Family Justice Council Response to the Child Care Review

The FJC welcomes the *Review of child care proceedings system in England and Wales.*

In commenting on the review, the members of the council have drawn on their different disciplines to provide proposals for developing the themes of the review by ensuring that services work more closely together.

We are concerned that, although the review emphasises the importance of inter agency working, it does not provide a well developed analysis of the relationship which needs to exist particularly between the local authority and the various health trusts, including primary care, acute and mental health trusts. In our comments, in which we will follow the sequence of possible care proceedings (including the pre-proceedings stage), we will suggest a framework for better integration of the two systems which we hope will be useful.

There is substantial and growing evidence of the impact on children, particularly very young children of delays in finding secure placements for them (Ward *et al., Babies and young children in care* (2005); Selwyn *et al., The costs and outcomes of non infant adoptions* (2006). The care proceedings process is essentially about the future well-being of children whether in their birth families or elsewhere. There is a danger in the desire to achieve more cost-effective proceedings of losing sight of the need to develop a process which can achieve resolution within a timescale which reflects the child's needs and stage of development. This is relevant not only to the length of proceedings, but to any action taken which delays the start of proceedings.

Preliminary points

1. The steps which we believe should be taken in every case in

    - collecting evidence
    - analysing evidence
    - making assessments of parents
    - engaging members of the extended family through family group conferences or through assessment

    will not always bear the same relationship to the point at which proceedings begin.

    The point at which it will be necessary to start proceedings will not depend upon the point which the process of analysis and assessment has reached, but it will depend on

    - the need for protective measures and any dispute about the arrangements for children whilst the investigation about future care is carried out;

- any dispute about the way in which an assessment is to be carried out.

We will explore in more detail below the difficulties which arise when local authorities delay taking proceedings when they are in fact necessary and the problems which arise when children are accommodated under Section 20 Children Act 1989 (1989 Act).

2. It is important to distinguish those cases where the plan for assessment is agreed and others where there is a challenge by the parents or on behalf of the child, which will require independent assessment.

3. It is our view that local medical and psychiatric services are not sufficiently well integrated into the child protection process in many areas to provide either support or assessment services within the necessary timetable for care proceedings.

4. The most recent edition of the guidance on 'Working Together to Safeguard Children' published by DfES in April 2006 further clarifies the role of health professionals with respect to Child Protection. However, the involvement of health professionals after the case conference and the development of the care plan are much less explicit. Health professionals need to continue to be engaged throughout the process.

The pre proceedings check list – what should it include?

It will be clear from what has been said that it is not possible to be prescriptive about what work will be done before proceedings are issued and what work will be done afterwards. The starting point for any pre proceedings checklist is whether there is, first, an immediate need for the child to be protected, and secondly whether there is agreement with those with parental responsibility about the way to move forward. It may be necessary to make an urgent application to the court.

In considering what is to be done before proceedings begin, it is important to build on the interagency work of the case conference and ensure that information from all areas of the child's life and that of his or her parents is available. It is essential that parents and guardians are told about the information collecting process and give their consent when it is required.

Next Steps

5. Provision of information to parents, children and young people, including legal advice. It is expected that parents will be engaged in all elements of the pre-proceedings steps.

6. Evidence gathering of what has already been done to support the family, describing the range of interventions and advocacy initiatives and the outcome of those interventions.

7. Arranging a family group conference (when appropriate) so that the family can propose ways of supporting the children and identify social work and other support they will need in order to do so.

8. Gathering of existing evidence from all relevant disciplines:

    - Social Care detailed chronology
    - Health information from records of children and members of the direct family (with consent), from multiple sources including primary and secondary care, mental health and others.
    - Education – reports from pre-school and school including educational psychology reports and SEN information
    - Police
    - Immigration
    - The health information should be collated by an agreed health professional (for example, by a specialist health visitor or community paediatrician); the other information should be collated by the case social worker.

9. Relevant multidisciplinary and multi-professional assessments

    The extent to which these assessments can take place before proceedings begin will depend upon the circumstances of each case. Consent is a key issue.

