



BIRMINGHAM
CHILDREN'S TRUST

Pre Proceedings Guidance

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1. Introduction

This guidance has been produced to improve effective management oversight and progression of all child safeguarding cases and replaces the previous Pre Proceedings and Court Work Protocol between Trust Social Work and Legal Staff.

This new 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, new resources and enhanced access to skills and knowledge, aims to improve performance and change these perceptions.

2. Key Points from the Public Law Working Group July 2019

- Local Authority Decision Making - there has been a tilt away from positive strengths-based practice and a move towards a rigid interpretation of threshold and an assumption that if threshold is met the most draconian action is required.
- It would be helpful to ensure responsibility for escalating cases towards the courts lies with experienced local authority managers.
- The role of legal advisers should be defined with an emphasis on the need to work towards staying out of court. The legal adviser should not purely be there to identify threshold but should assist in identifying the key issues and then what work is required. The role of legal advisers should shift from an emphasis on whether threshold is met to a wider question: if threshold is met, how do we then support the family to come back from that position? The legal planning meeting should be used to address the following key questions: what support is needed? Who are the “safe” people? Where might alternative and supportive carers from within the family come from? What will the impact on the child be not just now but in the future?
- All options should be aired and at each stage all alternatives must be exhausted before the next steps towards court are taken. This type of balancing should be akin to that undertaken within a *Re B-S* analysis.
- Throughout the steps of local authority decision-making the fact that the legal threshold has been met does not mean it is necessarily right or necessary to arrange a legal planning meeting, proceed to pre-proceedings or instigate care proceedings.

3. Birmingham Children's Trust Approach to Decision Making and Pre-Proceedings (Assessment and Support Phase)

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 therefore need to ensure:

- We work closely with families to ensure key steps are taken to help parents address problems in a timely way. The Trust should offer support/help and build on family strengths when working to safely manage risk.
- 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.
- Where the Trust decides parenting cannot be improved within the child's timescale and that the 'threshold' for care proceedings has been met in principle, it should determine whether to bring proceedings as quickly as possible. 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.

4. The Process - Early Involvement of "Relationship Lawyers" through Legal Clinics

The purpose of legal clinics is to provide Social Workers / Team Managers with improved access to legal advice. The legal clinics will be held on the same day as the Legal Planning Meetings and will be attended by a Senior Lawyer.

These clinics are not designed to replace complex case discussions or Legal Planning Meetings (LPM), they are to be utilised for advice about:

- The detail of a particular matter if there is uncertainty
- Advice on private law matters
- Any concerns about the progress of a case already before the Court
- Consultation if there is a difference of opinion
- Clarification needed regarding the actions required
- Understanding a court judgement and direction

This list is not exhaustive and a decision to seek legal advice will be at the discretion of the relevant Head of Service (HoS).

5. Legal Clinic Process

- Step 1: To access the Legal Clinic, Social Workers and Team Managers should consult with their Head of Service to determine whether legal advice is needed. It is important to note, we should encourage, throughout the process of decision-making to embrace early intervention as opposed to embarking on the steps towards proceedings.
- Step 2: The Head of Service will complete a management decision form and will send to the team administrator in legal services.
- Step 3: Following the clinic the Lawyer will write a brief note to the Team Manager to set out the discussion and recommendations within 48 hours.
- Step 4: **The Team Manager will upload the 'brief note' document from the Lawyer into case notes on Eclipse under the heading 'legal' and subsection 'legal correspondents' within 24 hours.**

6. First Step to Legal Planning meeting – 'Head of Service Discussion'

- Step 1: The Head of Service has responsibility for early decision making and as such, prior to any Legal Planning Meeting a 'Head of Service Discussion' must take place between the Team Manager, Social Worker and Head of Service. A recommendation for a 'Head of Service Discussion' can also arise from a Child Protection Conference Review or a Child in Care Review.
- Step 2: 'Head of Service Discussions' occur 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 provide:
- A genogram – to include parents, sisters, brothers, maternal and paternal grandparents, aunts and uncles and parent's partners
 - An up to date chronology using the Eclipse template
 - Any completed family assessment, including evidence of attempts to engage father/s if not part of household and other family members
 - Record/ Plan of Family Group Conference or Family Meeting activity
 - Analysis of the capacity for change, with explicit reference to the Cycle of Change
- Step 3: The 'Head of Service Discussion' 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
- Impact of or need for Family Group Conference/ Family Meeting

Step 4: 'Head of Service Discussions' are also required where a court has ordered a Section 37 Report in private law cases and a care application is being proposed.

Step 5: Following the discussion the Head of Service will agree either:-

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

Step 6: 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 with the case escalating to crisis when there is no alternative other than to issue care proceedings.

