

# **Partnership by Law?**

## **The pre-proceedings process for families on the edge of care proceedings**

**(Report of ESRC RES-062-2226)**

**by**

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**with**

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## LIST OF ACRONYMS

CAFCASS	Children and Family Court Advisory and Support Service
CC	County Court/ Care centre
CMC	Case Management Conference
CPS	Care Profiling Study
CO	Care Order
DCSF	Department for Children, Schools and Families
DfE	Department for Education
DfES	Department for Education and Skills
EPO	Emergency protection Order
FGC	Family Group Conference
FH	Final Hearing
FPC	Family Proceedings Court
ICO	Interim Care Order
IRH	Issues Resolution Hearing
IRO	Independent Reviewing Officer
ISO	Interim Supervision Order
LA	Local Authority
LAS	Local Authority solicitor
LbP	Letter before Proceedings
Loi	Letter of intent
LPM	Legal planning meeting
LSC	Legal Services Commission
MoJ	Ministry of Justice
PLO	Public Law Outline
PO	Placement Order
PPM	Pre Proceedings Meeting
PPP	Pre-proceedings process
PR	Parental responsibility
RO	Residence Order
SG	Special Guardian
SGO	Special Guardianship Order
SO	Supervision Order
SW	Social worker
TM/SWTM	Social Work Team Manager

## **Chapter 1 Introduction**

### **1.1 The pre-proceedings process**

The 'pre-proceedings process' for care proceedings is a formal process of notification and discussion which local authorities are expected to use before bringing child protection cases to court, so long as this does not put children at risk. The process starts with a decision by the local authority, with legal advice, that a child's circumstances are such as to justify court proceedings. Parents are notified of this decision and details of the local authority's concerns in a 'letter before proceedings.' The letter qualifies the parents for free legal advice so that they can be accompanied by a lawyer at a 'pre-proceedings meeting.' Discussions at these meetings are intended to result in a plan so care proceedings can be avoided or any area of dispute narrowed. The process was introduced in April 2008 in statutory guidance to local authorities, alongside reforms to the court process for care proceedings.

Work under the pre-proceedings process does not encompass the whole of the social work involvement with families on the edge of care proceedings. Rather, use of the process is a new phase of social work involvement, which may or may not differ markedly from what has gone before. All work before proceedings are issued could be considered as pre-proceedings work. The new phase is marked by sending the 'pre-proceedings letter' to the parents, notifying them of the concerns, advising them to seek legal advice and inviting them to 'a pre-proceedings meeting'. This report focuses on the use of the pre-proceedings process, its impact on the professionals and families involved, and on the outcome of the cases where it was used. It does not examine social work interactions with families outside proceedings more broadly but takes this as the context for the use of the pre-proceedings process.

### **1.2 The aims of the study**

The objective of this study was to gain in-depth understanding of the working of the pre-proceedings process for care proceedings and its impact, within a framework of parental participation in local authority child protection work and due process in decisions relating to legal rights. Guidance (DCSF 2008) outlined what local authorities were expected to do but there was no evidence about how to use the process successfully, or what could realistically be achieved. The process had been introduced as part of a programme to reduce delay in care proceedings so its impact on the time taken to make decisions for children was clearly a matter of concern. There was also an expectation that the process could result in a reduction in the number of child protection cases reaching the courts (DCSF 2008 para 3.3; MoJ and DCSF 2009, 3; Masson 2010a; Broadhurst and Holt 2010). The process had been developed without reference to either empirical work or relevant theory so there was little for those operating it to draw on. This study aimed to fill this gap by providing research evidence about the operation and impact of the process. The process had the potential for impact on social workers and local authorities by structuring and formalizing work with parents; on parents through providing legal advice and support which might change the way they engaged with child protection services; and on case outcomes either

by diverting cases from court or because courts dealt with cases where the process had been used differently from others which had gone directly into proceedings.

This research aimed to contribute to the literatures on engaging families in child protection social work, on the interrelationship between law and social work and procedural justice. The intention was to provide a basis for developing practice in work with families on the edge of care proceedings. Specifically it sought to answer the following research questions:

1. What is the relationship between the use and timing of pre-proceedings process and applications for care proceedings?
2. What are the characteristics of cases and interactions which result in (or are diverted from) care proceedings?
3. How do local authorities arrange 'pre-proceedings meetings', and do these arrangements provide parents with an opportunity to engage in constructive negotiation about their child's protection?
4. How do social workers, social work managers and local authority lawyers define and manage their respective roles in 'pre-proceedings meetings'?
5. How do solicitors and others acting for parents perceive and perform their role in 'pre-proceedings meetings'?
6. Do parents feel that the 'pre-proceedings meeting' enables them to influence decisions about their children's care?
7. To what extent are meetings successful in identifying and achieving alternatives to care proceedings or proceedings which are uncontested?

In order to answer these questions the researchers designed a mixed methods study, examining local authority files on cases, observing pre-proceedings meetings and interviewing professionals and parents with experience of the process. Further details of the method are set out in Chapter 2. An application for funding was made to the Economic and Social Research Council in March 2009; the decision to support the research was given in November 2009. The project started in April 2010 and was completed at the end of June 2012.

Although the original proposal for a pre-proceedings system had suggested an initial pilot scheme with an evaluation of its impact (DfES et al. 2006, para 5.12), this had not occurred. The changes to care proceedings, including the pre-proceedings process, had been introduced in 10 initiative areas in the autumn of 2007 but the whole scheme was implemented without any evaluation. An early evaluation of the reforms to court proceedings was commissioned by the Ministry of Justice. Its report, published in July 2009 concluded:

Finally, our study revealed a range of serious concerns regarding the pre-proceedings process. These included (but were not limited to) the efficacy of the process in preventing cases coming to court; duration of the pre-proceedings process and potential delays in issuing proceedings as a result; access to and take-up of effective legal advice for both

parents and children; and the welfare, voice and human rights of the child during the pre-proceedings process. We urgently recommend an evaluation of the pre-proceedings process that includes greater access to and input from local authorities. (Jessiman et al. 2009, 35).

All these issues were examined in this study, which explored the operation and impact of the process in six different local authorities and how the cases were processed in their local courts.

### 1.3 Origin of the process

The Lord Chancellor's Department, *Scoping Study on Delay* (LCD 2002) first alluded to the value of 'pre-action protocols' in family proceedings, giving the example of the protocol in private law proceedings. This idea was not new; reforms in civil justice intended to reduce both costs and delay, promoted in England and Wales by Lord Woolf, had resulted in the introduction of pre-action protocols for civil litigation (Woolf 1996; Zuckerman and Cranston 1995; Parkes 2009). No action was taken to develop a pre-action protocol for care proceedings but the judges who reviewed the *Judicial Protocol* (President of the Family Division 2003) introduced following the Scoping Study, indicated that they would submit detailed proposals to the recently-established Care Proceedings System Review, for the expansion of the Protocol to include, amongst other things:

**A Pre-Proceedings Protocol....**to enhance existing guidance issued to local authorities under section 7 of the Local Authority Social Services Act 1970 by a detailed protocol or Practice Direction which describes best practice prior to an application being made with the intention of a) avoiding proceedings in appropriate cases where issues can be resolved in an ADR [Alternative Dispute Resolution] environment and b) concurrently with (a) preparing for proceedings by identifying key issues, goals and their components, to minimise delay and costs. (Judicial Review Team 2005)

The focus of this initial proposal was on reducing the numbers of cases reaching the court and improving the quality of applications so that cases were easier for the courts to handle. Change was to be achieved by statutory guidance imposing new requirements on local authorities. There were three underlying assumptions: 1) local authorities brought cases unnecessarily; 2) cases could be resolved by a form of alternative dispute resolution; 3) local authorities failed to prepare cases adequately. These were all questionable assumptions from a local authority perspective; none was supported by evidence.