    - Social care core assessment
    - Health assessments of children – including physical and mental health and learning disability (by community, acute and specialist paediatrics and child psychiatrist / psychologist)
    - Child offending behaviour (YOTS)
    - Health assessments of parents including physical and mental health, substance misuse and learning disability (by psychiatrists, psychologists and social workers)
    - Parents' forensic risk assessment
    - Other

10. Analysis of the evidence from records and assessments

    It is our view that there should be a contribution to the analysis of the case at this point from the health side. The choice of relevant health practitioner(s) will depend on the particular concerns in each case. In a case of failure to thrive, a paediatrician would be the relevant person; in a case of maternal depression, an adult psychiatrist; in the case of alleged non accidental injury, a radiologist, for example.

Some cases might require more than one area of expertise. We would like to see the availability of local and more routine consultancy from the NHS to local authorities in providing a health dimension to the analysis of the case.

The analysis would identify areas of concern and any areas of disagreement. The contributors would set out their proposals for remedies and, if necessary, for further assessments and how they could be arranged – bearing in mind always the timescale for the child.

If this were to happen at an early stage, we suggest that the local authority would be better placed to provide information for the court at the beginning of proceedings about the kinds of assessments which were required.

11. Whether or not the parents (or others with parental responsibility) have been fully involved in the process described, we agree there should be a meeting (Review paragraph 1.11) in which the evidence, the analysis and the proposed plans are discussed with the parents before proceedings are begun. The parents will need competent legal advice at that stage.

12. If further assessment is required either before or within proceedings, the question arises as to whether the assessment can be done by drawing on local services with the agreement of the parents and those who represent the child. Can it be agreed, for example, that local addiction services can provide treatment / assessment – if so, there must be agreed measures of success; Can local psychiatric services provide treatment / assessment? Can a local family centre provide a parenting assessment?

Family Group Conferences

13. Family Group Conferences should be encouraged, as should the making of a greater effort, prior to the issue of proceedings, to identify suitable family carers. Many family members are, however, unwilling to put themselves forward (and parents do not want them to put themselves forward), unless they are sure that the parents really cannot look after their children. This already happens within proceedings where there are family members waiting in the wings. They do not compete with parents, but they say that if the court decides the parents cannot look after the children, they would be willing to do so. The pre- proceedings statement from the Local Authority will need to state in plain simple language that it is their opinion that the parents cannot look after the child and that they wish to identify and assess suitable alternative carers. It is essential that assessment of family members, if necessary on a provisional basis, takes place at an early stage, rather than delaying proceedings at the stage planned to be the final hearing.

14. Guardians and the court process can help to ensure that kinship care arrangements have the necessary assessment and financial and other support from the local authority. This may not always be the case outside proceedings. Indeed if the child

has never been looked after, local authorities are often very reluctant to provide financial support in the form of a residence order allowance.

15. It is not appropriate for a child to be placed long term within the extended family without something approximating to a 'Form F' assessment to ensure that the placement can genuinely meet his / her needs and is not simply a money-saving stop gap. The research evidence on kinship care does not provide any basis for acting without assessments. It may, however, be necessary to agree that a particular personal history, which might normally be a contra-indicator for approval of a local authority foster carer, is given specific consideration in terms of a family member – CAFCASS has experience, for example, of a very able grandparent being refused, following completion of a form F, on the basis of his very chequered history in his 20s and 30s.

Inter- agency working

16. The FJC Safeguarding Committee is in a position to make particular comments upon interagency working. In the majority of care cases there is a need for expertise from the medical / mental health professions: to advise on alcohol or drug addiction prognosis and treatment; to advise on psychiatric illness in parents; to advise on learning difficulties; to advise on the capacity of a parent to change; in complex cases to advise on the relationships between parents and children and children and their siblings; in injury cases to advise on causation. Yet in many local areas there are limited resources and skills and no links between these services and the local authority. The consequence is that there is insufficient information and analysis at an early stage in proceedings from the health side. The new responsibilities placed on Directors of Children's Services give them the task of looking at the whole range of services in their locality – not just the ones provided by the local authority. Co-ordination between the local authority and the health trusts in respect of child protection, we would suggest, is an essential development.

17. Child protection procedures are explicitly multi agency until the formal case conference and other agencies are engaged with the child protection plan. However, at the point at which an application for a court order is considered, accountability rests with the local authority alone and is not shared with the other agencies. Assessments, reports by experts and service provision (specialist assessment and therapeutic services) directed by the court are seen as outside NHS provision. There are exceptions when multi-professional health teams undertake specialist assessments at the request either of the LA or the courts. But even with these teams, the work may not be seen as a core part of the service and separate financial arrangements are in place.

