

Devon Children Services

Achieving Permanence via Public Law Outline

Pre-Proceedings Guidance Pack

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Pre-Proceedings and Public Law Outline Guidance

Introduction

This guidance is underpinned by the statutory guidance Court Orders and Pre- Proceedings April 2014 and the Public Law Outline 2014. It takes into account the Interim Report of the Family Justice Public Law working group of 3rd July 2019.

The guidance sets out the responsibilities for uploading decisions to allow for effective tracking and reporting of Pre-Proceedings work. Tracking/recording responsibility is set out in each section.

The Pre-Proceedings guidance has been made available to address issues highlighted by other agencies, in particular the courts. These being:

- Lack of clarity about issues
- Insufficient investigation
- Connected persons options not sufficiently explored
- Analysis and judgements flawed/disproportionate

This guidance along with a strengthened case progression role, stronger management oversight and quality assurance, improved resources and improved access to skills and knowledge, aims to improve performance and change these perceptions, create a culture of excellent practice and ultimately improve the lives of children.

Devon Children's Services Approach to Decision Making and Pre-Proceedings

In line with Chapter 2 of the Statutory Guidance Court Orders and Pre-Proceedings 2014 and the Interim Report of Public Law Working Group July 2019, we need to ensure:

- We work closely with families to ensure key steps are taken to help parents address problems in a timely way. Devon Children's Services should work WITH families offering them support to identify and build on family strengths to aid families to find their own solutions to safely manage risk whilst being open and transparent with families on what our concerns are and setting clear expectations (High Support & High Challenge)
- Where a child cannot remain living with their parents, where appropriate, the local authority should identify and prioritise suitable connected person's placements. Where possible, this identification should take place **before** care proceedings are issued, as it may avoid the need for proceedings, but only where it is safe to do so and is not recommended as a long term plan without any legal permanence to this arrangement.
- Where Devon Children's Services decides parenting cannot be improved within the child's timescale and that the 'threshold' for care proceedings has been met in principle, it should avoid unnecessary delay in bringing forward proceedings as quickly as possible. (Think about children subject to s20 agreements, if threshold is met and parents have not been able to make good enough changings, you should be thinking about the child's/children's long-term permanency needs.) This decision should be informed by engagement with other relevant agencies.

- Proceedings can be avoided if parents are able to demonstrate their capability to safeguard the child by working with relevant services to improve their parenting capability and demonstrating good outcomes for the child.

This list is not exhaustive and a decision to seek legal advice will be at the discretion of the relevant Locality Director.

First Step to Legal Planning Meeting – For Pre-Proceedings Only

Step 1: The Area Manager has responsibility for early decision making and as such, a request for a Legal Planning Meeting for pre proceedings can be agreed by an Area Manager during an Early Permanence Discussion.

Typically, the request for an Early Permanence Discussion arises from discussion between the Team Manager and the Social Worker but the request can also arise from a Child Protection Conference Review or a Child in Care Review.

Step 2: Early Permanence Discussion to request a Legal Planning Meeting occurs where the parenting is not seen to be improving sufficiently to protect a child from significant harm. In preparation for the discussion, the Social Worker should:

- Open and pre-populate the Permanence Planning Meeting template using drop down 'Permanence Planning with Legal' with relevant information
- Up to date Single Assessment and Chronology (unless in an emergency)
- Evidence a Family Group Conference has been considered and offered to the family

Attendance at Permanence Panel is required where a court has ordered a Section 37 Report in private law cases and a care application is being recommended. The recommendation of a care application will have already been discussed with the area manager in the same way an open child's plan would. With the endorsement of the recommendation to apply for a care order by the area manager, the s.37 report and the request for legal planning form will be sent to Permanence Panel to request a Legal Planning and capture clear decision making for the child's file.

Step 3. The 'Permanence Planning with Legal' template should be completed. The minutes must refer to:

- The impact on each child in the family
- Precipitating Incident- What has happened to prompt the legal planning request, why now?
- Outline of Initial Care Plan /Proposed Permanence

- Current Risk Management Strategy: What is in place now to make the children safe?

The information must be factual with detail – avoiding generalised statements such as parents did not engage / parents have not prioritised child over own needs. Unless it is referenced in the single assessment, also include any effort undertaken to locate absent parents.