There was little evidence of inappropriate applications; studies indicated that the vast majority of applications resulted in orders with changes of placement for the children concerned (Hunt et al. 1999; Brophy et al. 2006; Masson et al. 2007, 2008). Although only a minority of cases was contested at final hearing, parents were rarely willing to accept early in the proceedings that children needed other carers, and placements with relatives were not always less contentious than foster placements (Masson et al. 2008). There was negligible experience of alternative dispute resolution in child protection in England and Wales (King et al. 1998; Brophy 2006). This

approach was used in some cases elsewhere, notably in parts of the USA, Canada and Australia, usually within proceedings (Thoennes 2009; Edwards 2009; Wood 2008). There were many complexities in establishing and sustaining these services (Barsky and Trocmé, 1998; Stack 2003), and only limited evidence of their effectiveness (Thoennes 2009). As far as case preparation is concerned there was (and is) a culture of using the court process to explore solutions to the problems of parenting through 'investigation, assessment and management of change' (Hunt 1998) rather than determining matters by assessing the application, in the light of the evidence presented and the parents' response. This culture supported a process through which evidence was gathered during, rather than before, the proceedings. Not only did this undermine any notion that cases should be fully prepared at application, it made it impossible to do so. Ensuring that cases were properly prepared was as much about the court being prepared to make decisions on the basis of evaluating the case presented by the local authority, as about the local authority doing more work before applying to court.

The idea of a pre-proceedings protocol was revised and developed in the *Care Proceedings System Review* (DfES et al. 2006). The Review was established in July 2005 to examine ways to improve the system for children and families, and to ensure that 'resources were used in the most timely and effective way' (DfES et al. 2006, 1.1). Its main focus was the increasing cost of care proceedings (DfES et al. 2006; DCA and DfES 2006; Masson 2007); its terms of reference included: 'Identify(ing) good/innovative practice which enables children to be diverted away from court proceedings and, instead to be supported in their families where this is possible.' Amongst the options for consideration was, 'investigating the possibility of early low-level judicial intervention to encourage parents to resolve problems themselves, thus avoiding the need for full court proceedings...' (DCA 2005)

The Review made a series of recommendations relating to pre-proceedings work, which aimed to:

Ensure that families and children understand the proceedings and are, wherever possible, able to engage with them;

Ensure that s.31 applications are only made after all safe and appropriate alternatives to court proceedings have been explored;

Improve the consistency and quality of s.31 applications to court... (para 5.3)

These recommendations were expanded and re-iterated at various points. The Review proposed a system to inform parents of the local authority's concerns and intentions, and to give them access to publicly funded legal advice before proceedings were issued. This would be set out in statutory guidance to Local Authorities and enforced, for cases that went to court, by requiring the relevant documents to be filed with the court:

What is agreed at this [legal planning] meeting should be recorded in a short document, which sets out in simple language the aims of the case, including the permanent care

options, and the key issues that form the basis of the local authority's case. This document should form part of the local authority's application to court (and be included in the pre-proceedings best practice / guidance described above) and should be used to communicate the issues to the family (including to older children) prior to court proceedings. This will enable the family to be fully aware of the local authority's concerns and of what the potential outcomes of the planned care proceedings might be. This information can then be used by the parents as the basis on which to seek early legal advice. This document should subsequently form part of the local authority application to court and should be revised and re-circulated in light of the key issues identified at the first court hearing. (DfES et al. 2006, para 5.17)

The Review recommended that this system should be the subject of an immediate pilot. This

'could evaluate ....the impact of early legal advice on families' experience of and engagement with the system; the extent to which early legal advice can ensure that cases only reach the point of proceedings when all safe and appropriate alternatives... have been explored; and the impact of early advice on the quality of cases that go to court.' (para 5.12)

The Review acknowledged the relevance of child protection plans and the value of strong inter-agency working; stakeholders stressed the importance of a direct connection between the requirements of the child protection system and the system for care proceedings (DCA et al. 2006). Nevertheless, the interface between child protection planning and the pre-proceedings process was largely ignored. The Review proposed a new process, potentially adding complexity and cost, rather than acknowledging the work local authorities already did, and seeking to integrate the two systems in the pre-proceedings process.

The Review rested its approach to pre-proceedings on the power of information and legal advice to change parents' attitudes and behavior, not on the use of alternative dispute resolution before proceedings had been issued, as the judges had proposed. In doing so, it appears to have relied on research evidence (citing Brophy 2006) that advice during proceedings could 'galvanize a parent's involvement [and]...engage most mothers and many fathers in addressing social work concerns' (DCA et al. 2006, 27). It failed to note that once proceedings had been issued few parents succeeded in making sufficient changes to retain care of their children. However, this may not have been so crucial to its overall scheme, which gave more attention to improving the quality of local authority applications to court and ensuring that local authorities did not avoid the pre-proceedings process by making emergency applications (para 5.20) than to the prospect of diversion. The simple document prepared for parents would be used in proceedings to make clear the basis of the local authority application and its care plan (para 5.23).

Following Review, Bruce Clark from the Department for Children Schools and Families led work to draft the proposed statutory guidance to local authorities, drawing on experience of selected practitioners from social work and law, the views of the Legal Services Commission and other contributions. In parallel with this, the judges from the Judicial Review Team prepared a

streamlined and simplified case management system for care proceedings, which is referred to as the Public Law Outline (PLO) (Judiciary 2008). This introduced a 40 week target for the duration of care proceedings. The new approach to care proceedings (Masson 2010a) was introduced as a pilot scheme in 10 initiative areas in the autumn of 2007 and implemented nationally in April 2008, without further consideration of its effects.

#### **1.4 The introduction of the pre-proceedings process for care proceedings**

The pre-proceedings process for care proceedings was introduced in April 2008 alongside the Public Law Outline, which is a guide for judicial case management of care proceedings. The process is set out in the second edition of Volume I of the Children Act 1989 Guidance (DCSF 2008) and in the equivalent document for Wales (WAG 2008). This Guidance was issued under the Local Authority Social Services Act 1970, s.7; local authorities are expected to comply with it 'unless local circumstances indicate exceptional reasons which justify a variation' (DCSF, 2008: i).

A Foreword to the Guidance by the Welsh Deputy Minister for Social Services neatly captured its role. The Guidance complemented the PLO and supported 'the streamlining of process in preparation for...court proceedings' with the aim of achieving 'more rigour, consistency and accountability' by local authorities and the courts. The minister summed up the purpose of the pre-proceedings process as 'better communication' enabling local authorities 'to foster a social contract with families to gain their commitment to overcome some of their difficulties.' She emphasised the importance of 'earlier engagement' to help parents understand the process, their responsibilities and the available options; and underlined the 'imperative' of ensuring that 'exhaustive steps have been taken to explore alternatives before' care proceedings are started.