18. Without diluting the principal role of the local authority, it is most important, as we have said earlier, to engage health professionals at the earliest stage in and before proceedings. We believe this will reduce delay, reduce the need for independent experts, reduce costs, and ultimately improve the system for children and families.

Although some change will come about through example, good practice and leadership, this cannot be sustained nor generalised across the country without organisational and strategic development.

19. A model to consider is that developed for looked after children (LAC). By requiring joint and integrated performance targets (between social care, health and education) most areas in England and Wales now have some type of multidisciplinary and multi professional team, collectively responsible for ensuring that the health, welfare and educational targets of LAC are met.

20. A similar model (with parallel professional groups) could be developed to work with children and families involved or likely to be involved in care proceedings. A co-ordinated response is required from the health side. This would reflect the fact that a child accommodated under Section 20, might at any stage become a child subject to Care Proceedings so there needs to be a seamless system for professionally assessing the child's needs. Key health professionals need to be involved and to co-ordinate the health response to the needs of a child (both in terms of evidence and future planning). These are often the same people who have been involved professionally with the families for a considerable time; they may need to engage other health colleagues. Authority to do so is needed from their own organisations as well as from the local authority. As we have described above, they will need to work closely with the local authority on the collecting of evidence, the analysis of the needs of the child and on future planning.

21. Thus health professionals should be involved at the earliest point, identifying concerns, and collecting and collating information, diagnosis and assessment. The local health organisations (PCTs, acute and mental health trusts) must identify appropriate professionals to work with social care and others in providing a multidisciplinary evaluation and, if agreed, a multi disciplinary assessment, as described in the pre proceedings checklist. The health service will need to provide experienced supervision and peer review within each team, in order to develop competent local child protection experience.

22. The involvement of the local health experts at an early pre proceedings stage will clarify the need for independent experts either in relation to any dispute about threshold criteria (including causation) or to welfare assessments. Parents should be kept up to date with all developments.

The need for proceedings

23. There is a suggestion in the review that care proceedings are initiated too soon and in some cases where they are not necessary at all. Although we welcome the proposals for a pre-proceedings checklist and for careful and transparent work to be done with the family to see if proceedings can be avoided, it is important that proceedings are not seen in a negative light. We recognise the advantages of pre-proceedings protocols in civil proceedings, but there are a number of significant

differences between civil proceedings and care proceedings. We have emphasised in our proposals for the pre-proceedings checklist that practitioners should not be deterred from starting court proceedings, where this is appropriate. It is essential to recognise that proceedings can be started at any point during the preliminary stage. Care proceedings are not intrinsically "bad" and to be avoided wherever possible. They provide an essential framework where there is disagreement between parents and the local authority concerning the immediate or long terms for the child. In some cases there may be a difference of view about the history; in others there may be a difference of view about the kind of assessment which is appropriate. In the vast majority of cases a care order is made and is required in order to change the status of the child and to provide parental responsibility to the local authority or some other person.

24. It is rare for care judges to see cases where the evidence at the start is such that the judge could seriously question why the case had ever been brought to court. It is, however, all too common to see cases where the local authority's failure to institute proceedings at an earlier stage has been detrimental to the welfare of the child. Cases of chronic neglect most commonly fall within this category. Very often it is a perceived failure in co-operation by the parents which is the trigger for proceedings, not any analysis of the predicament of the child.

25. The consequences of any increased pressure upon local authorities not to institute proceedings must be carefully considered. There is potential, at worst, for children to remain in frankly dangerous households.

26. The Council is also concerned by the fate of children who are subjected to S20 "voluntary" accommodation, instead of becoming the subject of care proceedings. So often the accommodation is not in any sense voluntary, but the parents do not protest simply because the Local Authority has indicated that it will otherwise issue proceedings. Such children are unclear or under a misapprehension about their permanency plans, are deprived of the independent voice provided by CAFCASS, and their parents rarely have the advantage of legal representation.

