social work and time in order for them to have the best opportunity to meaningfully engage in the assessment process, and for the assessment to be both comprehensive and fair.
13. Sufficient assessment sessions need to be arranged with prospective carers to consider, and then reflect on:
    - their experiences of being parented;
    - their parenting of their own children;
    - their history of adult relationships;
    - their education and employment history;
    - their financial situation and the need to make lifestyle changes;
    - their medical history;

- their accommodation, access to community resources and support network;
- their understanding of the child's needs, including any harm they have suffered;
- the nature of their past and current relationship with the child;
- their capacity to provide reparative care and care for the child throughout her minority;
- their ability to manage relationships with birth parents and promote contact;
- their capacity to meaningfully work with professionals.

Provision for other meetings and observations

14. To avoid delay, time needs to be allocated as early as possible during the assessment process to provide for the following tasks:

- observation of contact between the prospective carer and the child subject to proceedings;
- direct work with children of the prospective carer to ascertain their wishes and feelings, and to assess the impact on them of a child joining the family;
- interviews with significant family members which may include the prospective carers adult children and the birth parents;
- interviews with any significant ex-partners to obtain their views on the carers capacity to care for the child;
- interviews with a minimum of three personal referees to obtain their views on the carers capacity to care for the child.

Provision for further action in addition to the assessment report: next steps

15. The prospective carers need to have the time and opportunity read the report before it is filed, and provide any comment. Consideration should be given for directions that allow for full disclosure of the report to carers and a time period in which to comment. Provision may need to be made for the redaction of any such report before it is served on the parents assuming the prospective carers wish to be considered.
16. Following the filing of the report the prospective cares should be given the opportunity to seek independent advice, including legal advice to understand the implications of the orders recommended, and make any applications on their own behalf required.
17. A SGSP will need to be provided where a recommendation for an order is made. This will require a detailed consideration of the support available to the carers and child, and in particular around contact with birth parents. This may include facilitation of a family meeting to discuss views and wishes in relation to the child's future care.
18. Provision for the filing of the SGSP should be made, often alongside final evidence. This will ensure the SGSP is meaningful and consistent with the local authority's final care plan, and allows the carers an opportunity to seek legal advice on the SGSP if they wish.

Learning from serious case reviews in England

19. The drive to produce a high standard of assessments within reasonable timescales is in the context of wider recognition of the

complexity of family and friends' assessments arising from the publication of serious case reviews into the significant harm or murder of children placed with special guardianship carers. Key learning from recent published reviews highlights the essential nature of the task.

20. In response to the death of Keegan Downer, the local authority and the judiciary in Birmingham have agreed that special guardianship assessments will be completed in no less than 12 weeks, and care proceedings are extended to allow for this timescale if family members are identified late into proceedings. Irrespective of any local protocol timescales need to reflect the general complexity of the task, and where previously unknown complexity arises unexpectedly this should be identified to the court and consideration given to providing proportionate time to explore it, rather than curtailing an assessment prematurely.

Appendix H: best practice guidance for s 20/ s 76 accommodation

H1. Guide to good practice: a guide for accommodation of children under s 20 / s 76

Introduction

1. The accommodation of children pursuant to s 20 of the Children Act 1989 and s 76 of the Social Service and Well-being (Wales) Act 2014 (unless otherwise stated reference to s 20 shall include reference to s 76) forms part of a social worker's essential toolkit. The use of these provisions can lead to favourable outcomes for children and their families. When deployed appropriately, s 20 can be very positive and can prevent the need to start court proceedings. Indeed, the importance of s 20 was recently emphasised by the UK Supreme Court in *Williams v London Borough of Hackney* [2018] UKSC 37.
2. S 20 is extremely broad in its application, both in terms of the types of family by whom it is used and the wealth of placements to which it applies. Its range covers: orphans, abandoned or relinquished babies, unaccompanied refugee children, children with disabilities, adolescents with behavioural problems and homeless 16 and 17-year olds. Placements under s 20 can include: short-term respite or short-break care, therapeutic placements, residential and assessment units, secure units, homes of family members, mother-

and-baby foster placements, foster care and fostering-for-adoption placements.