#### **The pre-proceedings process**

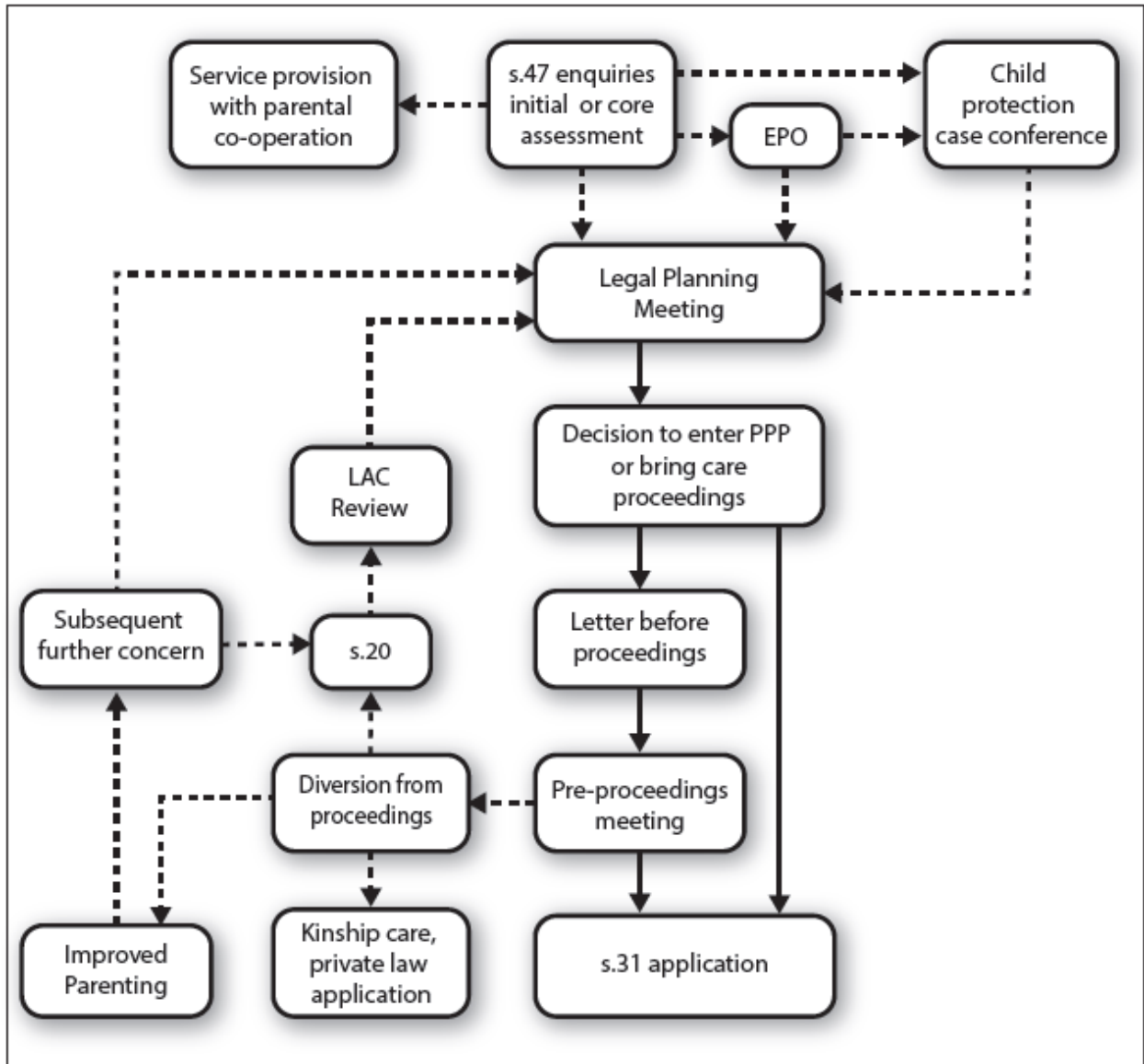
There are three main elements to the process. First, the local authority must obtain legal advice that the threshold for care proceedings is satisfied (para 3.25). Secondly, unless immediate or court action is required (para 3.30) the local authority should inform the parents, in writing, of its concerns by sending them a 'letter before proceedings' (LbP) inviting them to a meeting (para 3.29). A template for the pre-proceedings letter is provided in Annex 1 to the Guidance. The letter entitles the parents to free (non-means tested) legal advice and assistance (Family help level 2) (LSC 2007). The fee to the solicitor for this work was set at £347. Thirdly, the parents (and their legal adviser) attend a 'pre-proceedings meeting' where local authority staff discuss with the parents the plan to safeguard the child and the action they will take if this is not effective (para 3.31).

The Guidance requires local authorities to consider other matters before applying for care proceedings. They should complete a core assessment (para 3.16) working with other agencies, particularly health and education, to obtain a clear picture of the child's needs (para 3.23). Through the use of family group conferences or other means, they should explore suitable family placements for the child (3.24). Also they should consult others, including children who are of sufficient age and understanding, so that they can be involved in any plans. This obligation to consult is founded on the duty in the Children Act 1989,



s.22(4)(5) to give due consideration to the wishes and feelings of those involved, and ultimately on the right to respect for family life (ECHR, art. 8).

**Chart 1.1: A simplified model of the pre-proceedings process**



*A critique of the Guidance*

There are a number of omissions from the Guidance, reflecting the difficulty of drafting new processes without current experience of practice. First, the process appears to be free-standing, linked only to the

possible use of care proceedings. There is no recognition that cases may continue to be subject to one of two other important local authority processes – child protection planning and reviews for looked after children (LAC reviews). Almost 60% of children are subject to child protection plans when care proceedings are issued (Masson et al. 2008), so this is likely to be the case for these children on the edge of care. This raises the question of the potential effect of letters and meetings for parents who have already received copies of protection plans and attended conferences, review conferences and core group meetings. It also raises questions about how the processes work together. Should lack of progress in compliance with the child protection plan be seen as a trigger for the pre-proceedings process? And if so, at what point? Also, how can the pre-proceedings meeting be used when the content of the child protection plan is a matter for the child protection conference (HM Government 2006)? What should be the role of the pre-proceedings meeting in such circumstances? Should child protection Chairs also attend these meetings?

Secondly, the impression is of an event, centred on the letter, rather a process over time which provides new opportunities to build or rebuild a positive working relationship with parents for the benefit of their children. The follow up to the meeting is a confirmatory letter but there is no suggestion of a further review. Overall, the process appears linear, leading (or not) to care proceedings rather than a system through which the relationship between the parents and the local authority is formalised (and possibly renewed) for families at the edge of care. This impression is reinforced by the flowchart included in the PLO which places all diverted cases in a single box ‘intervention continues’ with cases where the threshold for proceedings was not met. However, Frequently Asked Questions (FAQs), issued to support implementation of the PLO, stated ‘The plan should be reviewed regularly and the safety of the child should be a paramount consideration in this. Local authorities will need to introduce their own procedures and systems for monitoring whether progress is being made with the family’ (MoJ 2008).