27. Although the provision of accommodation can be an important support to a child and its parents and although the current regulations require this to be linked to a clear plan which specifies purpose and timescale, it is not uncommon for cases later coming to court to be seen to have been subject to weak planning and drift. There needs to be clearer guidance to identify the circumstances in which s20 accommodation can properly be used in cases where there are real child protection issues. That guidance should specify for how long such a child can remain accommodated without the issue of care proceedings and, until the point when proceedings are issued, or the child is returned to its parents, there should be independent protection of the child's interests. The role of the IRO is clearly crucial in this, but concerns remain as to the effectiveness of the current framework within which IROs operate. Further consideration should be given to the

circumstances in which the child's interests should be represented in out of court situations, ideally by the appointment of a CAFCASS guardian.

Academic studies of the use of s20 in Child Protection Cases

28. Research studies of Emergency Protection Orders (EPOs) and police protection found that these emergency powers were frequently used where children had been protected by s.20 arrangements which the parents sought or threatened to end. In addition it was clear from interviews with social workers, local authority lawyers and lawyers in private practice that s.20 agreements were frequently sought by local authorities to avoid the need for EPOs. Parents were even explicitly threatened with 'going to court' if they would not agree. There is anecdotal evidence (not from these studies) that parents were not always clear about their rights and the local authority's responsibilities and plans where such 'agreements' had been made. The proposals set out below are intended to clarify the position for parents and avoid the most obvious abuses of s.20.

29. The research found numerous examples of local authorities delaying care proceedings, and no examples of EPO cases proceeding to care proceedings which were not justified. Out of 77 cases which went to care proceedings only 4 did not proceed to a final order. One child died; in the other 3 cases parents improved their parenting, accepted that their child had been abused by a relative or co-operated well after the making of interim orders, so that the guardian accepted that there was no need for an order and the local authority withdrew the proceedings.

30. Annex A to this paper contains an extract on this issue from the conclusions of J. Masson et al., *Protecting Powers* Wiley 2007. That extract does not address the *child's* position when such agreements are made. Care proceedings give the child the support of a children's guardian whose role it is to advise the court about the child's welfare and the arrangements for the child. Arrangements can be agreed between Local Authority and parents, which satisfy both but do not meet the child's needs. The increase in the use of proceedings from the 1970s was a direct response to concern about children drifting in care (Rowe and Lambert, *Children Who Wait* 1973) for whom there could be no long-term plans such as adoption, because parents would not agree to such arrangements and the local authority had limited power to gain control under the Children Act 1948.

31. There are cases where it seems to be only by reason of the intervention of the court that a child or family receives a proper level of service from the local authority. We set out below examples, although if local authorities follow the proposed checklist, these examples should be less frequent:

    a. at the most basic level it can sometimes appear as if a core assessment is produced only because the court requires it, rather than as a matter of ordinary good practice; and

b. even where the local authority acknowledges they are working with parents with learning difficulties, we are aware of cases which have lacked an adequate assessment of the parents' cognitive functioning prior to the issue of proceedings. Thus local authorities will sometimes work with a family, perhaps for years, without any accurate grasp of the parent's capacity to understand, to learn and to retain information;

32. It is unsafe to assume (para 4.10) that, in the small minority of cases where proceedings are withdrawn or no order made, the same outcomes could have been achieved without recourse to the courts. In the examples below applications were withdrawn, but the original proceedings were properly brought in the first place.

- where a child has an injury but the threshold is not crossed because the court accepts the account of an accidental cause; and
- where the dangerous and violent father was sentenced to life imprisonment, leaving the mother able to cope without formal state intervention.

Structure of proceedings (5.24)

33. We do not agree that the first hearing should not take place until 3 or 4 weeks after the issue of proceedings. One of the advantages of the protocol is that cases now get going in a much more effective and brisk way. It would be unfortunate if the momentum of the protocol were lost. Some of the stages could indeed be combined and it is not always possible to decide on a clear plan for the case at the first hearing. Nevertheless:

- A substantial number of cases either start with an emergency protection application or an application for an interim care order where the local authority wishes to make arrangements which are different from those in existence at the time – these cases need to be before the court so that decisions are made within the court framework with proper opportunities for representation and so that proper plans for protecting children are made at an early stage. Arrangements for contact are often an issue.
- Parents often do not find solicitors and get advice until just before a hearing whenever that is – the parents in these cases are often deprived and not very competent. Although the new pre - proceedings action may lead to improvements in this respect, the dangers of lack of representation should not be ignored.
- One of the early tasks is to identify those who should be joined as parties.
- Another early task is to decide on the level of court required and whether there should be a transfer.

