

Redcar & Cleveland Borough Council

Pre-Proceedings Process

- 1) This document is intended to set out the process to be followed when a Social Worker believes that court action may be required to safeguard the welfare of a child.
- 2) It is drawn from the Statutory Guidance, *Court Orders and Pre-Proceedings: For Local Authorities* (Department for Education: April 2014), which sets out guidance for Local Authorities on what should happen when a Local Authority is considering issuing care proceedings in respect of a child. Statutory Guidance is guidance issued by the Government and which must be complied with by Local Authorities when exercising their Social Services functions unless there are exceptional reasons which justify a departure from it in individual cases.

Pre-Proceedings: Letters Before Proceedings, Letters of Issue and Pre-Proceedings Meetings

The Legal Planning Meeting

- 3) Where social work assessment of a child and family is that care proceedings or other urgent action may be required to safeguard the welfare of a child, a **legal planning meeting** should be held. This meeting should be attended by the relevant social workers, team manager and a legal representative.
- 4) At this meeting, the circumstances of the case will be considered, and in particular identified:
 - a) The current concerns and risks to the child;
 - b) The immediate plans around managing risk;
 - c) Whether the threshold for a care or supervision order is available to the Local Authority. This is to say that there appears, in principle, the information available to satisfy a court that there are reasonable grounds for considering that:
 - A child is suffering, or is likely to suffer, significant harm; and
 - The harm, or likelihood of harm, is attributable to the care being given (or likely to be given) by the parent not being what it would be reasonable to expect a parent to give to the child.
 - d) Whether care proceedings, or other court proceedings, are required to adequately protect and safeguard the child;
 - e) What are the evidence gaps, are any additional assessments required, and what would be a suitable care plan for the child?
- 5) If it is determined that the grounds for care proceedings are established and are necessary in the circumstances, the Local Authority will then need to decide, based upon a robust analysis of the level of assessed risk:

- a) Whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings;
 - b) Whether proceedings should be initiated immediately.
- 6) If it is decided that while care proceedings are likely, a further period of support and assessment is appropriate, a decision will need to be made as to whether to seek approval to issue a Letter before Proceedings as part of the “pre-proceedings process”. If it is decided to issue a Letter before Proceedings, a referral will need to be made to the Pre-Proceedings Panel for approval to issue it.
- 7) If it is decided that care proceedings should be initiated immediately, the decision should be referred into the Pre-Proceedings Panel for consideration and approval. If the urgency is such that it prevents the matter going to pre-proceedings panel, it should be subsequently referred into the Panel.

Pre-Proceedings Panel

- 8) The pre-proceedings panel is designed to consider the following cases:
- a) Where, following an internal legal planning meeting, a decision has been reached that it would be appropriate to send a Letter before Proceedings in accordance with the April 2014 statutory guidance;
 - b) Where approval is sought of a decision to commission external expert evidence;
 - c) Where approval is sought to issue s.31 Care Proceedings;
 - d) Where specific guidance is sought from Panel in respect of progressing assessment and planning after the sending of a Letter before Proceedings;
 - e) Where the issuing of emergency proceedings has been required, the urgency having prevented prior consideration or approval by Panel. These cases should be referred into Panel on the next available Panel date following the issuing of the emergency proceedings.
- 9) A document setting out the functions of the PPP, its constitution and process for referral is available to all Team Managers and Social Workers.
- 10) The Panel consists of a Service Manager and Local Authority Lawyer, together with the Team Manager and Social Worker. However, nothing prevents the attendance of any other social care professional if required to assist in the process. This may include, for instance, the Independent Reviewing Officer if the child is an accommodated child.

What is the pre-proceedings process?

- 11) The pre-proceedings process was introduced in 2008 as part of the PLO reforms to care proceedings with the aim of diverting cases of abuse and neglect from the court, ensuring Local Authority applications were better prepared, and reduced the time courts took to decide the cases. The use of

the pre-proceedings process, where possible, was reiterated by the revised statutory guidance in April 2014 and in the Family Procedure Rules 2010 Practice Direction 12A, the “Public Law Outline”.

