

## **Family Justice Council Children in Safeguarding Proceedings Committee's Response to draft Children Act Guidance, Volume 1**

### **Introduction**

1. The Children in Safeguarding Proceedings Committee of the Family Justice Council warmly welcomes the moves under way to improve the conduct of care proceedings. The Committee endorses the aims to reduce unnecessary and inappropriate delay for children, and to provide clearer and more easily accessible information for parents and children before and during proceedings. As a multi-disciplinary body, the FJ C Safeguarding Committee would wish to emphasise the vital importance of involving all the appropriate agencies and professionals in concerted action for change. The Committee therefore welcomes the attempts to co-ordinate the necessary contribution to the changes by the simultaneous consultation on both the Public Law Outline and the revised Children Act Guidance.
2. It is important to consider in particular the role of health authorities and health professionals. It is the view of the Committee, expressed in its response to the Review of care proceedings<sup>1</sup> that better co-ordination between social services and health professionals both before and during proceedings is an essential element of improving the service to children and families
3. The guidance and PLO intend to give a coherent framework for the law and practice relating to children. They aim to set out an appropriate balance between the rights of children, responsibilities of parents and the duty of the state to intervene when the child's welfare may be under threat. They further set out the need for speedy, open and understandable practice, so that all parties are clear as to the issues, evidence and outcome. Both documents need to inform and improve practice by agencies and professionals, and in doing so should set out clearly the changes required in practice, the reasons for them, and the interrelationship between social work support for families and the

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<sup>1</sup> ([www.family-justice-council.org.uk/docs/060922\\_Response\\_to\\_the\\_Child\\_Care\\_Review.pdf](http://www.family-justice-council.org.uk/docs/060922_Response_to_the_Child_Care_Review.pdf))

need for court proceedings. We welcome guidance on the improved outcomes intended for children and their families and the need for speedy, transparent justice.

### **Specific comments**

When the existing Volume 1 Guidance was published in 1991 it was an important tool in preparing practitioners for the wholesale changes due to be brought about by implementation of the Children Act 1989. Understandably therefore it contained more explanation of the law than actual guidance. We would suggest that what is needed now is rather different. While there may be practitioners who are not as well acquainted as they should be with the legal framework, there are other sources where this information can be found and there is no need for extensive repetition of the text of the Children Act. Local authorities look to the Government for guidance in matters of *practice*, and to be as effective as possible the guidance needs to focus on this, highlighting what is expected of local authorities and their staff, while acknowledging the complexity of the task they undertake. It could be that what is needed at this moment in the context of adapting to the improvements identified in the Review of Child Care Proceedings is not in fact a replacement for the Volume 1 Guidance as it was, but something more in the form of a local authority circular, drawing attention to recent and anticipated developments particularly in the context of public law proceedings. The Committee recognises that this would be a substantial departure from the present draft.

4. We would suggest that any new guidance requires a clear and short introduction setting out the framework of the volume itself, setting out key points about changes expected from local authorities, signposting sources of guidance and good practice information, and providing a description of the relationship between social work practice in supporting families and the needs and impact of court proceedings.
5. At present the guidance is unclear as to whether it is setting minimum standards – what the Local Authority must have in place at issue of

proceedings - or setting out what good practice it should aim for, even if it will fail to meet these standards.

### **Timescale for publication and implementation of the guidance**

6. We understand that the intention is now to bring the guidance into effect in April 2008 and not in November 2008. We welcome this since the guidance needs to be taken seriously and although much of what it contains or is likely to contain will be a reinforcement of existing good practice, there are elements which will be different, and local authorities need time to prepare for compliance and to become familiar with the guidance.
7. The comments that follow are based on the draft as it currently stands. Our main concern is with chapter 3 because of the Committee's own focus on care and related proceedings.

### **Arrangement of the guidance**

8. The guidance as drafted follows the relevant parts of the Children Act. From a practice point of view, it would be more logical for chapters 3 and 4 to be in reverse order. Child protection investigations, which are dealt with in chapter 4 in the context of emergency protection and child assessment orders (but barely mentioned in chapter 3), will need to precede the institution of care proceedings, otherwise much of the pre-proceedings partnership work between the local authority and the family, outlined in the Review, may be overlooked.

### **Presentation of the guidance**

9. If both explanation and advice are to remain in the same document we would suggest that it would be helpful to highlight particular areas of practice guidance in boxes within the text (for example the matters on which legal advice will have to be sought before a decision is made to institute proceedings, or the documents that will be needed). A flow chart of the steps

necessary before proceedings might also be useful, particularly for non-legally trained readers. Many local authorities have devised various pro forma documents, or leaflets containing information for children and/or parents, and it would be helpful, where appropriate, to draw attention to any useful resources such as these.

### **Links to the Public Law Outline**

10. Although the draft PLO is in an initial draft form at present, it does refer to a number of matters which are not addressed in the draft guidance. In order to ensure consistency of approach and mutual understanding between courts and local authority social work staff it is important that the language used in both contexts is the same. The existing (2003) protocol and the new PLO/ Practice Direction are not in a format that is likely to be easily accessible to social workers. Without unnecessarily duplicating the PLO itself, it would be helpful for the guidance to set out more clearly what is expected of the local authority children's services department at the various stages of the proceedings, particularly the pre-proceedings stage. For example, the 'Documents Summary' in the draft PLO refers to an 'outline care plan' but the list of documents in paragraph 3.18 refers only to the 'care plan'. Once the new Public Law Outline has been finalised, we would suggest that reference be made to it within the guidance, with appropriate web links so that the document itself can be accessed by readers of the guidance

### **Pre-proceedings requirements**

11. Paragraphs 3.1 – 3.17 of the guidance set out to deal with crucial matters that must be addressed by local authorities before care proceedings are started, but a number of important issues are not covered, (some of which are mentioned below) and greater clarity is needed about the role of the core assessment for children in need and child protection investigations under s 47 of the Act. In the context of the Care Proceedings Review, this is the core of the guidance and we would suggest a substantial revision to provide much greater clarity here.