3. A period of accommodation under s 20 has a significant impact not only on a child's immediate life, but also on his/her future, including the potential that this is to weigh in the court's welfare balance thus properly influencing the outcome of any court proceedings.
4. For some time now, the use of s 20 has been the subject of much judicial guidance and observation. The varying interpretation and application of these provisions has led to an inconsistency in approach. In some areas, s 20 is little used; in other areas, it is much more common.
5. This guidance will help families, social workers, other child protection professionals and the courts to navigate these provisions with confidence. The guide seeks to bring about a uniform and consistent approach to the use of these important statutory provisions in England and Wales.
6. The first part of this guidance summarises the law. The second part is a guide to good practice. Appended to this document are (1) a flow chart setting out best practice, (2) a s.20 explanatory note for older children and their families, (3) a draft s.20 agreement.

Legal summary

Statutory provisions: s 20, CA 1989

7. The English statutory provisions are within Part III, CA 1989 which deals with support for children and families by local authorities. S 20 provides for two classes of duty on the local authority to accommodate children: a mandatory duty and a discretionary duty. The Act places:
    - a mandatory duty to provide accommodation for a child in circumstances where:
        i. there are no persons with parental responsibility for the child,
        ii. the child is lost or abandoned,
        iii. the person caring for the child is prevented from providing suitable accommodation for the child, or
        iv. A child in need who is within the local authority's area is at least sixteen years old and whose welfare is "*likely to be seriously prejudiced if they do not provide*" the child with accommodation.
    - a discretionary duty to provide accommodation for a child in circumstances where:
    - it is considered that it will safeguard and promote the child's welfare even where a person with parental responsibility can accommodate the child, or

- a person who is sixteen years old but under twenty-one years old may be accommodated in a community home which takes children who have reached the age of sixteen if to do so is considered to safeguard and promotes the child's welfare.

8. A local authority is not permitted to accommodate a child under s 20 if a person with parental responsibility who is willing and able to provide or arrange for accommodation objects. A person with parental responsibility may at any time remove the child from local authority accommodation that is provided under this section. There is no requirement to give notice. The only exceptions to that person being able to remove the child from local authority accommodation are:
    - when a person with a "lives with" child arrangements order, a special guardian or a person in whose care the child is put under the High Court's inherent jurisdiction agrees to that accommodation;
    - when a child who is 16 or over agrees to being accommodated.
9. The statute does not prescribe any time limits or maximum duration for any accommodation under s 20. Any such accommodation is the subject of the local authority's duties that are set out in s 22, CA 1989, as reinforced by the Care Planning and case Review (England) Regulations.2010, SI 2010/959.

Statutory provisions: s 76 SSW(W)A 2014

10. The Welsh statutory provisions are set out in Part 6, SSW(W)A 2014. The relevant provisions are summarised as follows:

- there is a general duty on the local authority to secure "sufficient accommodation" for a looked after child and to meet the needs of those children within its area in so far as reasonably practicable;
- the local authority has a mandatory duty to provide accommodation for a child within its area who is lost, abandoned or the person who is looking after the child is prevented from providing the said child with suitable accommodation. Additionally, this duty extends to a child who is 16 years old and whose well-being is likely to be seriously prejudiced if not accommodated;
- well-being has a specific statutory definition, which includes but is not limited to "welfare" as defined in the CA 1989;
- however, the local authority may not provide accommodation if any person with parental responsibility who is willing and able to provide accommodation for the child objects. Note that any person with parental responsibility may at any time remove the child from accommodation that is provided under this section. However, this does not apply where a person who (1) has a child arrangements order, (2) is a special guardian or (3) otherwise has care of the child by an order from the High Court (under its inherent jurisdiction) agrees to

the child being looked after in accommodation by the local authority;

- the local authority also has "principal" duties to children that are looked after.

Statutory provisions: general

11. A local authority is not permitted under s 20 to prevent a person with parental responsibility from removing a child from local authority accommodation. Instead, a court order is required, either an emergency protection order or interim care order. Alternatively, the police can exercise their police protection powers.