- 12) The pre-proceedings process is intended to offer families a final opportunity to either make substantive changes when the Local Authority considers care proceedings are likely, identify and agree any arrangements that would avoid the need for proceedings, or alternatively – if proceedings are to be required – provide a period where the Local Authority can properly identify, assess and formulate the plan for the child it will present to court.
- 13) Research has identified that the use of the pre-proceedings was successful in diverting cases from court. However, the research also identified that it could cause delay for decisions in respect of children if there was failure to recognise family care was not improving.¹
- 14) Sending a Letter Before Proceedings is likely to be of assistance where the decision is taken that there are significant concerns, the child may need to be placed outside the care of their parent, but either the child is not at risk of immediate harm or alternatively arrangements can be put in place to effectively safeguard the child while further assessment can be undertaken, e.g. the parent being in agreement to the child being looked after under s.20 accommodation.
- 15) Examples of where immediate proceedings may be likely are where assessments have concluded that there are risks of immediate harm to a child and where it is not possible to put in place arrangements that would safeguard the child without the authority of a court order such as an Interim Care Order.

Sending out a Letter Before Proceedings

- 16) A Letter Before Proceedings provides formal written notification to parents that care proceedings are likely. It is intended to set out:
 - A summary in simple language of the Local Authority’s concerns;
 - A summary of what support has already been provided to the parents;
 - What parents need to do, and what support will be provided for them, to avoid proceedings, including timescales;
 - Provide information on how to obtain legal advice and advocacy and make clear how important it is for the parent to seek legal representation.
- 17) The research undertaken into the pre-proceedings process demonstrates that one danger under the pre-proceedings process is that matters may “drift”. It is therefore important to be clear and robust in considering what is the purpose of sending a Letter Before Proceedings and then:

¹ (Partnership by Law? School of Law, University of Bristol and Centre for Research on Children and Families, University of East Anglia (2013) www.bristol.ac.uk/law/research/researchpublications or www.uea.ac.uk/socialwork/research)

- a) What substantive change should be demonstrated to prevent the Local Authority from issuing proceedings?
 - b) What specific interventions are to be implemented and what is their purpose?
 - c) What are the timescales for the process before determining whether matters should progress to care proceedings or revert away from the pre-proceedings process?
- 18) It is important to remember that the pre-proceedings process is exactly that: a process that follows the decision of a Local Authority in principle to issue Care Proceedings. The process is distinct from Child Protection procedures. The pre-proceedings process does not necessarily replace the need for a multi-agency protection plan or forum if one is considered appropriate.
- 19) The Letter of Proceedings will be prepared by Cygnet Family Law, amended as necessary and approved by the Team Manager, and sent out to a parent either by hand or recorded delivery by the Social Worker.
- 20) No Letter Before Proceedings can be issued without the approval of the Pre-Proceedings Panel, normally following on from a legal planning meeting.
- 21) Once approval is given to issue a Letter Before Proceedings:
- a) Within seven days, the Social Worker or Team Manager will provide to Cygnet Family Law:
 - i) The most recent C&F Assessment;
 - ii) The most recent strategy meeting minutes;
 - iii) A copy of any s.47 Reports;
 - iv) A copy of the documents of the most recent Child Protection Conference, most recent Child Protection Plan and insofar as available minutes.
 - b) Within seven days on receipt of the documents, Cygnet will prepare a draft of the Letter Before Proceedings. This will be forwarded to the relevant Social Worker or Team Manager by email to enable any amendments to be made;
 - c) The Social Worker or Team Manager will send by either recorded delivery, or deliver by hand a copy of the letter to each of the respective recipients. This shall be done no later than seven days before the date of the proposed Pre-Proceedings Meeting.
 - d) The Social Worker or Team Manager shall at the same time forward a copy of the finalised letter to Cygnet Family Law.
 - e) No later than two days before the Pre-Proceedings Meeting a draft plan of actions and assessments will be drawn up by the Social Worker or Team Manager.

The Pre-Proceedings Meeting

- 22) The Pre-Proceedings Meeting will be chaired by the Team Manager and will normally include the following:
 - Team Manager, Social Worker and Local Authority Legal Representative.
 - Parent(s) and parents' respective legal representative(s).
 - Any other person with Parental Responsibility.
 - Any other significant individual whom the Social Worker or Team Manager considers it would be helpful to invite (e.g. a grandparent who assists the parent in providing care for the child).