34. There must be recognition that there are two major strands within care proceedings:

- the first is the question of what will happen in the long term and what evidence is necessary in order for that to be decided; and
- the second is what will happen in the meantime whilst evidence is collected and decisions made. In the discussion on case management the Review does not take account of the second element and yet, even if the case takes only 40 weeks and not more, it is of the greatest importance to the current and future welfare of children.

Timing of the case management conference (CMC)

35. As we have said, we believe there should be an early hearing in each case. In some cases, where the issues are straightforward or the family is well known, it may be possible to deal with the case management issues at the first hearing. In other cases we propose that the CMC is fixed at the first hearing to take place between 15 days and 60 days from the start of the proceedings, as in the present protocol. It is important that the structure maintains the flexibility to respond to the diverse needs of different cases.

The early review of cases

36. We hope that the pre-proceedings checklist and the contribution from all the agencies at an early stage will mean that there is a better analysis of the case before proceedings begin. Where an application is made to court, there should also be an early review of each case, immediately after proceedings have commenced. The purposes of such a meeting would be:

- to gather / arrange for collation of information already available from different agencies, if that has not already been done;
- to identify what historical information is still missing and how it should be obtained;
- for the local authority to set out the basis on which the case meets the threshold. Although the threshold is only successfully challenged in a minority of cases, it is important to clarify whether there is a challenge to the threshold and the historical evidence or whether the case turns on a disagreement about future plans;
- to identify the issues to be resolved within the proceedings and what evidence will be needed to resolve them;
- so the new model letters of instruction can form the basis for the questions to be put to those preparing assessments

Expert evidence

37. As we have suggested, there should be much more emphasis in any new scheme on links between the local authority and the health trusts, so that all the available

information is before the court. Records, for example from hospitals, school nurses and GPs, are often not available until late in the proceedings which in itself causes delay.

38. We have proposed that health professionals should be better integrated into the child protection process before proceedings and in the early stages. They should contribute to the analysis of the case and provide consultation on relevant issues. In many cases an early psychological perspective would be useful to social workers as they prepare care plans. This is separate from the question of whether additional assessments should be prepared by local services.

39. The review's proposals for expert evidence appear to have drawn on the views of Mike Hinchliffe and Elizabeth Hall (Family Law, April 2006, page 288), who worked on the review team. Their model proposes that assessments should be done within the health service by local teams. They envisage a multidisciplinary assessment in every case.

40. Although we recommend a closer relationship between all the relevant services and a multi-disciplinary approach to care proceedings, it will be important to identify in each case which issues arise and thus what sort of assessment is required rather than assuming assessment on all issues in every case.

41. An immediate problem is that sufficient local facilities are not available generally, particularly in psychological services. For example, the wait for Child and Adolescent Mental Health Services (CAMHS), is often very long outside proceedings.(NB: the waiting time targets for NHS services do not apply for work requested by or associated with the Local Authority and/or courts, as this is not (generally) considered to be a core NHS service. Hence there is a significant time delay and cost). Certainly at present many local services could not provide assessments within the timetable for court proceedings. A radical change in the funding and allocation of services would be necessary to provide such a service. The present system relies on medical / psychological experts doing additional work funded by local authorities and the Legal Services Commission rather than through the NHS. The higher rates of pay draw some specialists into the system. If a comprehensive NHS service could be available, there would be advantages in local availability and in the link to treatment. In many cases the parties would be able to agree on the use of relevant local assessment services. However, we believe there would still need to be independent experts in some cases (6.9).

- If such local services were developed, they would work closely with the local authority; and so it would still be necessary in certain cases to have experts from outside the area to give a completely independent view.
- In some cases parents very properly wish to challenge the evidence of a primary assessment – for example, the assessment of a local consultant paediatric radiologist that a fracture is non-accidental, or the psychiatric assessment of the capacity of a parent to change;

- In some cases there is no local expert sufficiently able to advise on particular issues, for example on chronic fatigue syndrome.