Guide to good practice

12. The guide to good practice will assist in navigating through the relevant provisions of s 20 and to use it appropriately and effectively. The guide must be read alongside the statutory provisions set out above. It does not have the status of formal statutory guidance, but rather it promotes good practice.
13. Local authorities should promote this guide and compliance with it. Support should be given to front-line social workers to do so.
14. Within each local authority, the use of s 20 should be monitored by senior management, although this may be delegated by senior management.
15. Each case should be assessed on its own individual facts.

16. Working with parents and families collaboratively is an essential part of s 20. Partnership is key. This includes considering and working with suitable family members.

17. The following steps should be taken in every case where the use of s 20 accommodation is considered. These steps are further summarised in the flow chart below.

The family and s 20

18. Identify the context and purpose for which s 20 is being considered. This may be short-term accommodation during a period of assessment or respite; alternatively, it may be a longer period of accommodation, including the provision of education or medical treatment.

19. Have particular regard to the child's age. Different considerations, including the purpose and duration may be heavily influenced depending on the age group of the relevant child. Consider the groups as follows (1) newborn and very young babies, (2) toddlers up to five years of age, (3) six years old to pre-teens, (4) teens but under sixteen years old, and (5) sixteen years old or older when the child can consent to accommodation.

20. Separation of a newborn or a young baby from her parents is scarcely appropriate under the provisions of s 20. The circumstances in which this is appropriate are very rare. The limited appropriate use of s 20 in this context may include circumstances

where the parents need a very short period in a residential unit to prepare for the child to join them, or if a carer needs to undergo a short programme of detoxification or medical treatment.

Consent and consulting with those who have parental responsibility

21. As far as it is reasonably practicable identify, locate and consult with every person who has parental responsibility for the relevant child.

22. When consulting with the person who holds parental responsibility, ensure that he/she has capacity to consent. Capacity can change and it should be reviewed as necessary. The issue of capacity must be decided by applying s.1-s.3 of the Mental Capacity Act (2005). If there are doubts about any relevant person's capacity, take no further steps until the question of capacity has been addressed. A person may have capacity to agree but have extra needs. Consider if these needs can be met by engaging adult services or an intermediary.

23. In appropriate cases discussions about the use of s 20 can commence some time prior to birth so that the parents have time to consider all of the options and be assisted in making an informed decision. However, agreement to a child being accommodated can be given only once the child is born.

24. Special care should be taken with mothers who are close to or have recently given birth. The local authority should address the

question of capacity very carefully, if appropriate, with medical advice. Put in place such support as is necessary to ensure that the mother in such circumstances can make an informed decision. This may include referral to adult advocacy services, engaging the services of an intermediary or involving other reliable family members.

25. If the relevant person has capacity to consent, the local authority should ensure that the said person has all the relevant information available to him/her which is in a form and language that can be understood by that parent. This also applies to a child who is capable of consenting to accommodation under the CA 1989 / SSW(W)A 2014. Consider if key documents such as the written agreement should first be translated into the appropriate first language.

26. The local authority should ensure that the relevant person who holds parental responsibility is aware of the consequences of giving consent and be made aware of the full range of available realistic options.

27. The relevant person should be informed that he/she can withdraw his/her consent at any time without notice to the local authority.

28. The local authority should ensure that consent is not given under duress or compulsion to agree (whether disguised or

otherwise). Consent may not be valid if given in the face of a threat to issue court proceedings.

29. The giving of consent is a positive act. Do not treat silence, lack of objection or acquiescence as valid consent.

30. Consent to accommodation should be given prior to or at the same time as accommodation. Consent cannot be given retrospectively.

31. Where possible, the person with parental responsibility should have access to legal advice.

32. Where possible, the purpose and duration of any proposed accommodation should be agreed in advance of the relevant child being accommodated. In case of emergencies, this should be addressed as soon as it is practicable to do so. The purpose and duration of accommodation may change and should be subject to review.

33. It is good practice to record the agreement in writing in a simple format. That document should clearly state that the persons consenting to accommodation may withdraw their consent and remove the child at any time without giving notice to the local authority. It should make the parents aware that by agreeing to accommodation they are delegating the exercise of that aspect of their parental responsibility to the local authority. The document should be translated into the parents' first language if they are not fluent in English. This document should be signed on behalf of the

relevant local authority and by the persons consenting to accommodation.