Step 7: **The Head of Service will record and upload the rationale and decision on a Management Decision form within 48 hours using the manager's decision worklist on Eclipse.**

Step 8: Throughout the steps of our decision-making, the fact legal threshold has been met does not mean it is necessarily right, or proportionate to arrange a Legal Planning Meeting, proceed to pre-proceedings or instigate care proceedings.

7. Decision Making Support

To support all decision making the following Legal briefing notes and Evidence Based Tools are available on the Practice Hub Intranet section. These should be referred to throughout the analysis and decision-making process.

Legal Briefings:

- Proportionality and thresholds
- Interim removal
- Use of Section 20
- Contacting family members where parental consent not available
- Learning disability
- Family care or accommodation
- Realistic options

Evidence Based Tools:

- Barnardo's Domestic Violence Risk Table
- Cafcass Safe Contact Indicator Analysis
- Cafcass SCODA Drug Use Parental Risk Assessment
- RIP Assessing Parent's Capacity to Change
- RIP Assessment of Future Maltreatment Template and Guidance

When making the decision to convene a Legal Planning Meeting the guidance points below should be considered with reference to the '[Right Help, Right Time](#)'.

- What are the parental difficulties? (Mental health, substance misuse, learning disabilities/capacity etc)
- Is an advocate required?
- What is the harm identified? (Physical, Emotional, Sexual, Neglect)
- How do these affect the child?
- How is the wellbeing of the child impaired by the concerns?
- Has an FGC or equivalent been held to consider the concerns of the local authority, 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;
- Does the arising plan need amending?
- Does it fully incorporate working in partnership with the family?
- If not, steps consider re-convening before the decision to initiate the pre-proceedings process;
- Have any changes been made within the family to address those concerns?
- What support services have been offered to the family?
- How has the family engaged with support services and what has been the impact / outcome?

8. The Process for Arranging Legal Planning Meetings

Step 1: If the Head of Service agrees to a Legal Planning Meeting, the Case Progression Officer will liaise with the Legal Team. The Legal Team/Case Progression Officer will make the arrangements for the meeting at one of the regular weekly area Legal Planning Meeting days.

Step 2: The Management Decision Form, the [LPM Request Form](#) and the additional documents listed below will be sent to the Case Progression Officer **3 days prior to** the Legal Planning Meeting, or immediately if urgent, who will screen the documents and then forward to the Legal Team Administrator at leslpmrequest@birmingham.gov.uk

- Up to date chronology
- Genogram
- Birth certificate
- Family Assessment and any other relevant assessments

- The most recent Child Protection Plan and minutes of the last Child Protection Conference or where applicable Care Plan and Child in Care Review record
- Any relevant reports from other agencies
- Record of Head of Service discussion
- Any previous expert assessments or judgements if there were previous proceedings

- Step 4: On receipt by the Legal Team the case is opened on the Legal Team case management system and allocated to the Lawyer who will attend the Legal Planning Meeting.
- Step 5: 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 Team Manager and / or Head of Service for further action.
- Step 6: The Legal Team Administrator will liaise with the Case Progression Officer/ area Business Support Team to finalise and circulate dates and times of the Legal Planning Meeting.
- Step 7: Each Legal Planning Meeting will be allocated a 30-minute timeslot, although it is understood in more complex cases more time may be required.
- Step 8: The Team Manager and Social Worker will attend at their allocated time with a clear evidenced plan of what is required and what decision is being sought from the Legal Planning Meeting. There is a Legal Planning Meeting [checklist template](#) to help you prepare for the meeting.

9. Urgent Legal Planning Meetings

The Head of Service may decide to seek an urgent Legal Planning Meeting where an emergency has arisen. If the case 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 Administrator who will open a file, receive available documents and set up the meeting if necessary by telephone.

If care proceedings have been **issued in an emergency** without having been presented to Legal Planning Meeting, there must always be a discussion with the Legal Team. In all cases, the decision making and rationale to issue should be clearly recorded by the Team Manager on the child's record.

The allocated Social Worker and Team Manager must provide the Case Progression Officer with an update to allow for case tracking and scrutiny of the proposed care plan and assessments prior to the Court Case Management Hearing.

10. Frequency of Legal Planning Meetings

Legal Planning Meetings will take place weekly and will take place at the following offices: Lifford House (South), The Willows (East), New Aston House (North West Central) and fortnightly at Lancaster Circus for (Disability Service).

