VIEW FROM THE PRESIDENT'S CHAMBERS (2)

The process of reform : the revised PLO and the local authority

Sir James Munby, President of the Family Division

In my previous 'View from the President's Chambers' ([2013] Family Law 548), I referred to the work underway on a revised PLO. An interim version of the revised PLO will be published at the end of May 2013 and will come into effect on 1 July 2013. It will be superseded in April 2014 by the final version, incorporating any further adjustments that experience over the previous months has shown are desirable. But although it is still work in progress the main outlines of the revised PLO are now clear and will in all probability remain substantially unchanged.

In my previous 'View', I explained how the new PLO is going to put a much greater emphasis than hitherto on the first hearing, which will be re-named to bring out the key fact that it is to be the effective case management hearing. This fundamental change is vital to the entire process of reform in dealing with care cases. *If* the first case management hearing is effective, then we will meet the 26 week deadline; if it is not we will not. As I explained, an effective first case management hearing requires – necessitates – that the local authority, CAFCASS and the case management judge all play their parts. Current thinking is that, to achieve this, the first case management hearing should take place on Day 12. (This will be evaluated in the light of experience between July 2013 and April 2014.) Crucial to what everyone else is able to do is compliance by the local authority with its obligations under the revised PLO. It is on this that I wish to concentrate here.

The key principle is very simple: the local authority must deliver its material – the right kind of material – on Day 1. If that does not happen, the entire timetable will be thrown out. What must the local authority deliver? And what do I mean by the 'right kind of material'?

The revised PLO will require the local authority to attach the following documents to the application filed with the court on Day 1:

- The social work chronology

- The social work statement and genogram
- Any current assessment relating to the child and/or the family and friends of the child to which the social work statement refers and on which the local authority relies
- The threshold statement
- The care plan
- The allocation proposal form.

On Day 2 the local authority must serve on the other parties (but must *not* file with the court unless expressly directed to do so) the 'checklist documents'. These are:

- Evidential and other documents which already exist on the local authority's files (for example, previous court orders and judgments / reasons, any relevant assessments, including section 7 or section 37 reports, and single, joint or inter-agency reports, such as health, education, Home Office, UKBA and Immigration Tribunal documents). These documents are to be served with the application form.
- A list of decision making records (for example, records of key discussions with the family, key local authority minutes and records, pre-existing care plans and letters before proceedings). These documents are to be indentified by list, not served, but must be disclosed on request by any party.

It is important to note that documents need not be served or listed if they are older than two years before issue of the proceedings unless reliance is placed on them in the local authority's evidence.

Pausing to take stock, two key elements in the revised PLO will be noted. First, the clear distinction it draws between (i) those documents which are to be filed with the court and served on the parties, (ii) those documents which are to be served on the parties but not filed with the court unless directed, and (iii) those documents which are to be listed for the parties but not served unless requested. Second, the restriction of documents to the most recent, limited to those from the last two years. In other words, both the filing and service of documents is to be more focused, with a concentration on what is relevant, what is central, what is key, rather than what is peripheral or merely historical.

At the same time, there is a strong imperative to produce documents that are *focused* and *succinct*. The social work chronology must contain a *succinct* summary of the *significant* dates and events in the child's life. The threshold statement is to be *limited to no more than 2 pages*. And the social work statement is to be *limited* to the following evidence:

- Summary
    - The order sought
    - *Succinct* summary of reasons
- Family
    - Family members and relationships especially the primary carers and significant adults / other children
    - Genogram
- Threshold
    - Precipitating events
    - Background circumstances
        - Summary of children's services involvement cross-referenced to the chronology
        - Previous court orders and emergency steps
        - Previous assessments
    - *Summary* of harm and / or likelihood of harm
- Parenting capacity
    - *Assessment* of child's needs
    - *Assessment* of parental capacity to meet needs
    - *Analysis* of why there is a gap between parental capacity and the child's needs
    - *Assessment* of other significant adults who may be carers
- Child impact
    - Wishes and feelings of the child(ren)
    - Timetable for the child
    - Delay and timetable for the proceedings
- Early permanence and contact
    - Parallel planning
    - Placement options

    - Contact framework
- Case management
    - Evidence and assessments necessary and outstanding
    - Case management proposals

The significance of *assessment* and *analysis* will be apparent.