Thirdly, the Guidance contains very little about the format of, or arrangements for, the meeting. For example, there is no mention that it should be chaired or that a record should be kept, only an indication in the PLO application checklist that the local authority must file ‘records of discussion with the family’. The Guidance clearly regards as important that there should be discussions and refers to providing parents with a revised plan ‘in writing’ at the meeting. However, it underplays the meeting by stating merely that the local authority should ‘liaise’ with the parents ‘with a view to considering what steps, if any, can be taken to avoid proceedings.’ Nothing is said about *how* the meeting might become a means of achieving change or agreement.

#### *Further Guidance*

In August 2009, the Ministry of Justice issued further (non statutory) guidance, a ‘best practice guide’, *Preparing for care and supervision proceedings* (MoJ and DCSF 2009). It was based on feedback seminars held by the Department in July 2008 with practitioners from the areas where the PLO had been piloted in autumn 2007. The Best Practice Guide used the term ‘pre-proceedings stages’; it acknowledged that the start of pre-proceedings was not well defined – everything the local authority did before it issued

the application was pre-proceedings – but it made clear that its use of the phrase was precise. Pre-proceedings commenced with a decision at a legal planning meeting to send a letter before proceedings.

The Best Practice Guide sought to clarify the difference between the ‘letter before proceedings’, which indicated that there was a ‘window of opportunity’ to avoid care proceedings, and a letter informing parents that proceedings would be started. This second type of letter, termed an ‘immediate issue letter’ in the Guide template and referred to in this report as a ‘letter of intent’, did not include an invitation to a meeting. According to the Guide, this letter did not qualify parents for level 2 funding but they might be able to obtain the lower, means-tested, level 1 service before proceedings were issued (para 2.3). This contradicts the Legal Services Commission Fee Scheme which states, ‘Level 2 is available...where the local authority has given written notice of potential s.31 care proceedings’ (LSC 2007, para 20.11). The Guide also advised that local authorities should arrange for their legal department to ‘check the contents’ of the LbP **‘to ensure that it includes all the information relevant to the grounds for the proceedings’** [bold in original]. More guidance was given about the language and contents of the LbP emphasising the need to use simple English, its legal status as a trigger for legal aid and its inclusion with the court application. Local authorities were directed to use the published version as a template and to translate it into language suitable for parents to understand. The letter should contain ‘no surprises’ (2.4.3); suggestions were made for the format of the proposed plan, which should ‘ideally’ be sent with the LbP (2.4.4). It was also recommended that the letter should be delivered by the social worker personally if it is safe to do so, or by recorded delivery.

The Guide recognised the centrality of the meeting to the pre-proceedings process. It included two pages of guidance about the meeting, and three further pages on children’s participation, the role of lawyers and reviewing cases. Meetings should take a conciliatory approach and aim to reach agreement:

‘[The pre-proceedings meeting (PPM)] is a social work led meeting and not a court or tribunal where a judge or arbiter listens to evidence, argument and makes decisions. Neither is the PPM a forum for disputed facts to be determined, such as in a fact finding hearing. If there are disputed facts or issues, the participants can through negotiation agree facts or narrow issues down voluntarily. The PPM will not however, decide on anything which fundamentally remains contested or disputed. No participant should feel pressured to agree to anything that he or she does not want to.’ (para 2.5.2)

It acknowledged the importance of the venue; this could ‘make or break’ the meeting by encouraging (or not) attendance and engagement. It suggested that there should be an agenda and listed, in an appendix, possible matters for inclusion. It stated that it was ‘good practice’ to take minutes of the meeting and suggested that local authorities should adopt the approach applied in child protection conferences of circulating the minutes to attendees, including parents, for correction before the local authority produces a final version (para 2.5.2). Although the Guide stated that the ‘purpose of the meeting was to agree the plan and track and monitor its progress’ (2.5.5), it included no suggestions as to how this should be done. It appeared not to consider that

the majority of children within the pre-proceedings process might already be subject to monitoring through child protection plans.

The Guide also reviewed attendance and participation in the meeting. It noted that 'some local authorities have not found it helpful for the social worker or manager to chair the meeting' and suggested a more senior manager or 'contracted person akin to an Independent Reviewing Officer', with no prior involvement with the family, should take this role. Such a person could improve the chances that the meeting would be productive through increasing the family's trust by being seen as distanced from the social worker and more impartial. Where the parents were legally represented, a local authority lawyer should also attend (2.5.3). 'Appropriate legal advice was vital' for both the parents and the local authority (para 2.5.8). The training for solicitors in private practice was more directive: 'The solicitor...should encourage the parent to engage or re-engage with the local authority with a view to avoiding proceedings altogether, or to narrow and resolve issues with the local authority before proceedings' (TACT 2007).

The Guide gave particular attention to the position of parents with learning disabilities or mental health problems. Local authorities were encouraged to make use of their own adult services to assess the capacity of parents to participate in the pre-proceedings meeting, and to make arrangements for parents to have an advocate. However, it noted that the local authority would ultimately have to issue proceedings if parents lacked capacity to instruct a solicitor at the pre-proceedings stage (2.5.4).

The child's participation was a difficult matter for the Guide; it accepted the importance of consulting children and ensuring that the meeting understood their wishes but had to reflect the parents' rights to decide whether or not their child should attend and to control confidential information about their health and relationships. The result was advice that was legalistic and impractical; children 'should be given the chance to make written representations to the PPM' and 'informed of the local authority complaints procedure' if their parents vetoed their attendance (para 2.5.6).

The Guide included a heading 'Timing' (2.5.1), but made no suggestions about the notice period for the meeting, how long the pre-proceedings process should be allowed to run, or time periods for review, leaving these difficult issues to the judgment of social workers and managers. Rather, it stressed that applications to court should not be delayed when children needed protection. It also recommended using the PPM to agree joint instruction of the expert so that specialist assessments, required for the proceedings, could be commissioned during the pre-proceedings process (2.7.3).

Overall, the approach of the Guide to the pre-proceedings stage is more process-driven and legalistic than the statutory guidance. It acknowledges that there may still be time to work with the family to avoid going to court (2.4), but the overall picture is one of preparing for proceedings (as in the title of the document) by notifying parents what is expected, monitoring their compliance, narrowing the areas of potential conflict and commissioning additional assessments

to support the application. Although the Guide filled many of the gaps in the Guidance, particularly in relation to the meeting, it remained limited by the original conception of pre-proceedings work. It appears that the main expectation was better-prepared applications to court.

### 1.5 Monitoring the pre-proceedings process

The only national data on the use of the pre-proceedings process is collected by the Legal Services Commission (LSC). The LSC records the bills it pays for this work by reference to the district where the assisted person lives, not the local authority which has initiated the pre-proceedings process. The number of bills is not the same as the number of meetings; if both parents were legally represented at a meeting there would be two bills, and if neither obtained legal advice there would be no bill. The numbers reflect pre-proceedings letters which result in parents obtaining legal advice, not whether obtaining legal advice proved positive for the parents or for the case. The LSC does collect limited information about the outcome of advice but this is not published.