11. 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 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?
- 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?
- Consideration whether case meet the criteria for FDAC
- 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
- Whether the provision of support can remove the need for proceedings or put another way can the parents provide good enough care with support?
- 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 contact.
- 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

12. Attendance and Chair of Legal Planning Meeting

- Chair – Head of Service
- Case Progression Officer

- A Senior Lawyer from the Trust Legal Team
- Social Worker
- Team Manager
- Trust representative where applicable (FDAC, Family Group Conference, Fostering, Adoption, Learning Disability Team, Adult Social Work)
- Observer by invitation only

13. Agenda and Minutes of Legal Planning Meeting

The case is presented by the Social Worker and Team Manager who will take questions from the Head of Service and Lawyer.

The Lawyer will make a note of the discussion and provide advice on the agreed template.

The legal advice should be uploaded to the Legal Planning Meeting form within Eclipse during the Legal Planning Meeting. If this is not possible, the Trust Lawyer will provide legal advice within 48 hours of the meeting and upload the advice to the Legal Planning Meeting form within Eclipse.

Following discussion and advice from Legal Team, the Head of Service will decide whether threshold is met and make the decision to agree on:

- No legal action required
- Case deferred for further evidence
- Specialist Assessments
- Pre-proceedings (Assessment and Support Phase)
- Issue care proceedings

The Head of Service/ Case Progression Officer will complete the Legal Planning Meeting event on Eclipse which will commence the legal tracking process.

If threshold is not met the Legal Team will close the case.

Where the decision is to work with the family through the Pre-proceedings (Assessment and Support Phase) the timetable will be set at the meeting.

Where the decision is made to initiate Pre-proceedings (Assessment and Support Phase) or to issue care proceedings, the case will be allocated to a Lawyer in the Legal Team and the Team Manager and Social Worker will be informed of the allocation.

The Case Progression Officer will be responsible for tracking and monitoring cases and ensure cases return to Legal Planning Meetings for updates and review.

For the avoidance of doubt, there will no longer be a Court Resource Panel and all decisions will be made at the Legal Planning Meeting.

14. 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 Chair must receive in writing within 2 working days of Legal Planning Meeting a rationale and challenge to the decision maker. This will then be considered by the Chair who will respond within 2 working days of receiving. If the matter remains unresolved then the Area Assistant Director will be notified, and they will be required to make a final decision.

15. Immediate Issue of Care Proceedings

The Head of Service will set timescales for sending the letter of Intent to issue proceedings, evidence preparation, enquiries regarding experts, liaison with the relevant team regarding case transfer as necessary, the care plan and a final date by which the application should be made.

16. Pre-proceedings (Assessment and Support Phase)

The fundamental purpose of the pre-proceedings process is not purely one of assessment, but also to create another opportunity to work closely with families by addressing their recognised needs, to identify and provide support, including the support of the wider family, attempting to negate the need to issue proceedings.

Where pre-proceedings have been agreed, unnecessary delay is to be avoided. Work should be conducted to the same standards of fairness, transparent and respect as if it were being conducted subject to scrutiny of the court process.

The Pre-proceedings (Assessment and Support Phase) is not a procedural step to issuing proceedings.

Although care proceedings are the option of last resort, by having a robust Assessment and Support Phase, 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 Head of Service.

17. Core Principles of Pre-proceedings (Assessment and Support Phase)

- 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
- 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 a senior manager (or person nominated by the senior 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

18. Pre-proceedings (Assessment and Support Phase) Process

Step 1:

(3 days) The social worker will hand deliver the letter before proceedings. This provides an opportunity for parents to access independent free legal advice, which will help parents to participate more effectively in our planning processes. Specifically, it can help them to understand their rights and options. When constructing the letter think about the language being used. The letter before proceedings should be drafted with care, recognising that this will be stressful and frightening for parents to receive, and they will require support to digest it and act upon it.

****Do not provide a list of Lawyers to families; they should always be referred to the [Law Society find a Lawyer page](#).***

Step 2: Within 10 days of the Legal Planning Meeting, the first meeting with family and their Lawyers should take place. Where the need has identified, ensure parents are supported by an advocate or an intermediary. The aim of this meeting is to:

- Explain the content and the purpose of the assessment plan;
- Seek the parents (or other significant adult's) views and input in the assessment plan;
- Finalise and agree the dates of the Assessment, Intervention and Support Plan including the dates of appointments.

- Step 3: The meeting is attended by the Team Manager, Social Worker, Trust Lawyer, parents and their Lawyers.
- Step 4: 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. It is equally important that they have a clear understanding of what to expect from you.
- Step 5: The meeting will be minuted by the Team Manager using the Eclipse form following the set agenda.
- Step 6: A draft Assessment and Support Phase Plan [PP11 - ASP Plan](#) must be implemented at the meeting in consultation with the parents and their Lawyers. It is good practice to draft an assessment plan prior to the meeting.
- Step 7: The meeting should identify family and friends who could offer support or ultimately care for the children if parents cannot change within the children's timescales. Please refer to legal briefing: Contacting family members where parental consent not available
- Step 8: The agreed plan 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 9: 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 10: Records of what was proposed, what has happened and what the outcomes are must be kept. A template document is available within Eclipse.
- Step 11: A final review meeting should take place no later than 12 weeks from the first meeting. If there has been sufficient positive change during pre-proceedings and step down is indicated, the review meeting should proceed on that basis unless there is advice to the contrary.