Step 4: The Permanence Planning Meeting will consider the following:

- The seriousness of the harm
- Whether the test for interim removal has been met
- Proportionality
- The work completed to date
- Gaps in the evidence/assessment
- How the risk to the child/children is being managed by Children Services at this time
- Agree any expert assessments required

Step 5: Following the discussion the Area Manager will agree either: -

- If serious and proportionate immediate issue or other emergency action should be taken (escalated to Locality Director)
- Progress to Legal Planning Meeting and /or
- Further work, which could include for e.g. Family Group Conference, family meeting, viability assessment, any specialist assessment.

The decision for further work will need to strike a balance between providing time to work supportively with the family to address the concerns and damaging delay for the child (ongoing neglect?) with the family situation escalating to crisis when there is no alternative other than to issue care proceedings.

Step 7: The Area Manager's decision and rationale will be recorded on the meeting minutes.

Step 8: Where legal planning is agreed, Legal Planning Meeting should be booked for the next available slot. The Permanence Planning Meeting minutes will form the referral to Legal Team. All additional documents must be provided prior to the Legal Planning Meeting.

A draft of a Letter before Proceedings letter should be taken to the Legal Planning Meeting, this will give opportunity to discuss and seek advice on content to avoid any delay in the letter being signed off and sent out.

Step 9: If documentation is not provided in advance, the Legal Planning Meeting may need to be **rescheduled or cancelled** and a notification will be sent to the Area

Manager and Locality Director for further action. Please send all documentation immediately after Permanence Planning Meeting to avoid delay.

Decision Making Support

When making the decision the interim guidance key points below should be considered with reference to the threshold tool: [Continuum of Need](#)

- What are the parental difficulties? (Mental health, substance misuse, learning disabilities/capacity etc.) Is an advocate required for the parent?
- What is the harm identified? (Physical, Emotional, Sexual, Neglect)
- How do these affect the wellbeing of the child, what is the impact on the child?
- What tools have we used to assess the impact; how do we know? – consider a range of evidence-based tools available. For all children where neglect is a concern, all single assessments recommending legal planning should have used the:
 - [Neglect Graded Care Profile](#)
- Have any changes been made within the family to address the Local Authority's concerns? Is it good enough to meet the child's holistic needs?
- What support services have been offered to the family?
- How has the family engaged with support services and what has been the impact / outcome to the child, has their daily lived experience's improved?
- Has a Family Group Conference (FGC) or equivalent been held to consider the concerns, as well as the family's views and any support needs?
 - If there is a Family Plan in place, does this need amending?
 - Does it fully incorporate working in partnership with the family?
 - If not, do we need an FGC Review before the decision to initiate the Pre-Proceedings process;
- Is Devon Children's Services' position that the concerns remain high and is there a possibility that care proceedings will be issued?
- Best Practice Guidance for Local Authority Decision-Making states 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 a child is to be subject to a child protection plan;
 - When a child is subject to a child protection plan and at the second review conference 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 and the Team Manager or the Independent Reviewing Officer identifies the need for a Legal Planning Meeting
 - Children 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 or father is expecting a child with another partner.
- Children at high-risk of significant harm where it is likely the matter will proceed to court.

Urgent Legal Planning Meetings During Pre-Proceedings

The Area Manager may decide to seek an urgent Legal Planning Meeting where an emergency has arisen. If the child is already allocated to a Lawyer, then if possible, contact should be made with the Lawyer to set up the meeting.

Otherwise urgent contact should be made with the Legal Team children public law - mailbox legal.childrenpubliclaw-mailbox@devon.gov.uk who will open a file, receive available documents and set up the meeting, if necessary, by telephone.

Frequency of Legal Planning Meetings

Legal Planning Meetings will be available to book onto each week and will continue to take place at each locality and/or virtually. Legal Team will notify the Social Work Team of these arrangements at the time of the request.

Where care proceedings is live, formal Legal Planning Meetings are not required to be booked in, there should be on going communication between Social Work Team and Legal Services with any legal advice received confirmed in writing and saved on the child's file by the social worker.

Purpose of a Legal Planning Meeting

A Legal Planning Meeting must take place before a final decision is made on whether the threshold is met for care proceedings/pre proceedings in line with statutory guidance and will consider:

- Is threshold met to initiate care proceedings – is the evidence serious enough to justify this. Are there any gaps in evidence? (if there are gaps in evidence; this may mean we undertake pre-proceedings, if the risk can be managed safely for the child).
- Whether proceedings should be initiated immediately and **whether the test for interim removal is met.**
- Has there been a Family Group Conference or Family Meeting, if not, why not?