**Table 1.1: Legal Services Commission Bills for pre-proceedings legal advice**

	2009-10	2010-11	2011-12
<b>N Bills England</b>	6282	6349	5842
<b>Rate per 10,000 &lt; 16 years</b>	0.65	0.65	0.60
<b>Rate per care case</b>	0.704	0.661	0.572
<b>N Bills Wales</b>	786	618	679
<b>Rate per 10,000 &lt;16 years</b>	1.42	1.12	1.23
<b>Rate per care case</b>	1.16	0.971	1.0

Table 1.1 gives the figures for the number of pre-proceedings bills in England and Wales for three years from 2009-10. This indicates almost no change in the number of bills in England between 2009-10 and 2010-11 but an 8 per cent drop to 2011-12. In Wales, there was a decline between the first and second year of 22 per cent followed by an increase of ten per cent in the last year. The number of pre-proceedings meetings arranged by any local authority is likely to relate to its size of population and the use it makes of care proceedings. Table 1.1 also includes figures for the rate of use of pre-proceedings calculated by reference to the child population and the numbers for care proceedings (using Cafcass/ Cafcass Cymru statistics). However, this way of calculating rates for the use of pre-proceedings is misleading. It takes no account of the number of parents who could obtain level 2 advice, or whether parents seek advice separately. It also suggests that

the numbers of bills and proceedings are directly related, even though one aim of the pre-proceedings process is to avoid proceedings.

As part of its programme to reduce delay in care proceedings, the government required local areas to establish performance improvement groups to work across agencies to tackle delay. It set Key Performance Indicators (KPIs) for the various agencies, reflecting their responsibilities and the information available to them. The Legal Services Commission was set a target, based on the proportion of care cases where pre-proceedings legal advice had been provided. This reflected the view that pre-proceedings advice contributed to faster court proceedings (MoJ 2010) but took no account of the LSC's powerlessness in impacting on the figures. It had no influence on the numbers of letters before proceeding sent, parents' decisions to seek legal advice, nor on the number of care applications made by local authorities. The only issues it had any influence on were the numbers and locations of lawyers with contracts to provide level 2 advice, and the level of fee it paid for this work. The target was set at 15 per cent (0.15) with the aim of increasing the proportion of cases where parents had received pre-proceedings legal advice to 25% within four years (MoJ et al. 2010; MoJ 2010a). This figure is low considering that the use of the pre-proceedings system was supposedly required in all non emergency, non immediate cases, which comprise approximately 60% of care proceedings (Masson et al. 2008). It suggests there was little confidence that local authorities were using the pre-proceedings process or that parents would access lawyers, or that there was a commitment to ensuring that the target would be met.

No other national arrangements were made for monitoring the effectiveness of the pre-proceedings system. Consequently, it was not possible to establish whether letters were being sent, cases were being diverted from care proceedings or use of the process was resulting in shorter court proceedings. These issues were all explored in the ESRC Families on the Edge of Care Proceedings Study reported here.

## **1.6 Context at the introduction of the pre-proceedings process**

### **Changes to care proceedings**

The reforms to care proceedings were a response to two major and interrelated concerns - cost and delay. The length of time to decide care cases had risen continually from the implementation of the Children Act 1989 and was averaging over 40 weeks in family proceedings courts and over 50 weeks in county courts (Masson et al. 2008). Longer proceedings were more expensive in terms of legal costs, Cafcass services and court resources (DCA and DfES 2006), and the long periods of uncertainty imposed greater social and emotional costs on children and families. Particularly, long proceedings delayed permanent placements for children, and could mean that the window for achieving the best arrangements for young children was missed (Brown and Ward 2012).

The PLO was intended to tackle the problem of delay by requiring local authorities to prepare cases more thoroughly and expecting courts to control the proceedings with robust judicial case

management (Judiciary 2008, p.i). Proceedings were frontloaded, with local authorities filing more documents at the start to allow early decisions about what further evidence or assessments were necessary. Hearings would be fixed when cases were ready, for the time required, not booked long in advance and blocking the court diary for other cases. The court would schedule proceedings so that they were determined within a suitable timescale for the child and a maximum of 40 weeks.

Shorter, more focused proceedings could be expected to result in lower legal costs for the parties. Changes to the fee scheme for lawyers acting for parents or children, introduced in the autumn of 2007 (LSC 2007) also sought to control costs (Masson 2008). Solicitors ceased to be paid for care proceedings on the basis of the amount of work they had done, by time and line, but received fixed fees according to the number and type of parties they represented, the court in which the case was heard and the region where they practised. Hourly rates were only payable where the work done amounted to twice the fixed fee in the case of care proceedings, three times for pre-proceedings work. This move to fixed fees also meant the removal of enhanced fees for solicitors who were members of the Law Society Children Panel, so there was no longer a fee incentive for becoming accredited. Fixed fees meant that solicitor's firms risked losing money on cases where more work was required than covered by the fixed fee but the case did not 'escape' to hourly rates. Small firms, which were heavily dependent on care cases, were particularly at risk. Firms responded by changing the way they worked, taking more cases, undertaking more of their own advocacy rather than instructing barristers, and making more use of paralegals (lower paid, unqualified staff), including to see clients (Pearce et al. 2011). There were also mergers, resulting in fewer firms with contracts to provide legal services in care cases (Masson 2011).

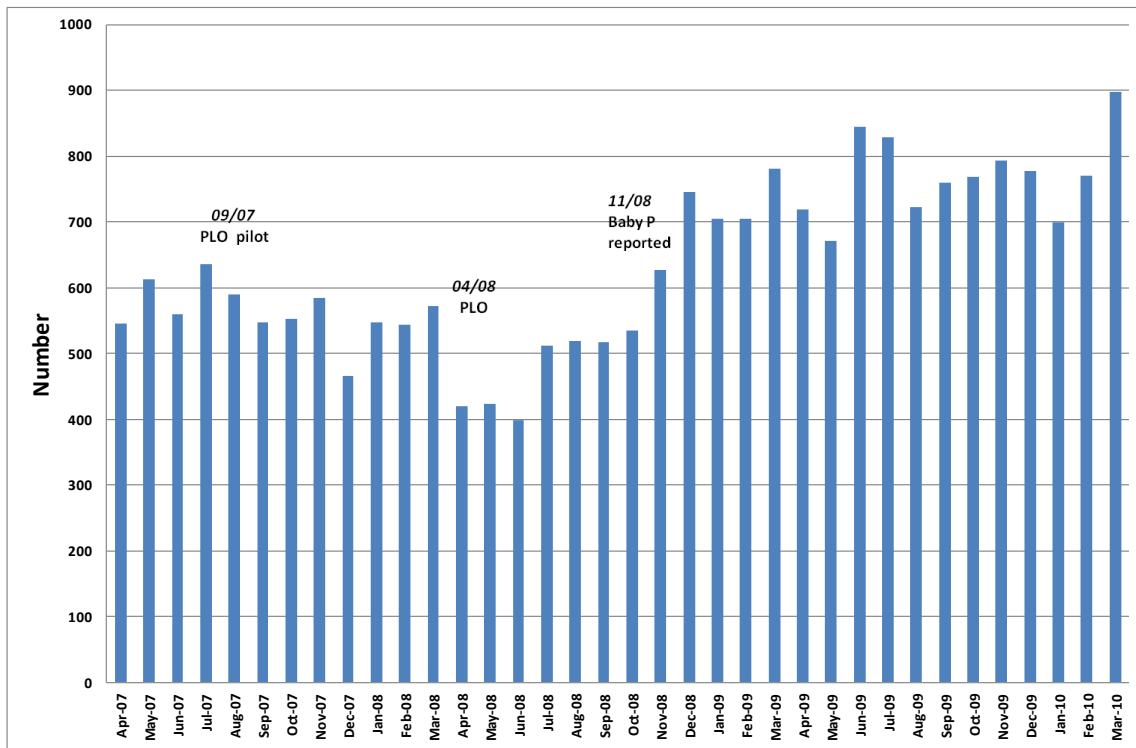
Cafcass also introduced a new practice model for care proceedings in response to the PLO (Cafcass 2007, 2008a, b). Rather than providing a detailed report covering the children's history, the local authority's involvement, the family's views and the guardian's recommendation, children's guardians would provide an initial analysis and recommendations for the First Hearing, either orally or in writing. This would involve scrutiny of the local authority's pre-proceedings work and identification of any expert evidence required to determine the case. This would be updated for later hearings with a focus at each stage on analysis of the case rather than reporting what had happened (Cafcass 2007). During the mid phase of proceedings the guardian would have a 'watching brief' but they would update analyses for the final hearing. Cafcass hoped that this would reduce the staff time each case required so that more time could be devoted to cases early in the proceedings (Cafcass 2008b).