Reviews of s 20 accommodation

34. The purpose and duration of any accommodation should be regularly reviewed whilst the child is accommodated. This may change with the changing circumstances of children.

35. The provision of accommodation by the local authority with consent should be reviewed regularly, at an accommodation review. The frequency of such reviews should be agreed at the time that the agreement is signed and recorded in that document. The appropriate frequency will depend on the facts of each case. Generally longer-term provision of accommodation can be reviewed in line with looked-after child reviews. However, short-term provision of accommodation may require more frequent reviews. The accommodation should be reviewed as soon as it is practicable when there has been a material change in the circumstances. Accommodation reviews should be undertaken by an IRO who at each accommodation review may alter the agreed frequency of the subsequent accommodation review. The review should involve all persons capable of continuing to give informed consent to accommodation.

36. The IRO's duties and best practice are set out, in England, in primary legislation, accompanying regulations and statutory

guidance, in particular: s 25B, Children Act 1989; regulations 36, 37, 45 and 46 of the Care Planning, Placement and Case Review Regulations 2010; and the IRO handbook. Each of those merits careful reading. In Wales, the position is again set out in primary legislation, accompanying regulations and codes, in particular: ss 99 – 102, Social Services and Well-being (Wales) Act 2014; regulations 38 – 44 and 53-54 of the Care Planning, Placement and Case Review (Wales) Regulations 2015; and, the Code of Practice to Part 6 Code of Practice, Social Services and Well-being (Wales) Act 2014. In addition, there is the Practice Standards and Good Practice Guide: Reviewing and Monitoring of a Child or Young Person's Part 6 Care and Support Plan. Again, each of those merits careful reading.

37. During the period of accommodation, the local authority should continually assess the needs of the accommodated child and to provide for those identified needs. This includes educational, psychological and therapeutic needs.

Parental responsibility and s 20

38. During the period of accommodation those who have parental responsibility for the accommodated child retain parental responsibility for that child. The holder of parental responsibility who consents to accommodation delegates to the local authority the exercise of her parental responsibility for the day-to-day tasks.

However, they should each be kept fully and promptly informed about the progress and any updated information concerning their child.

39. Under s 20, the local authority cannot interfere with the exercise of parental rights by those holding parental responsibility for the relevant child, even in circumstances that it deems the parental rights to be unreasonably exercised.

40. If consent is withdrawn, the local authority should immediately return the child to the care of her parents.

S 20 accommodation that places significant restrictions on a child's liberty

41. Restrictions on a child's liberty that cross the article 5, ECHR threshold – i.e. "continuous supervision and control and lack of freedom to leave" - require specific court authorisation. The law on whether a parent can consent under s 20 continues to develop. Local authorities should consult with their legal teams if the s.20 placement is one in which a child, particularly an older child (for example, 11 +) is subject to significant restrictions. That is more commonly the case in a residential placement than in foster care, but can apply to both.