12. We welcome the intention to ensure that parents (and the child if old enough) should be given an easy-to-understand explanatory document of the local authority's reasons for considering that care proceedings are justified (paragraph 3.16) but the guidance needs to underline:

- i. the importance of ensuring that such communication takes place **throughout** the investigations and assessment;
- ii. that parents should be informed (orally and in writing) immediately of:
  - a. the conclusions of any investigations and assessment,
  - b. the proposals the local authority is making to provide support to the child and family, and
  - c. its expectations of the parents to address identified concerns, with a clear statement of the likely consequences if these expectations are not met;
- iii. that the document needs to be couched in a way which is not too legalistic.
- iv. if such a document is only provided at the point where the local authority has already 'decided that it intends to apply' for a section 31 order, there is little opportunity for the parents to attempt to address the alleged deficiencies in their care of the child. The timing needs to be such that parents can seek free legal advice and be assisted to avoid proceedings or at least narrow the areas of concern. and;
- v. the importance of facilitating communication in those cases where additional help is required, for example the use of interpreters when English is not the first language and/or referral to appropriate specialist support services when family members are known to have cognitive difficulties.
- vi. It may be that there needs to be a process for marking the end of concerns if the parents do address the issue with a further letter explaining this.

Further, this part of the guidance needs to address, or cross refer to:

- good practice as set out in ‘Working Together’, including collaboration with health professionals, and health and other agencies;
- some consideration as to the status of the assessments prior to the commencement of proceedings and who can be acknowledged as an expert witness therein so that there is no undue repetition or delay during proceedings.
- some consideration of the value and use of family group conferences in appropriate cases. The ‘frequently asked questions’ provided for the ‘initiative courts’ mention that there ‘will be more consistent use of advice and support initiatives such as FGCs’ - yet these are barely mentioned in the draft guidance.;
- consideration of, and guidance on, how to approach the dilemmas inherent in proposing section 20 accommodation as an alternative to care proceedings
- consideration of the implications of encouraging an arrangement for a relative to care for the child, the various legal forms this might take, and the support that the local authority can or should provide (including assistance with legal costs for a relative ineligible for CLS funding and the financial support that might be available depending on the legal form that kinship care takes);
- the importance of good communication with the parents and wider family – not just in keeping them informed (taking into account issues of confidentiality in the case of sharing information with relatives) but also listening to what they have to say;
- acknowledgment that some care proceedings are commenced in respect of children already looked after under section 20 of the Act, and the particular considerations that may apply in such cases;
- recognition of the fact that while emergency protection orders should be used sparingly, there will be some cases which, while inappropriate for an EPO, will nevertheless require the local authority to start proceedings without being able to complete the core assessment;

## **Care plans and care planning**

13. We appreciate that this volume of guidance is entitled ‘care orders’ and presume that it is for this reason that issues of care **planning** are not addressed. However, since the care plan is an essential requirement for the proceedings, it is necessary to set out here what is required. Guidance along the lines of circular LAC (99)29 - at the very least – is required. Social workers need to be reminded of the importance of contingency and twin-track plans, and an acknowledgment of the role of concurrent planning schemes would be helpful.
14. Social workers will need to understand, for example, the extent to which the documentation they complete under the Integrated Children’s System [ICS] can be used for the care proceedings.

## **Cases where adoption is, or may be, the plan**

15. Specific guidance is needed for those cases where adoption has been identified as the plan, or as one prong of a twin track plan. The Family Justice Council has already drawn attention to the need for the court directions and the local authority’s processes to consider how compliance with the Adoption Agencies Regulations 2005 and other requirements of the Adoption and Children Act 2002 can be ensured within an appropriate timetable. This is another area where specific input from health professionals is required in advising the adoption panel, and compliance with the timetable for the child will be jeopardised if insufficient specialist paediatric input is available.

## **Liaison with CAFCASS**

16. There is some explanation of the role of the CAFCASS children’s guardian, but it would be helpful to include guidance on the importance of the local authority’s co-operation with the guardian, and the guardian’s right to access relevant documentation. It would be helpful also to mention the value of

liaison between the Independent Reviewing Officer and the CAFCASS guardian and the handover to the IRO.

### **Other chapters of the Guidance**

17. These comments have focussed on chapter three of the draft in particular since it is clearly crucial to the work also being consulted upon on the Public Law Outline. However, more guidance on special guardianship might be helpful, especially in the context of its apparently growing use as an outcome in public law proceedings.
18. The amount of interrelating guidance in existence and to be revised and re-issued makes it difficult for all professionals to be clear what documents they should consider. There needs to be very good sign-posting in all new guidance to facilitate this. At the very least the guidance (and or circular) should be issued with an appendix listing where guidance on e.g. care planning is provided. It would be more helpful if clear sign-posting was also given in the text.