New court fees were introduced for care proceedings, applying the principle that the full cost of the civil courts should be imposed on those who made use of them in order to promote the efficient use of the courts (MoJ and HMCS 2007, 2008). The impact on local authorities was to raise the cost for each application that ended with a final hearing from under £900 to almost £5000. The change was controversial; child protection is a state function where all parts of the state should be working together not focusing on recharging agencies with responsibilities in

individual cases. Local authorities have no alternative to using the courts where orders are required for the child’s protection or future care; the use of final hearings to determine matters depends on all parties to the proceedings and the approach of the court, not simply the stance of the local authority (Pearce et al. 2011). There were concerns that local authorities would be discouraged from bringing proceedings, to the detriment of the children concerned. Also, raising fees alongside the pre-proceedings process and the PLO would make it impossible to establish whether changes in the use of care proceedings were due to the new approach to care proceedings or the increased costs. In response to criticism from Lord Laming, who had examined the safeguarding system following the death of Baby Peter Connelly (see below), the government established a review of court fees for care proceedings. This recommended their abolition (Plowden 2009). This was accepted by the Labour Government but the Coalition Government reversed this decision in October 2010. Whether or not fees discourage the use of care proceedings, the decision to make a court application involves making provision for this substantial fee. Local authorities in the study spent between £65,000 and £250,000 on the court fees for the care cases they undertook during the 6 months sampling period.

There was a reduction in the number of applications for care proceedings between autumn 2007 (when the changes were piloted in the initiative areas) and continuing until June 2008, after which it rose again, but still below April 2007 levels, as shown in chart 1.2.

**Chart 1.2: N of s.31 applications April 2007 to March 2010**



(Source Cafcass CMS system)



There was then a marked increase following the press reports of the Baby Peter case in November 2008. The decline in care applications was paralleled in the numbers of children who became looked after as a result of emergency action (Masson 2010), indicating a general reduction in compulsory child protection activity by local authorities. The number of applications in the years 07-08 and 08-09 was almost identical suggesting that the reforms delayed applications rather than preventing them. This explanation fits with perceptions that the PLO made applying to court more demanding for local authorities (Jessiman et al. 2009), and with a common observation, apparent when the Children Act 1989 was first introduced, that new court procedures lead initially to a reduction in applications.

### **The death of Peter Connelly**

Peter Connelly, aged 17 months was found dead at his home with horrific injuries in August 2007. Eight months previously he had been admitted to hospital with bruises, consistent with non-accidental injury, for which his mother gave no explanation. A local authority lawyer advised that the threshold for care proceedings was met. A child protection plan was made, a decision was made not to issue proceedings and Peter returned home. During the next seven months Peter's mother was thought to be co-operating with children's services but he was injured on a number of occasions and the chair of the child protection review conference expressed concern that Peter was continuing to suffer injuries which had led to the child protection plan. A decision was made to hold an urgent legal planning meeting to discuss whether to issue care proceedings but the meeting was not held for seven weeks and then concluded that the case did not meet the threshold for proceedings. The following week Peter was killed. In November 2008, Peter's mother, her partner and her partner's brother were convicted of causing or allowing Peter's death. The local authority then published the executive summary of the serious case review it had completed before the trial; this was considered inadequate by Ofsted and a second serious case review was undertaken (Haringey 2009).

The second serious case review identified many errors in the way Peter's case had been handled. These are the 'typical' errors so often identified in child abuse enquiries which have the luxury of hindsight: judgments which are now seen to be erroneous, failures of communication and poor co-operation between agencies. The review found that there had been a lack of thoroughness and urgency in responding to Peter's ill-treatment, a failure to focus on his welfare and unwillingness to challenge his mother. The approach taken had been based on expectations of his mother that were too low and a threshold for intervention that was too high. Specifically the summary reflected:

There is a balance to be struck between protecting a child from the risk of further significant harm, and undermining his attachment to his family, in particular his parents, but also his siblings. It needs to take into account his age, the seriousness of his injuries, the quality of his relationship to his parents, and the realistic ability of the child protection system to supervise his welfare sufficiently closely to prevent further harm, as well as to improve the parenting. Where the authorities have reason to believe that the parents are

not being frank or are not cooperating they should initiate care proceedings either to remove the child from home or to strengthen their position with the child at home. The process of doing so would signal the seriousness of their concerns to the parents. It would also help in a continuing assessment of the parents' motivation and capacity to care for and protect their children. (Haringey 2009, para 4.7.1)

This message was reinforced in Lord Laming's progress report on safeguarding, commissioned by the government in response to the Baby Peter case:

It is essential that the local authority can put the evidence on which their decision to make the [s.31] application is based before the court. This is the reason for the pre-proceedings checklist. Good preparation enables a case to proceed more quickly and to reach a permanent solution for the child. It is essential that the court is well-informed about the work that has taken place with families. ... However, whilst it is important that the correct documentation is in place for each case, the local authority should not delay making an application because of paperwork considerations if there is concern for a child that requires swift action in order to safeguard their welfare (Laming 2009, paras 8.3-4).

The Baby Peter case had immediate repercussions for child protection practice, for care proceedings, and for social work more generally (discussed further below). Notably, there was a sharp and sustained rise in the number of care proceedings in England (Cafcass 2011; ADCS 2010a, 2012) (and see chart 1.2 above), which put pressure on local authorities and on all parts of the care proceedings system. Cafcass referred to this as the 'Baby Peter effect' (Cafcass 2009). However, the increase in applications from November 2008 is also related to the introduction of the PLO, with its additional demands for pre-proceedings work, and the natural hesitancy to face new court procedures as soon as they are introduced. It was predictable that the number of applications would decline with the introduction of the PLO, and that this decline might be temporary (Masson 2010b). The sustained increase in care applications, right through to 2013, is not just about Baby Peter but reflects other changes in local authority practice, notably a greater awareness of the long-term harm caused by neglect and emotional abuse; the importance of early intervention (Cafcass 2012a); and, possibly, closer monitoring of cases through the pre-proceedings process.

Local authorities experienced significant increases in all areas of safeguarding work, with the exception of the numbers of full care orders made (ADCS 2010a, b, 2012). These increases were larger than predicted by the Government in its response to Lord Laming's Report (HM Government 2010). No single reason explained these increases but their consequences were clear. Local authorities had to commit more of their resources to safeguarding work, leaving them less able to undertake other work to support families, and facing large overspends (ADCS 2010b). Many social workers held increased case loads, with consequent negative impacts on practice and morale. Social work time was focused on assessment and reporting associated with child protection planning and care proceedings (Macleod et al. 2010; ADCS 2010b). There was a shortage of foster placements (Fostering Network 2009); this added

to cost pressures as local authorities used more expensive, independent agency, placements and increased the importance of identifying carers within the family.