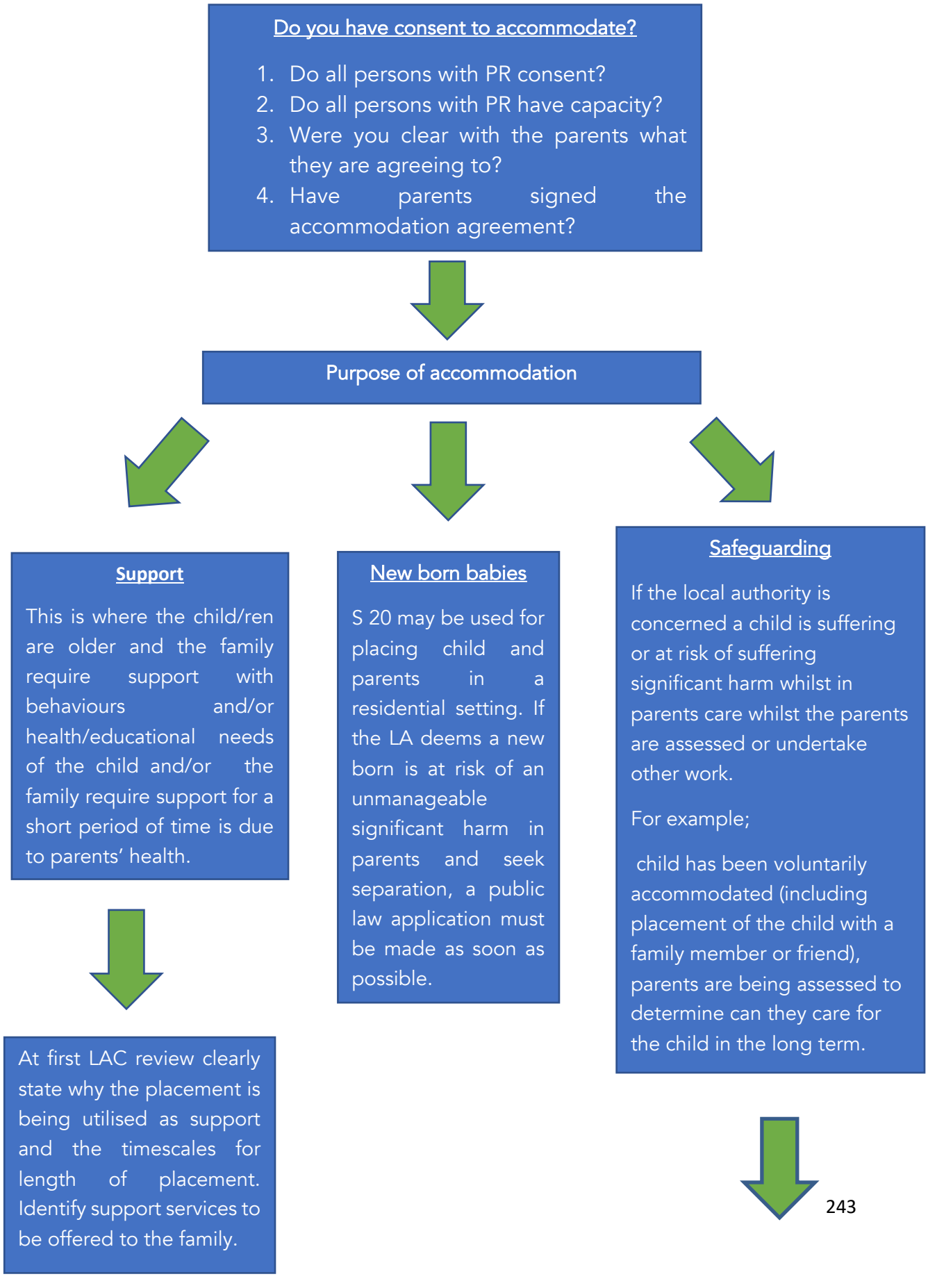
Examples of appropriate and inappropriate use of s.20:

Appropriate use of s.20	Inappropriate use of s.20
Respite for parents/carers where: - Child suffers a medical condition and/or disability, - Child has challenging behaviour - Unexpected domestic or family crisis	Placement out of the care of parents or those holding parental responsibility for long periods that is akin to long-term fostering where the grounds for making public law applications exist and the placement should be regulated by formal court orders.
Parents/carers require a short time - to undertake an assessment (e.g. during the PLO), - intensive therapy, or - undergo a detoxification programme	Where a placement (may be with a family member) under a court order has broken and the child is accommodated by the local authority without returning the matter to court (i.e. a material change to the court-approved care plan) or otherwise where

	there has been a fundamental change in the care plan that was approved by the court and the new care plan is implemented by agreement without seeking the court's approval.
Parents/carers require a short time to improve home conditions or move to more suitable accommodation.	Separation of a new born baby from his/her parents is scarcely appropriate under s 20 save in the very limited and exceptional circumstances set out above.
Parents/carers or a close family member who is reliant on the parents/carer require a short period of medical intervention such as surgery including time to recover from the same.	Placement within the family under a s 20 placement that avoids recognition of the family member as a foster carer and deprives him/her of support that is available as a foster parent.
Shared care arrangements between the parents/carer and	Where a child is accommodated without a formal structure in

the local authority where conditions of public law proceedings are not met or if met are deemed to be inappropriate. This may include placement in a residential school and provision of education.	place to assess his/her need and to provide for those identified needs. This becomes increasingly relevant as the period of accommodation is increases.
Unaccompanied minors seeking asylum where no person can exercise Parental Responsibility for the child or if there is such a person available, he/she has consented in accordance with the above guidance.	Save for children who are 16 years or older, where the only relevant fact is that the child does not wish to live with a parent, this fact alone will not mean that parent is "prevented" from providing accommodation.