- The judgment on capacity to change and 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.
- The need for any specialist assessments, is it necessary?
- Whether the provision of support can remove the need for proceedings or put another way can the parents **provide good enough care** with support (think, how long do they need support for)?
- Alternative family care and how to support the care of children within their families and communities where this is still a viable and safe option, taking into account proportionality.
- Other complex legal issues for example international issues, Section 20 use, designated Local Authority, Deprivation of Liberty Safeguards (Dols) Child Exploitation, etc.
- The best use of resources and that accommodation is used only to safeguard children at risk of harm.
- Whether is it safe and appropriate to divert the case away from care proceedings key points being acceptance of issues and agreement by all with the benefit of advice with the alternative route proposed?
- The care plan and family time.
- Helping to promote early permanence decisions for children – setting a timetable.
- Ensuring full consideration is given to the child's voice, their ethnicity, culture and disability when planning for their permanence
- Whether there has been missed opportunities in the social workers practice eg; capacity issues for parents and failing to undertake a s47 that could impact on the evidence produced to court.

Attendance and Chair of Legal Planning Meeting

- Chair – Area Manager or Locality Director
- Case Progression Manager
- A Senior Lawyer from the Devon Children's Services Legal Team
- Social Worker
- Team Manager
- Devon Children's Services representative where applicable (Family Group Conference, Fostering, Adoption, Learning Disability Team)
- Observer by invitation only

Legal Planning Meeting Steps

Step 1: The child's plan is presented by the Social Worker and Team Manager who will take questions from the Area Manager and Lawyer.

- Step 2: The minutes of the Legal Planning Meeting Minutes will be recorded on to Eclipse during the meeting by Business Support. The written legal advice from the Lawyer will be provided within 24 hours and sent to Business Support for uploading to Eclipse.
- Step 3: The Legal Planning Meeting will conclude with a recommendation and next steps based on evidence provided, the meeting discussion and application of threshold and proportionality.
- Step 4: At the Legal Planning Meeting, where applicable the proposed timescales for sending work, e.g. Letter before Proceedings, evidence preparation, enquiries regarding experts, will be set. Guidance is available to support you instruct experts where required. See: Experts in the Family Courts: Guide and Sample Questions.
- Step 5: If threshold is not met or legal advice is not accepted, Locality Director will decide on next steps. Where no legal action is required, the Legal Team will close the case. Where Pre-Proceedings or care proceedings are agreed, the Lawyer will be allocated.
- Step 6: At the end of the Legal Planning Meeting, where Pre-Proceedings is agreed as next steps, Social Workers have opportunity to discuss letters of content of the Letter before Proceeding document in readiness for it to be shared with families **within 2 working days**.

The Case Progression Manager will be responsible for tracking and monitoring pre-proceedings and ensure child's plans are returned to Legal Planning Meetings for updates and review.

Dispute Resolution

There may be occasions when there will be professional differences either by our internal or external partners about the outcome decisions made by Legal Planning Meetings. In these circumstances, the Locality Director must receive in writing within 1 working days of Legal Planning Meeting a rationale and challenge to the decision maker. This will then be considered by the Locality Director who will respond within 2 working days of receiving it.

If the matter remains unresolved then the Head of Service (Deputy Chief Officer) will be notified and they will be required to make a final decision.

Urgent or Immediate Issue of Care Proceedings

For any children where urgent or immediate issue is requested, agreement is required from Locality Director. The decision and rationale will be recorded by Locality Director on a Manager Decision Form. The child's plan will then be presented at the next available Permanence Panel for planning and tracking purposes.

At the Legal Planning Meeting the timescales for sending the Letter of Intent to Issue Proceedings, evidence preparation, enquiries regarding experts, the care plan and a final date by which the application should be made will be set. Guidance is available to support you instruct experts where required.

Pre-Proceedings

Pre-Proceedings provides a series of expectations for professionals working with children and their families. This is the work that is completed with families when it is clear there is a real risk of public law proceedings and therefore is of critical importance.

Pre-Proceedings can provide the family further work and support to avoid or divert from proceedings. It creates an opportunity to work closely with families by further understanding and addressing their needs, to identify and provide further support, including the support of the wider family and building on strengths.

The Pre-Proceedings is not a procedural step to issuing proceedings. However, to avoid delay it is important to ensure twin tracking for care plan realistic options starts as early as possible to avoid delay.

Although care proceedings are the option of last resort, by having a robust pre proceedings stage, 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.

Each decision-making stage of this phase should be subject of regular review and oversight by the Area Manager.