The increase in court applications had major implications for Cafcass. It was unable to meet demand for children's guardians from the courts, resulting in long delays before appointments were made (NAO 2010). The intention to provide an initial analysis of cases for the first hearing was abandoned; in August 2009 Cafcass adopted new operating priorities which reduced work to 'a safe minimum' (Cafcass 2009a). Cases were prioritised but some did not have a children's guardian by the Case Management Conference (CMC) when the court determined whether further assessments were required. Without the guardian's view about any local authority pre-application work, courts were dependent on the parties' lawyers to identify the need for further assessments. Courts tended to agree to requests from the parents for further expert evidence (Masson et al. 2008), not least because the Court of Appeal had allowed appeals where such requests had been denied (*Re K (Care Order)* [2007] EWCA Civ 697; *M (A Child)* [2009] EWCA Civ 315). Both delays in appointing children's guardians and the reliance on experts contributed to an increase in the time taken to conclude care proceedings.

A similar increase in applications was experienced in Wales but Cafcass Cymru avoided delays, making guardian appointments within two days in over 90 per cent of cases (Cafcass Cymru 2011).

Cafcass surveyed the applications made in the three weeks following the publicity about Baby Peter and a sample of the children's guardians to whom they were allocated, to establish whether the increase reflected changes in local authority practice, particularly in the threshold for care applications (Cafcass 2009). Its findings suggested that the rise in applications was not a direct response to the publicity about Baby Peter's case. These cases did not differ from earlier samples and the majority of guardians considered that there had been no change in the threshold for applications. However, the guardians considered that two-fifths of these applications had been made 'late', with only just over half appropriately timed. The survey also asked guardians about compliance with the pre-proceedings process. In almost a quarter of cases guardians stated that there had been full compliance; letters before proceedings had been sent in 39 per cent of cases and only seven cases (10 per cent of responses) were identified where the guardian thought the local authority could have taken other action before bringing care proceedings. A repeat of this study, three years later, found only a quarter of applications were considered 'late', with two-thirds appropriately timed. Letters before proceedings had been sent in 45% of cases but guardians were unsure about this in a third of cases, and thought that the local authority could have done more before court proceedings in 36 cases (15 per cent of responses). Guardians were more likely to view the application as 'late' where a pre-proceedings letter had been sent (Cafcass 2012a).

The Judiciary also responded to the concerns expressed by Lord Laming about the length of care proceedings, and by local authorities and courts about the volumes of paperwork required by the PLO. The application form and pre-proceedings checklist were revised to reduce the documents required on application, and more emphasis was given to the 'timetable for the child' in the amended Practice Direction (MoJ 2010). The targets for care case completion were also adjusted, replacing the single 40

week target with targets of 30, 50 and 80 weeks (MoJ et al. 2010). These were minor adjustments which could have little impact on either local authority preparation for care proceedings or the length of those proceedings.

### 1.7 Context at the completion of the research

The period from April 2008, when the pre-proceedings process was introduced, to June 2102, when this research project ended, was marked by significant changes in the national context of child protection social work. There were also changes made and planned relating to family justice and the provision of legal services. These are briefly reviewed here.

First, as noted above, there was the Baby Peter case, with the criminal trial hitting the national headlines in November 2008 and having a marked impact on the number of care cases brought to court. In the year ending 31 March 2007 – the last full year before the PLO changes were piloted and the numbers of care applications dropped until November 2008 (as noted above) – there were 6,791 care applications, which rose to 10,229 in the year ending 31 March 2012 – an increase of 50% over the six years (if we take the year ending 31 March 2008 as the starting point, the end of year total was 6,240 and the increase is 64% over five years: Cafcass 2012a). (Note, these figures are the number of cases, not individual children).

The increase in court proceedings was part of a substantial increase in the workload in children’s social care. The number of looked after children increased from 60,000 on 31 March 2007 to 65,520 on 31 March 2011. Table 1.2 (below) shows the composition of the looked after population, in terms of the major legal categories. It shows increases in the proportions of children on interim care orders, and placement orders/freed for adoption. Both reflect the greater number of cases going to court; the former reveals the continuing increase in the duration of proceedings, and the latter the difficulties of finding suitable adopters for many of the children. The Family Justice Review reported that care cases ending in the first six months of 2011 had taken, on average, 61 weeks in county courts and 48 weeks in the family proceedings courts. Like most averages this disguises great variation. Some cases will have taken much longer, in excess of two years (Cassidy and Davey 2011), and there is considerable variation between different parts of the country (Family Justice Review 2011b, 103-4.)

**Table 1.2: Looked after children in England, 2007-12**

	Total no. of children looked after	On interim care orders	On full care orders	Section 20	Placement orders + freed for adoption
31 March 2007	60,000	9,800 (16%)	28,800 (48%)	17,800 (30%)	3,350 (6%)
31 March 2012	67,050	13,500 (20%)	26,610 (40%)	19,370 (29%)	5,540 (11%)

(Sources: DCSF 2007a; DfE 2012a)

The increase in the looked after population was matched by an increase in the number of referrals to children’s social care, the numbers of assessments and the numbers of children on child protection plans, as shown in Table 1. 3 below. Further, the number of children assessed as being ‘in need’ under the Children Act 1989 increased from 304,400 on 31 March 2009 (no comparable data was published for 31 March 2007) to 369,400 on 31 March 2012 (DCSF 2009 and DfE 2012b) (but this is down from the 2011 figure, which was 382,400: DfE 2011c).

The ADCS ‘safeguarding pressures’ project (ADCS 2010a, 2010b; 2012) analyses the increasing workload in local authorities. The first stage of this survey of local authorities compared referral rates, child protection activities, looked after children statistics and court work between Oct-Dec 2007 and Oct-Dec 2009. There was an up-date in 2012. Whilst the overall trend is strongly up, the study highlights that there is considerable variation between authorities, and some had seen reductions: for example, more than 40% of the authorities which responded, reported a decrease in the number of children on child protection plans over the year 2011-12, and likewise for numbers of children starting to be looked after during the year (ADCS 2012: 27, 29). There are no simple explanations for the trend or the variations, and the point is that numbers alone do not tell the whole story – high or low numbers are neither automatically ‘good’ or ‘bad’. It is necessary to explore factors such as local interpretations of thresholds, decision-making procedures, availability of preventive services, budgets, public and professional awareness, inter-professional working, social work practice, staffing levels, and matters such as recording practices and policies on case closure or transfer. Variation between and even within local authorities is a well-known, enduring finding of social work research (e.g. Packman et al. 1986; Rowe et al. 1989; Oliver et al. 2001; Statham et al. 2002, Dickens et al. 2007).