H2. Good practice flowchart



At 1st LAC review clearly set out the concerns of the local authority, how the concerns are to be assessed, what support services are to be offered to the family and identify family members that can support the family.

Provide the family with clear expectations of what needs to change for the child/ren to return home.

Where the child/ren are voluntarily accommodated and the LA has concluded that the child/ren not be rehabilitated home, the case must be considered by Senior management who will decide whether the case should proceed to legal gateway meeting.

If at the 2nd LAC review the child/ren remain voluntarily accommodated and the LA dos not consider that returning the children home is appropriate, the case must be considered at a legal gateway meeting.

Continuous review

Is the placement being utilised as support for the family? If circumstances have changed and the placement is now utilised for safeguarding, then the case must be considered by senior management, especially when the LA has assessed that the child(ren) cannot return to the parent's care in the long term.

Explanatory Note:

Support

This is where social services involvement with a family is to offer support. Not where a child is at risk of suffering significant harm due to the care it receives. Examples include, respite for a child who suffers with a medical condition and/or disability. Support for a child with challenging behaviours and parents work with the Local Authority to address the needs of the child and support the care plan for the child.

Safeguarding

This is where social services are concerned is suffering or at risk of suffering significant harm whilst in parents' care. Examples are the child has been voluntarily accommodated to keep the child safe. Parents are being assessed to determine can they care for the child in the long term. Voluntary accommodation for safeguarding purposes includes when a child is looked after by a family member or a family friend.

H3. Explanatory note for older children: what it means to be a looked-after child[49]

The following are bullet points on what you can expect if you are looked after by your local authority under s 20:

- becoming looked after does not mean the local authority has parental responsibility for you;
- when you are 16 years of age you can ask to be accommodated by your local authority. If you are not yet 16 all persons with parental responsibility can agree to you being accommodated by the local authority;
- becoming accommodated means your local authority will decide who you live with and where you live. Your views will be very important and discussed with you before any decisions are made;
- you will be allocated a social worker who will come to visit you within the first week you are placed with either a family member, foster carers or a residential home. The social worker will then meet with you at least once every six weeks;
- your social worker will be responsible for your support and care plan. This will state where you are to live, contact with your family, your education and any other support that will be made available

[49] This has been developed by the working group and is a suggested template or point of reference that may assist older children to gain a better understanding of their circumstances and what it means to be a looked-after child.

to you. Your views are very important and will be listened to and reflected in your support plan or plan. Your support or care plan will set out the detail of the plans for you. If you do not feel you are being listened to you can contact an advocate or the independent reviewing officer, who is independent;

- your support and care plan will be reviewed regularly at looked-after child reviews. You can attend these views to ensure your voice is heard. All the people who are part of the plan will be at the meeting and the meeting is chaired by the independent reviewing officer. You can attend with your advocate if you wish. The meeting will take place within the first weeks then every three months;
- when you are 16 your social worker will support you to think about what needs to be done to prepare you to live independently. You will be provided support with housing, money, further education, applying for jobs, your health and well-being. You will be supported to achieve your goals and ambitions.

H4. Template s 20 / s 76 agreement[50]

AGREEMENT BETWEEN [LOCAL AUTHORITY] AND [PERSONS WITH PARENTAL RESPONSIBILITY] FOR THE ACCOMMODATION UNDER SECTION 20 OF THE CHILDREN ACT 1989 / SECTION 76 OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014 OF [CHILDREN]

THE RELEVANT PERSONS

The children: [names]

The persons with parental responsibility: [names]

The local authority: [name]

Date: [date]

[50] This template is included on the basis that practitioners and judges may consider it to be a useful tool in the preparation for and conduct of public law proceedings.