42. We do not believe that it would generally be useful for experts to attend court at an early hearing or the CMC. If the local authority has access to relevant expertise early in the proceedings and there is a contribution to the analysis of the case by health professionals, then that analysis can be provided to the court without the need for the expert to be present.

43. There may be cases when there is a dispute about the relevance of particular expertise or the proper questions to put to an expert, when it might be useful to have expert guidance for the court, but we anticipate that this will only be necessary on rare occasions. The child's solicitor will be able to make inquiries of experts. We would suggest also that there are some cases when it might be useful to invite an expert to a preliminary meeting with the advocates or professionals. This meeting could be conducted by video link if that would avoid costs and be more convenient. We agree (6.11) that, where the threshold is contested on the grounds of disputed medical evidence, medical experts should be involved as early as possible, so that they can advise as to what kind of additional expert evidence is necessary. However, it must be recognised, first, that it sometimes takes time to identify an expert who is able to report and, secondly, that the expert can only identify other issues, once he or she has considered the evidence. For example, a radiologist or neurosurgeon might only identify the need for a haematologist once they had analysed the evidence. In these cases it is often very helpful to have the guidance of a paediatrician who can give an overview of the issues.

Delay

44. We hope that the proposed changes in the pre-proceedings stage, and in particular more careful analysis of the case at an early stage with a contribution from health professionals, will lead to a more focussed approach to proceedings and an earlier instruction of relevant experts, if required. However, the availability of court / judge time and the responsibility taken by judges for case management are key elements in avoiding delay. For example, in the higher courts in London and the south east cases could be ready for final hearings many months before there is time available to hear them. The delay is not only significant in terms of the experience of the child; it also adds to the number of hearings to deal with (amongst other things) what the arrangements are during the course of the proceedings.

Legal Advice

45. The Review proposes that the provision of legal help pre - proceedings is piloted through legal aid on a fixed fee. There is already legal help available to enable solicitors to advise families in these circumstances on a fixed fee. However, the Legal Services Commission's (LSC) Consultation Paper, *Legal Aid: a sustainable future (July 2006),* which accompanies the Carter review suggests additional

funding on a fixed fee (level 2) after the local authority has given notice of an intention to start proceedings. At that stage parents could be advised about the possibility of reaching agreement with the local authority about a way forward or discussions could lead to an identifying or narrowing of issues before proceedings begin. It is understood that this funding would be available without a means test.

46. It is unlikely that the absence of a means test at this stage will make a difference to the extent of advice since the majority of parents involved are entitled to funding in any case. Parents are often not sufficiently well organised to find legal representation, but we hope that the work done before pre-proceedings, including providing a list of local family practitioners, and the recognition by social workers of the importance of legal advice for parents might lead to a greater take up of legal advice at this stage.

47. The proposals put forward by the LSC following the Carter review are, however, likely to lead to a substantial reduction in the number of practitioners able and willing to represent parents and children in care proceedings or before those proceedings, with likely serious consequences. The rates for legal help have in the past meant that it is often a 'loss leader', if it is done at all. The rates for the new scheme appear to be the same. Further, proposals have been made for a series of fixed fees for different stages of care proceedings, which will cause a significant reduction in income in a field of work which is at present only marginally profitable for some and does not cover its costs for other practitioners. Full information on the basis of the new proposed fees has not yet been made available, but initial calculations done on the information available so far have suggested that the deficits will be too great for practitioners to undertake the work.

48. We agree that the funding of solicitors in care proceedings should be limited to those on the panel both for children (as now) and for parents and other parties (6.3). However, it appears from *Legal Aid: a sustainable future* that there will no longer be a requirement that a practitioner be on the panel to represent children nor will there be any financial recognition of panel membership. A new scheme of peer review is to take the place of panels so far as the LSC is concerned. It is not yet clear what the implications will be for courts which at present allocate the representation of children to those who are on the panel.

49. We believe that the change in approach proposed by the LSC will seriously undermine the work done to create a specialist body of lawyers with expertise in the area of child law. Given the recognition by the Review of the need for expertise and its proposal to limit representation of other parties by non experts, this appears counter productive. Rather than establishing a new system to secure adequate skill levels, the FJC considers that it would be better to build on the existing, successful structures.