- 23) The meeting is intended to agree proposals for addressing the current problems which have led to concerns about the welfare of the child and in particular:
 - a) Agree a revised plan for the child, which will be confirmed in writing to the parents, setting out what the parents and the Local Authority must do to safeguard the child. The plan will indicate the steps the Local Authority will take to support the parents and the timescales within which progress must be made for proceedings to be avoided;
 - b) Outline the steps that the Local Authority will take at the end of this period, depending on whether progress has been demonstrated; and
 - c) Identify what arrangements are in place, and will be put in place, to identify potential family carers, and / or for assessment of the parents.

- 24) A draft plan referred to at paragraph 15(e) should be available in order to discuss what specific things are required from the parents. Very often, this plan may be based upon any core/ outline Child Protection Plan. It should also identify any additional assessments, providing timescales for the same.

- 25) At the meeting, a date, within the next 6-8 weeks, will need to be set to hold a review meeting with the parents and representatives and discuss progress.

- 26) A week prior to that meeting, it would be helpful to hold an internal legal meeting to review progress. If the pre-proceedings work has been unsuccessful, consideration should be given at that meeting to whether the case should be referred into Pre-Proceedings Panel for approval to issue s.31 Care Proceedings.

- 27) If it is considered that there has been progress it may be that a further review meeting be proposed for a further 6-8 weeks for a final decision to be reached.

- 28) A week prior to that final meeting, a final internal legal planning meeting should be held, and the case referred to Pre-Proceedings Panel, at which the decision should be taken to either:
 - a) Give consideration to issuing Care Proceedings;
 - b) Alternatively refer the matter back into Child Protection or Child in Need or Looked after Child procedures, with the Child Protection Plan, Looked after Child Care Plan being updated.

- 29) Written confirmation of the decision is to be sent to the parents through either a Letter of Issue, or alternative a letter informing them that the Pre-Proceedings Process is at a close. This should be orally reiterated to the parents at a final Pre-Proceedings Meeting.

The process for issuing s.31 Care Proceedings

- 30) Where, following the internal legal meeting, the decision is reached that having regard to the individual circumstances of the case, proceedings should be commenced (either following a failed period of pre-proceedings work, or immediately without the pre-proceedings process being undertaken), a referral should be made to the pre-proceedings panel (excepting where urgent action is required to safeguard the child and it is not possible to place matters before the panel).
- 31) If the pre-proceedings panel approves the issuing of s.31 Care Proceedings, it may also provide for a Letter of Issue to be prepared to be sent out to the parents. This is a letter that notify the parents that the Local Authority will be issuing care proceedings. This may be sent either when a Letter Before Proceedings has previously been sent and the pre-proceedings process has not been successful at avoiding proceedings, or where the child's circumstances are such that no Letter Before Proceedings has been issued.
- 32) When approving s.31 Care Proceedings, PPP will determine a date for the lodging of initial evidential documents with Cygnet Family Law. This will ordinarily be within 14-21 days thereafter. Apart from in exceptional circumstances, the following documents need to be lodged alongside the application:
- a) Initial Statement;
 - b) Genogram;
 - c) Chronology;
 - d) Interim Care Plan;
 - e) Any assessments currently relied upon.
- 33) At the same time, the Social Worker or Team Manager must notify Cygnet Family Law as to whether:
- a) If the child is a Looked After Child the name of the IRO;
 - b) If the child is subject to a Child Protection Plan the name of the Chair of Conference.
- 34) It is a requirement that when issuing Care Proceedings, the Local Authority must lodge with the court "Checklist Documents" dating back two years (or longer if still of continuing relevance). Cygnet Family Law will liaise with the relevant team clerk around obtaining these documents. These documents are:
- a) Evidential documents including:-

- Previous court orders including foreign orders and judgements/reasons;
 - Any assessment materials relevant to the key issues including capacity to litigate, Section 7 and 37 reports;
 - Single, joint or inter-agency materials (e.g. health and education/Home Office and Immigration Tribunal documents).
- b) Decision making records including:-
- Records of key discussions with the family;
 - Key Local Authority minutes and records for the child;
 - Pre-existing care plans (e.g. child in need plan, looked after child plan and child protection plan);
 - Letter Before Proceedings.