Core Principles of Pre-Proceedings

- The overriding consideration is the welfare of the child
- Working in partnership with families with an aim of bringing about improvement and change and to avoid the need for care proceedings is key
- Understanding the needs and strengths of children, their parents and their wider families is essential
- This is an assessment and support phase and not a procedural step to issuing proceedings

- Families will always know where they stand with us. We will be open and honest with families about what our concerns are and set clear expectations.
- Care proceedings are an option of last resort if no other intervention protects the outcomes for children.
- Each decision-making stage of this phase should be the subject of regular review and oversight by an Area Manager
- 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
- 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
- Access to professional support, including expert legal advice, is essential for professionals and families alike.

Pre-Proceedings Process

Step 1: Within 2 days of the Legal Planning Meeting the Letter before Proceedings is sent/hand delivered.

Step 2: Within 10 days of the Legal Planning Meeting, the first Pre-Proceedings Meeting with the parents and their Lawyers should take place. Where the need has identified, ensure parents are supported by an advocate or an intermediary. It is good practice for the Pre-Proceedings Plan and Written Agreement of Expectations to be completed in draft prior to the meeting. A template for this can be found on Eclipse.

The aim of this meeting is to:

- Explain the content and the purpose of the Pre-Proceedings Plan and the Written Agreement of Expectations
- Seek the parents (or other significant adult's) views and input in the Pre-Proceedings Plan and Written Agreement of Expectations
- Finalise and agree the dates of the Pre-Proceedings Plan and Written Agreement of Expectations; including the dates of appointments

The Pre-Proceedings Meeting is attended by the Team Manager, Social Worker, Devon Children's Services Lawyer, parents and their Lawyers.

As children are not in attendance, it is crucial children of sufficient maturity have a clear understanding of this process and what is expected of them and the role of the Social Worker within this.

Step 3: The meeting will be minuted by Business Support using the Pre-Proceedings Meeting template following the set agenda.

- Step 4: A draft Pre-Proceedings Plan and Written Agreement of Expectations must be implemented at the meeting in consultation with the parents and their Lawyers. It is good practice to draft the Pre-Proceedings Plan prior to the meeting and have documents ready for signing, such as Medical Authority of an Adult and Medical Authority for a Child. Templates for these can be found on Eclipse.
- Step 5: The meeting should identify family and friends who could offer support or ultimately care for the children if parents cannot change within the child/ren's timescales.
- Step 6: The meeting should agree the template for the parenting assessment to be completed and any tools to be used in this process e.g. Pre-Birth Parenting Assessment. See [Assessment Toolkit on Resources](#)
- Step 7: The agreed Pre-Proceedings Plan and Written Agreement of Expectations from the meeting should be sent to parents and Lawyers within **3 days** of the meeting. When this has been sent, this should be recorded on the child's file.
- Step 8: The meeting should set a review date no more than 6 weeks from the date of first meeting to check progress, adjust plans and support and check whether work with the family outside proceedings continues to be safe.
- Step 9: Records of what was proposed, what has happened and what the outcomes are must be kept. These should be documented in the Pre-Proceedings Meeting and Pre-Proceedings Plan and Written Agreement of Expectations
- Step 10: A final review meeting should take place no later than 12 weeks from the first meeting (unless agreed by Permanence Panel for a purposeful extension). Before the meeting a Legal Planning Meeting should take place with the allocated Devon Children's Services Lawyer to review the evidence, acceptance of issues, capacity to change and proportionality of intervention. The allocated Devon Children's Services Lawyer should provide advice at this meeting to inform the decision whether to:
- Step down from Pre-Proceedings
 - Divert to family care/private proceedings where agreed with the family
 - Issue of care proceedings
- Where the recommendation at Legal Planning Meeting is to issue care proceedings for removal, this must be presented to Permanence Panel. Where endorsed, immediate notification must be sent to the Placements Team.
- Step 11: Where parallel planning is in place, this plan is to be maintained alongside the Pre-Proceedings Plan and Written Agreement of Expectations. It is key alternative plans are not abandoned until it is clear the alternative plan is no longer relevant.

Pre-Proceedings Documents

There are several local template documents available. These are:

- Evidential Checklist for Legal Planning Meetings
- Legal Planning Meeting Minutes
- Letter Before Proceedings (LbP)
- Family Courts sample expert instruction questions
- Medical consents (Child/Adult)

Do not automatically provide a list of Lawyers to families; they should be referred to the [Law Society find a Lawyer page](#). If they have difficulties accessing this site, they may require support to filter the list and acquire the details of a Lawyer of their choosing.

Letter Before Proceedings (LbP)

Letter before Proceedings provides an opportunity to utilise the access of the parent to independent free legal advice. This will help parents to participate more effectively in our 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 we 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 accommodation for a child is being considered, access to legal advice for the parent is essential.