50. We agree that primary assessments should be funded by local authorities. The decisions in the cases of Calderdale [2005] 1FLR and Lambeth [2005] EWHC Fam

have had a significant impact on the way in which these assessments are funded and the extent to which a call is made on legal aid funds (5.13).

Local Family Justice Councils

51. At paragraph 5.30, the Review comments that the Local Councils receive funding for running events and invites the President and the FJC to consider whether such events might be used to bring together representatives from all areas of the family justice system with the aim of improving understanding of each other's roles and responsibilities.

52. Over the last 10 months or so, quite a number of Local Councils have held such events / conferences, mainly to address the issue of delay in care proceedings, but also to consider such topics as the use of experts and domestic violence. Local Councils will also be given advice shortly on their priorities in the current financial year, when the need for them to continue to address these issues will be emphasised. It should, however, be noted that local FJCs have only limited resources. They may be able to be catalysts for change, but they will not be able to resolve the endemic structural problems which lead to delays in care cases. The proposals for a better integration of health and social services in relation to child protection and care proceedings will need initiatives both at departmental and local levels. The FJC both nationally and locally will support the changes which follow from the review.

Miscellaneous

53. The proposals at 1.14 in relation to Independent Reviewing Officers are obviously sensible and should be implemented immediately.

54. The proposition at 5.19, that if s31 applications are not properly prepared the judge should require the local authority to pay costs, ignores not only the financial plight of most local authorities, but also the fact that the court's powers are limited to requiring a party to pay the legal costs of other parties - which are not usually much increased by an application not being in proper form.

55. The proposition in paragraph 5.20 appears to ignore the fact that courts have granted EPOs which the High Court has criticised and the fact that Munby J relied on the suitability of a Child Assessment Order in X LA v B, an order which was patently unsuitable for investigating misuse of the children's prescribed drugs.

ANNEX A

Extract from the conclusions of J. Masson et al., *Protecting Powers* Wiley 2007.
'Provision of accommodation in child protection cases

Agreements between social services and parents about the protection of children can serve a useful purpose in avoiding the need to take compulsory action. It is clear that in very many cases social services have sought to reach agreements before bringing proceedings (Hunt *et al*. 1999; Brandon *et al.* 1999) but that parents often feel pressured and ill informed in this process (Freeman and Hunt 1998). Agreements were sometimes made alongside an explicit threat to bring court proceedings if parents did not agree, and breach of these agreements was a major factor precipitating emergency proceedings. Despite the statutory provisions allowing parents to remove their children from accommodation at any time, where accommodation was provided to protect children, parents effectively lost their power to reclaim their children against the local authority's wishes. Although agreements might be less disempowering than court proceedings, they often left parents with little control over the arrangements for their children's care (Packman and Hall 1998).

There are good reasons for local authorities seeking to avoid proceedings wherever possible in terms of maintaining control over the case, focusing on the issues that concern the authority, working towards more speedy resolution, saving expenditure and, if proceedings are started, ensuring that they are properly prepared (DCA and DfES 2006). Keeping cases out of court can also benefit parents who are likely to find the proceedings baffling, demeaning and excluding (Lindley 1994; Freeman and Hunt 1998). However, forced agreements cannot successfully protect children nor avoid the need for proceedings, unless their terms assist parents to improve their relationship with and care for their children, and local authorities provide the services which families require. For these reasons, and particularly if breach is likely to lead to the local authority starting care proceedings, *parents* need independent advice and representation when the local authority proposes a child protection agreement.

A single form of agreement is not adequate to cover both non-contentious situations where a parent needs temporary assistance from the local authority to look after their child during the parent's hospital treatment, and other cases where accommodation replaces compulsory action. If parents are being required to agree to their children's accommodation in circumstances where they will not be free to remove them, this should be explicit in the terms of the agreement. In such cases a notice period, which is long enough to enable the local authority to secure the child's care whilst it starts proceedings should be included in the agreement. This term should override the parent's right to reclaim the child for a specified but limited period. The court can then decide whether the local authority can establish a case for an interim care order. Any parents entering into such an agreement need to be clear about its effects, underlining the importance of making independent advice available as the care proceedings review has proposed. Such a term would also emphasise to all involved with the child's care, particularly the Independent Reviewing Officer, that accommodating this child is a matter of his or her protection and that the plans for the child's care need to reflect this.'