If there has not been sufficient positive change during pre-proceedings and public law proceedings are contemplated, before the review meeting, a legal planning meeting should be convened. The legal planning meeting will be attended by the allocated social worker, team manager and allocated solicitor if possible. The legal planning meeting will be chaired by the Head of Service.

A senior lawyer will review the papers in advance and provide advice at the meeting as to the acceptance of issues, capacity to change and proportionality of intervention. The legal advice provided at this meeting will inform the decision, made by the Head of Service, whether to:

- Step down from pre-proceedings (Eclipse: Do not proceed)
- Divert to family care/private proceedings where agreed with the family (Eclipse: Agreement)
- Issue of care proceedings (Eclipse: Proceed to application)

- Step 12: Where the decision is made to issue care proceedings, immediate notification must be sent to the Placements Team.
- Step 13: **For all decisions made, the Team Manager will update Eclipse with the outcomes of all pre proceedings meetings.**
- Step 14: Where parallel planning is in place, this plan is to be maintained alongside the Assessment, Intervention and Support Plan. It is key alternative plans are not abandoned until it is clear the alternative plan is no longer relevant.

19. Pre Proceedings (Assessment and Support Phase) Documents

There are a number of local template documents available on Eclipse. These are:

- Immediate issue letter
- PP6 (BCT) ASP Letter Before Proceedings
- PP1 ASP Consent Form for Disclosure From Agencies
- PP2 ASP (BCT) Letter to Agencies Template
- PP7 (BCT) Letter to Extended Family
- PP9 (BCT) ASP Pre-Proceedings Letter of Instruction
- PP10 (BCT) ASP Agenda Minutes
- PP11 (BCT) ASP Assessment Intervention Plan Record

20. Issuing Care Proceedings

This guidance does not set out full advice on the issue of care proceedings, this level of detail can be accessed under the Children Act guidance Volume 1 and changes coming in through the further Public Law Review changes 2020.

Eclipse **must be used** for the creation of the Social Work Evidence Template and locally saved documents should **not be** used.

The Legal Team will complete application form C110a from the information provided in the Social Work Statement and documents. The Legal Team will also 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. This should be no more than 25 pages.
- 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.
- A care plan using the worklist and form in Eclipse. This should be no more than 10 pages.

- Where there have been pre proceedings (Assessment and Support Phase) the Assessment and Intervention Plans, information and outcomes will be filed with the application.

Once the application has been made, the Legal Team Administrator will enter details on Eclipse under case note/case note type/ legal documents/sub-type/legal application. This will track when care proceedings are issued.

To track the completion and outcome of cases the Legal Team Administrator will update details on Eclipse Classification of Legal status.

21. Expectations When a Case is Before the Court

The allocated Social Worker should be on time to attend court and give instructions in pre hearing discussions and have diary commitments available to make sure the case can be timetabled around these.

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 the Trust. 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. The Lawyer should send calendar invitations for hearing dates.

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.

22. Quality Assurance

The quality of our pre-proceedings and Legal Planning Meeting process will be quality assured through the following methods:

- Senior management will have oversight of cases;
- Case Progression Officer will keep an overview;

- The progress of the Assessment, Intervention and Support Plan will be regularly reviewed at the Legal Planning Meeting at six weekly intervals to avoid delay;
- Case Progression Officer will liaise with the Practice Hub 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;
- Principal Officer and Independent Reviewing Officer (where applicable) will provide oversight of the child's plans in place.
- Team Manager and Head of Service will provide an overview of safeguarding measures in place and these will be reviewed when PLO and or Care Proceedings are issued;
- Case Progression Officer and Head of Service will 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.

23. Legal Team Contact Information

For urgent advice during 9am-5pm, Monday to Friday, contact the duty Lawyer on:

0121 464 3096

For urgent advice and representation out of office hours, contact the Legal Team on:

07833 059425

For general non-urgent advice, you must get approval from your Head of Service before contacting us.

If your Head of Service has approved your enquiry, contact the Legal Team via email at: bct.legal.advice@birminghamchildrenstrust.co.uk

To arrange a Legal Planning Meeting as part of the pre-proceedings process request should be sent to: leslpmrequests@birmingham.gov.uk