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 when completing documents for or about the families.

We should be mindful about making all our correspondence, understandable, respectful and engaging. Therefore, the Letter before Proceedings should be drafted with care, recognising this will be stressful and frightening for parents to receive, who may require support to digest it and act upon it. If the letter is taken to your Legal Planning Meeting, you will have opportunity to discuss content without causing delay in parents receiving this **within 2 days** of the Legal Planning Meeting.

Consideration needs to be given by social workers whether it would be beneficial for them to deliver this letter to parents by hand and explain the content of the letter to parents/carers in order to demonstrate the support we are providing to parents. This should be particularly considered for parents with learning difficulties and or those parents who have limited understanding of the English language.

Issuing Care Proceedings

Eclipse **must be used** for the creation of the Social Work Evidence Template and Initial Care Plan.

The Legal Team will complete application form C110a from the information provided in the Social Work Statement and documents. The Legal Team will provide a separate schedule of findings document but will not include this in the application.

The Social Work Team will need to complete the following in support of the application:

- A Social Worker Evidence Statement.
- A social work Chronology which will be filed as a separate document that is located within the chronology section of Eclipse. This should be no more than 10 pages and should not include any legally privileged advice.
- Where there have been pre proceedings, Pre-Proceedings Plan and Written Agreement of Expectations, information and outcomes will be filed with the application.
- Send your SWET to the Case Progression Manager after it has been checked and signed off by your Manager for advice strengthening your statement on **Child Impact** and the **Child Daily Lived Experiences**.
- To track the completion and outcome of court cases the Legal Team Administrator will update details on the Permanence PLO tracker.

Expectations When You Have a Hearing Before the Court

The allocated Social Worker should be on time to attend court which is a minimum of **one hour** prior to the hearing time to give instructions in prehearing discussions and have diary commitments available to make sure the case can be timetabled around these. Where hearings are conducted virtually, please organise with your Lawyer what time you will meet.

Team Managers should attend to support Social Workers who are inexperienced or where complex issues are likely to come up.

Lawyers will keep Social Workers informed of who will be representing Devon Children's Services. The aim of the Legal Team is to provide consistent representation by the same Lawyer during the entire proceedings.

At court, Lawyers will keep Social Workers fully informed of discussions and take instructions on any suggested changes to care plans.

Following hearings, the Lawyer will create a case plan. All dates for evidence and hearings should be diarised by both the Social Worker and Lawyer.

Post court, the Lawyer will provide an attendance note, the Order and the updated case plan to the Social Worker.

The Lawyer and Social Worker should include a case planning meeting in the case plan at the point when parenting and kinship assessments are concluded so that legal advice is available for social work decision making.

Quality Assurance

The quality of our Pre-Proceedings and Public Law Outline process will be quality assured through the following methods:

- Senior management will have oversight of children's plans.
- Case Progression Manager will keep an overview.
- The progress of the Pre-Proceedings Plan and Written Agreement of Expectations will be regularly reviewed at the Pre-Proceedings Meeting at six weekly intervals to avoid delay.
- Case Progression Manager will liaise with the Principal Social Worker to share examples of good practice and/or where practice and multi-agency working needs to be improved.
- Team Managers will keep an overview that assessments and interventions are evidence based and robust and engage families to prevent issues escalating and reduce the likelihood of care proceedings being issued.
- Safeguarding Reviewing Officer and Independent Reviewing Officer (where applicable) will provide oversight of the child's plans in place.
- Team Manager and Area Manager will provide an overview of safeguarding measures in place and these will be reviewed when Public Law Outline and or Care Proceedings are issued. Locality Directors will be kept informed of escalation of concerns or delay.
- Case Progression Manager will provide support to develop good robust SWETs, provide reflective learning circles to review, and close the loop on learning by following up on actions and impact on practice.
- Case Progression Managers will also analyse patterns and trends in order to ensure best practice; inform commissioning intentions and trigger responses from relevant service areas and partner agencies regarding identified practice concerns;
- Thematic audits and Practice Evaluations will focus on the quality of our interventions.

Legal Team Contact Information

For urgent advice during 9am-5pm, Monday to Friday, contact the Lawyer for your area. If you are unable to reach them, please email: legal.childrenpubliclaw-mailbox@devon.gov.uk

Urgent advice and representation is available Saturday and Sundays 9am-5pm. The details of the out of hours Lawyer can be located in the calendar for email address: legal.legaloutofhours@devon.gov.uk