Urgent Proceedings

- 35) Where the concerns are such that either rapid or immediate recourse to the courts are required, it may not be possible to prepare or collate documentation prior to an application. This should never prevent the Local Authority from bringing the case to court urgently. Where the urgency in issuing emergency proceedings has prevented prior consideration or approval by the PPP, the case should be referred into Panel on the next available Panel date following the issuing of the emergency proceedings.

Following the issuing of proceedings

- 36) Once the initial papers are received (excepting in emergency cases), Cygnet Family Law will lodge with the Family Court the papers and Care Proceedings will commence.
- 37) Under the Public Law Outline, (unless an urgent interim care order is required), the Care Proceedings will be issued by the court within one day of being lodged. A Guardian will be appointed by day 2 with the proceedings listed for a Case Management Hearing by no later than 12-18 days. If either an Emergency Protection Order or Interim Care Order are required the proceedings can be listed for hearing within hours of issue.
- 38) On receipt of the issued papers, Cygnet Family Law will inform the Social Worker and Team Manager, and any IRO or Chair of Conference, of the proceedings and name of the allocated Children's Guardian.
- 39) The Children and Families Act 2014 provides that Care Proceedings must conclude within a maximum of 26 weeks from the date the application was issued, although exceptionally if necessary courts may extend the timetable for a maximum of 8 weeks at a time.

Questions / Queries

- 40) This process will be reviewed regularly.

- 41) If there are any questions or queries regarding this process or concerns as to how it is being operated, these should be directed to your relevant manager.

6th March 2019

GLOSSARY OF TERMS

LETTER BEFORE PROCEEDINGS (LBP)

A letter sent out to parents providing them with written notification that proceedings are likely.

LETTER OF ISSUE

A letter sent out to parents informing parents that the Local Authority considers that care proceedings are necessary (or will be once a child is born).

PRE-PROCEEDINGS MEETING

A meeting that will be held between the Local Authority, parents and legal representatives. This may be after a Letter Before Proceedings has been issued or a Letter of Issue has been issued.

A meeting held following a LBP is intended to discuss Local Authority's concerns and agree plan for the child, setting out clear expectations and timescales for improvement in order for to prevent the Local Authority for issuing proceedings.

A meeting held following a Letter of Issue is intended to set out to parents the proposed plan of the Local Authority following the instigation of care proceedings.

PARENTAL RESPONSIBILITY

All the rights, duties, powers, responsibilities and authority's which by law a parent of a child has in relation to a child and his property. Mothers automatically obtain Parental Responsibility for a child on birth. Fathers of the children may obtain Parental Responsibility for a child either by marriage to the mother, being registered on the child's birth certificate, a formal agreement through the court or otherwise a court order. Other people can obtain parental responsibility by other orders, most commonly a Child Arrangements Order or Special Guardianship Order.

CARE PROCEEDINGS

Proceedings under s.31 of the Children Act 1989 where the Local Authority applies for either a Care Order or Supervision Order in respect of a child.

CARE ORDER

An order made under s.31 of the Children Act 1989 which provides that the child concerned is placed in the care of the applicant's Local Authority. This gives the Local Authority Parental Responsibility for him. An Interim Care Order can be made

at any point during proceedings, if the Court is satisfied that there are reasonable grounds for the making of a Care Order.

SUPERVISION ORDER

An order made under s.31 of the Children Act 1989 which provides that the child concerned is placed under the supervision of the applicant's Local Authority. This does not provide the Local Authority with parental responsibility for the child, but provides that the Local Authority must "advise, assistance and befriend" the child concerned.

CHILD ARRANGEMENTS ORDER

An order made under s.8 of the Children Act 1989 providing for arrangements around with whom a child will live, spend time with or otherwise have contact with.

THRESHOLD CRITERIA

The "threshold" is contained at s.31 of the Children Act 1989. It says that a Court may only make a Care Order or a Supervision Order in respect of a child if it is satisfied that the child concerned is suffering, or is likely to suffer, significant harm; and the harm, or likelihood of harm, is because either (i) the care given to the child, or likely to be given to him if the orders sought were not made, is not what it would be reasonable to expect a parent to give to him; or (ii) the child is beyond parental control.

Document Control

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