THE AGREEMENT

Agreement

- This is an agreement between [local authority] and [persons with parental responsibility].
- The agreement is that [children] will be placed in [say, foster care] by [local authority].
- In legal terms, that placement is happening under [sub-section of section 20 of the 1989 Act].

The placement and the children's wishes

- The purpose of that placement is [purpose]. The current plan is that [current plan for children's return home] and that the [children] will remain accommodated by the local authority for a period of [X weeks / months].
- It [has / has not] been possible to find out the [children's] wishes and feelings. [The children's] wishes and feelings are [wishes and feelings].

Agreement of the persons with parental responsibility and right to remove

- [The persons with parental responsibility] do not at the moment object to [the children] being placed in [say, foster care].

- [The persons with parental responsibility] may at any time remove [the children] from the [say, foster care].
- [The persons with parental responsibility] [has / has not] had legal advice.

Reviews

- [This is / this is not] an agreement for the accommodation of a newborn baby or child under six months. In the event that it is an agreement for the accommodation of a newborn baby or child under six months, the exceptional circumstances requiring the use of s 20 / s 76 are [exceptional circumstances].
- [The local authority] intends to review this placement every [X weeks] and the persons with parental responsibility will, after each review, be updated by the local authority on its plan moving forward.

SIGNATURES

Signature:

- Signed and dated:
    - [The persons with parental responsibility]
    - [Local authority]

Where required to be translated into a foreign language:

- This document has been written in English and translated into [foreign language]. The [persons with parental responsibility] have read it in [foreign language].
    - Signed and dated in [foreign language]: ["*I have read this document and agree to its terms"*].
    - Signed and dated by [named interpreter].

Where an advocate or intermediary has assisted

- The [person with parental responsibility] has been assisted by [name; advocate / intermediary].
- I [advocate / intermediary] confirm that I have read this document with and explained it to [person with parental responsibility] and I am satisfied that the [person with parental responsibility] understands its contents.
- [Signed and dated by advocate / intermediary].

Check list for local authorities

- ✓ Are you satisfied that the persons with parental responsibility have capacity to consent?
- ✓ Are you satisfied that the persons with parental responsibility have consented?

- ✓ If the persons with parental responsibility are not native English speakers, has the agreement been translated into their native language?

Appendix I: template case summaries and position statements[51]

I1. Case summary on behalf of the local authority

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE APPLICANT LOCAL AUTHORITY

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

THE CHILD(REN)

Name	Age & DOB	Living arrangements	Orders/S20 including the date

THE RESPONDENTS AND INTERVENERS

Party	Name	Relationship to the children
1st Respondent		
2nd Respondent		

[51] These templates are included on the basis that practitioners and judges may consider them to be a useful tool in the preparation for and conduct of public law proceedings.

TIMETABLE

Please do not delete the columns below. The dates should be filled in when the event has occurred.

Event	Date of the event or date by which the event must be listed including any relevant summary
Application	
26 weeks from issue of application. Please include dates of any extension.	
EPO	
ICO	
PCMH (6 days from issue)	
CMH (12-18 days from issue)	
IRH (no later than week 20)	
Final hearing (completed by no later than week 26)	

PLO

Has PLO taken place	Yes/NO
If so, please confirm; 1. The length of the PLO, and 2. The summary outcome of any assessments.	

FAMILY GROUP CONFERENCE

Has a FGC taken place	Yes/NO
If so, please confirm; 1. The outcome(s) of the conference 2. Any agreed plan	

THRESHOLD & FINDINGS

Date of the threshold/findings document	1. Interim: 2. Final:
Date of responses by the relevant parties/interveners	1. 1st Respondent mother: 2. 2nd Respondent father: 3.
Please confirm that the Applicant has all the evidence it requires in support of the threshold findings sought. **(If there is any outstanding evidence please identify each outstanding evidence and the date by which it will be filed and served)**	
Are threshold/findings agreed?	
If not agreed, please set out a summary of the	

main areas of dispute.	