We must get away from existing practice. All too often, and partly as a result of previous initiatives, local authorities are filing enormously voluminous materials, which – and this is not their fault – are not merely far too long; too often they are narrative and historical, rather than analytical. I repeat what I have previously said. I want to send out a clear message: local authority materials can be much shorter than hitherto, and they should be more focused on analysis than on history and narrative.

In short, the local authority materials must be *succinct* and *analytical*. But they must also of course be *evidence based*.

We need to distinguish clearly between what is fact and what is professional evaluation, assessment, analysis and opinion. We need to distinguish between the general background and the specific matters relied on to establish 'threshold'.

Even if there has been local authority involvement with the family extending over many years, both the social work chronology and the summary of the background circumstances as set out in the social work statement can – and if they can then they must – be kept appropriately short, focusing on the key significant historical events and concerns and rigorously avoiding all unnecessary detail. We do not want social work chronologies extending over dozens of pages. Usually three or four pages at most will suffice. The background summary in the social work statement, particularly if it is cross-referenced to the chronology and avoids unnecessary repetition of what is already set out in the chronology, need be no more than a page or two.

The threshold statement can usually be little more than a page, if that. We need to remember what it is for. It is not necessary for the court to find a mass of specific facts in order to arrive at a proper threshold finding. Take a typical case of chronic

neglect. Does the central core of the statement of threshold need to be any more detailed than this?

> "The parents have neglected the children. They have
> - Not fed them properly
> - Dressed them in torn and dirty clothes
> - Not supervised them properly
> - Not got them to school or to the doctor or hospital when needed
> - Not played with them or talked to them enough
> - Not listened to the advice of social workers, health visitors and others about how to make things better: and now will not let the social worker visit the children the home [the evidence to support the case being identified by reference to the relevant page numbers in the bundle]."

I think not.

Careful thought needs to be given to the evidence required to establish 'threshold'. Voluminous statements will usually not be required. Take the case of chronic neglect I have just referred to. No more than four or five pages (if that) from each of the school teacher, the health visitor and the family's GP will surely suffice to establish much of the factual basis for the local authority's case, supported by similarly succinct and focused statements from the social workers who can speak of their own personal knowledge of conditions in the home and the attitude of the parents. Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no-one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority's files.

What, after all, does the court need? It needs to know what the nature of the local authority's case is; what the essential factual basis of the case is; what the evidence is

upon which the local authority relies to establish its case; what the local authority is asking of the court, and why.

Work done by the local authority in the period pre-proceedings – front loading – is vital for two quite different reasons. Often it can divert a case along a route which avoids the need for proceedings. When that is not possible, and proceedings have to be commenced, work done beforehand will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly than a case which reaches the court in an unsatisfactory state. A week, two weeks, four weeks, spent productively before proceedings are commenced will usually produce greater savings of time later on. On occasions *urgency* will necessarily trump *readiness*, but very often it need not.

It is not for me to tell local authorities how to organise themselves. But practical experience seems to suggest that local authority lawyers need to get involved, advising and assisting their social work clients, earlier than is often the case; that a properly organised legal planning meeting is invaluable – indeed, the key to achieving timely outcomes to care proceedings –; and (a key lesson from the Tri-borough, the Bi-borough and similar projects) that the employment of a local authority case manager is vital.

Two other features of pre-proceedings work have a direct and crucial bearing on the future smooth running of the case. The sending by the local authority to the parents of a timely 'letter before proceedings' is vitally important, because it triggers the availability of public funding for them. Equally important is the need for pre-proceedings work to focus on identifying and evaluating possible family carers and discussing with the parents their potential need for such support and the risks they may be running of losing their children if such potential carers are not involved early on in the process.

One of the problems is that in recent years too many social workers have come to feel undervalued, disempowered and de-skilled. In part at least this is an unhappy consequence of the way in which care proceedings have come to be dealt with by the courts. If the revised PLO is properly implemented one of its outcomes will, I hope,

be to re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts.

Social workers are experts. In just the same way, I might add, CAFCASS officers are experts. In every care case we have at least two experts – a social worker and a guardian – yet we have grown up with a culture of believing that they are not really experts and we therefore need experts with a capital E. The plain fact is that much of the time we do not.

Social workers may not be experts for the purposes of Part 25 of the Family Procedure Rules 2010, but that does not mean that they are not experts in every other sense of the word. They are, and we must recognise them and treat them as such.