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

LINKED OR PAST PROCEEDINGS

Are there linked or past proceedings involving members of this family	Yes/NO
If so, please confirm; 1. The identity of the same; and 2. The outcome of those proceedings.	

APPLICATIONS TO BE DETERMINED AT THIS HEARING (e.g. Part 25)

Application (identify the applicant)	Person(s) being assessed/subject to the application	Peron(s) undertaking the assessment	Proposed completion date

ISSUES TO BE DETERMINED AT THIS HEARING

Issue	Applicant's position	Mother's position	Father's position	Guardian's position	Other
1.					
2.					

SUMMARY OF THE PROPOSED DIRECTIONS/ORDERS

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

SUMMARY OF THE RELEVANT BACKGROUND

…

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

…

SUGGESTED READING LIST

Document	Date	Bundle ref
1.		
2.		
3.		
4.		

[Please insert advocate's or the author's details including the date]

I2. Case summary on behalf of the [1st / 2nd…] respondent

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE [1st, 2nd …] RESPONDENT [OR OTHER] [NAME]

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

THRESHOLD & FINDINGS

This part should only be completed only in so far as it relates to the party on whose behalf this document is prepared.

Date of the threshold/findings document	1. Interim: 2. Final: 3. Not applicable to this party
Date of responses by the Respondent/Intervener	
Are threshold/findings agreed? (If part agreed please identify what is agreed)	
If not agreed, please set out a summary of the main areas of dispute.	

PROPOSED ALTERNATIVE CARERS TO BE ASSESSED

(THIS INFORMATION MUST BE PROVIDED PRIOR TO THE CMH)

Name	Identify which of the children is this person to be assessed for	Relationship to the child or parents	Assessed as carer, support for the parent(s) or both

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

APPLICATIONS (OR ISSUES RAISED) BY THE RESPONDENT/INTERVENER TO BE DETERMINED AT THIS HEARING

Application	Date	Identify other parties' position as agreed, opposed or neutral	Date the work will be completed
1.			
2.			

SUMMARY OF ANY PROPOSED DIRECTIONS/ORDERS SOUGHT BY THE RESPONDENT/INTERVENER

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

[Please insert advocate's or the author's details including the date]

I3. Case summary on behalf of the child

Case No. [……]

CASE SUMMARY NUMBER [No.]

ON BEHALF OF THE CHILD(REN)

THROUGH THE GUARDIAN [NAME]

FOR THE HEARING ON [*DATE*]

Re …

[Insert the abbreviated case title such as Re A]

IMPORTANT RELEVANT DATES FOR THE CHILDREN

Child	Date	Event

COMPLIANCE

Have previous court orders been complied with	Yes/No
If not please identify the order not complied with and suggested directions sought	

APPLICATIONS OR ISSUES IDENTIFIED BY THE GUARDIAN TO BE DETERMINED AT THIS HEARING

Application (include the date of the application)	Date it will be completed	Agreed by	Opposed by	Neutral

1.				
2.				

SUMMARY OF THE ORDERS SOUGHT BY THE GUARDIAN

Number	Directions/Orders	Agreed/not agreed
1.		
2.		

SUMMARY OF THE GUARDIAN'S RECOMMENDATION FOR EACH CHILD

(this will only have to be updated at the IRH, final hearing or if there has been a change in the circumstances)

Child	Recommended placement and order	Recommended contact

ADDITIONAL INFORMATION OR FURTHER SUBMISSIONS

…

[Please insert advocate's or the author's details including the date]

Appendix J: other relevant documents

J1. FJYPB TOP TIPS for working with children and young people

J2. FJYPB TOP TIPS for keeping children and young people informed and keeping them at the centre of their case

J3. FJYPB TOP TIPS for working with children and young people pre-proceedings

J4. FJYPB TOP TIPS for working with children and young people affected by domestic abuse

J5. FJYPB TOP TIPS for professionals when working with brothers and sisters

J6. A parent's perspective on the standard template for a letter before proceedings

J7. FRG Charter

Public Law Working Group

Recommendations to achieve best practice in the child protection and family justice systems

Interim Report (June 2019)

To contact us: pfd.office@judiciary.uk

To participate in the consultation:
https://www.surveymonkey.co.uk/r/PublicLawWG