**Table 1.3: Referrals, assessments and child protection plans, 2007-12**

	No. referrals to children’s social care in year ending	No. of initial assessments	No. of core assessments	No. of children on cp plans on 31 March	No. of children starting cp plan in year ending
31 March 2007	545,000	305,000	93,400	27,900	33,300
31 March 2012	605,100	451,500	220,700	42,900	52,100

(Sources: DCSF 2007b; DfE 2012b)

As well as commissioning Lord Laming's progress review of child protection in England (Laming 2009), the Labour government's response to the Baby Peter case included setting up a 'Social Work Task Force' (SWTF), to conduct a root and branch review of social work, across adult and children's services.

Lord Laming reported in March 2009. He held that the legal and organisational framework for child protection was satisfactory, but called for a 'step change' in putting the principles into practice – at one point, using capitals for emphasis: 'NOW JUST DO IT' (Laming 2009, 6). However, it also noted the challenges for 'just doing it', including low staff morale, cumbersome bureaucracy, inadequate IT systems, poor supervision, high caseloads, under-resourcing and poor training (Laming 2009, 44).

The SWTF, chaired by Moira Gibb, produced three reports in 2009 (SWTF 2009a, b, c). The first, in May 2009, identified six well-known challenges for social work, which echo Lord Laming's assessment. These were that social workers were overburdened by high caseloads and excessive bureaucracy; poor IT systems and poor supervision; inadequate training for the realities of practice and unrealistic expectations; ineffective performance management systems; a widespread sense of demoralisation; and the lack of a strong national voice for their profession.

The work of the SWTF led to the creation of a Social Work Reform Board to take forward the proposals. This concluded its work in spring 2012 (SWRB 2012), passing it over to a newly established professional body, the College of Social Work, and a new regulator, the Health and Care Professions Council. The final progress report from the SWRB stated that its work had laid sound foundations for future improvements, but acknowledged that progress had been slower than hoped, and was being impaired by resource cutbacks (SWRB 2012).

The wider context also needs to take account of the global financial crisis of autumn 2008, leading into a deep economic recession. Following the election in May 2010, the Conservative-Liberal Democrat coalition government imposed a national austerity programme with severe cuts to government expenditure. The coalition adopted rhetoric of reducing central government prescription and an agenda of 'localism'. This aspires to devolve decision-making to local councils and even beyond that, to local communities, businesses and voluntary organisations; the difficulty is the sharp cutbacks to funding for these bodies (Jordan and Drakeford 2012; Featherstone et al. 2012).

One of the early acts of the coalition was to commission Professor Eileen Munro to undertake a review of the child protection system in England. The Conservatives had debated the need for revitalisation of social work long before the 2010 election (Conservative Party 2007, 2009). The Munro review ran alongside the Family Justice Review (set up in March 2010 by the Labour government, but taken forward by the coalition) and the work of the Social Work Reform Board.

### **The Munro review, 2010-11**

The Munro review produced three reports in 2010-11 (Munro 2010, 2011a, 2011b). One of its leading points was that the proliferation of procedures has created a highly bureaucratic system. This made it harder to keep a focus on the well-being of the children and undermined social workers' sense of

professional responsibility (e.g. Munro 2011b, 137). This has, in turn, reduced job satisfaction and contributed to problems of staff retention, making it harder for those who are left to focus on the needs of the children – a vicious cycle.

Munro called for a new culture in children's services – a *learning culture* rather than a *compliance culture*. This would allow professional responsibility and professional judgment to be exercised more effectively, with (most importantly) proper guidance and support for social workers to do so (Munro 2011b, 7).

The coalition government accepted the proposals, with the Minister, Tim Loughton, speaking of the need 'to move towards a child protection system with less central prescription and interference, where we place greater trust and responsibility in skilled professionals at the front line' (DfE 2011, 2). In June 2012, in line with this undertaking, the government published draft versions of dramatically reduced statutory guidance on child safeguarding (DfE 2012c). Putting the approach into practice, truly changing the culture, remains a big challenge for social work in England, where public outrage against social workers is so great whenever there is a child abuse death, and where the standard response for so long has been to add more rules and procedures.

Munro's progress review, one year on (May 2012), like the earlier progress reports of Lord Laming and the SWRB, concluded that there had been progress, but more and faster change was needed. The goal remained the same, to move from a compliance culture to one which focuses on how children are actually being helped, and which recognizes the complexity and uncertainty of the work (Munro 2012). More still needs to be done to increase professional expertise and confidence, and to ensure there is good guidance and effective management; but also, wider change is necessary to bring realistic expectations about what is possible. Munro's progress report also warned about the likely impact of cuts in public expenditure and further re-organisations – concerns that are shared by Lord Laming, the SWRB, and the *Safeguarding Children* research overview (Davies and Ward 2012), discussed later in this report.

### **The Family Justice Review**

The Family Justice Review was established by the Labour government in January 2010 to assess 'the operation of the family justice system ... and make recommendations on: the promotion of informed settlement and agreement; and management ...' (Family Justice Review 2010). These terms of reference were accepted by the coalition and the Review began its work in the summer of 2010. The government wanted to bring the system under control so that the courts focused on protecting the vulnerable and cases where judicial decisions were necessary; families in dispute made more use of mediation; processes were simpler and easier for parents to understand; and cases were resolved more quickly.

Like Professor Munro, the Review (Family Justice Review 2011b) identified a vicious circle in child protection cases where the court's approach made local authorities reluctant to apply to court and wary of commissioning assessments because court would agree to further assessments, and courts

considered local authority applications to be poorly prepared. Courts did not manage cases consistently and delay built up at every stage (para 3.3). Delay 'really matters' for children (para 3.5) and resources committed to proceedings were out of proportion with those committed to services for children and families (para 3.7). The Review endorsed the approach of the Public Law Outline but recommended that it be applied more consistently, and remodelled to include time limits (para 3.96). Rather than appointing experts to assess parenting and capacity to change, courts should determine most cases on the basis of the evidence presented by the local authority so that decisions could be made within the child's timescale (paras 3.103 and 3.155). In order to reduce delay, there should be a statutory time limit requiring courts to complete all but exceptional care cases within 26 weeks (Family Justice Review 2011a, b). These recommendations have been accepted by the government (MoJ and DfE 2012); legislation has been prepared to introduce a 26 week time limit.

The Review supported the use of letters before proceedings: 'it made sense to give the parents due notice with a clear statement of the changes they need to make, rather than going straight to court' (Family Justice Review 2011a, para 4.226). 'Given the potential of the process to support parents as well as providing the courts with better prepared cases' its use should be encouraged until the findings of the ESRC study were available. The process should then be reviewed to inform the decisions around the remodelled PLO (Family Justice Review 2011b, para 3.109). The Review also supported the increased use of Family Group Conferences and the trialling of mediation for care cases (Family Justice Review 2011b, paras 3.176-179).

### **Coventry Warwickshire Pilot**

A different approach to pre-proceedings work has been developed by Cafcass with the support of funding from the Children's Workforce Development Council. The involvement of Cafcass went some way to meet concerns expressed in the PLO evaluation that children were not represented in the pre-proceedings process (Jessiman et al. 2009). Cafcass arranged with two local authorities, Coventry and Warwickshire, to trial a scheme to provide scrutiny of local authority pre-proceedings work. These were areas where the use of pre-proceedings legal advice was low and court proceedings took longer than average. Under the scheme, experienced family court advisors would provide pre-proceedings advice with the aim of improving plans for work with the family, diverting more cases from the courts, improving case preparation and speeding up court decisions. Family court advisors have no mandate to work without a court appointment so parental consent was required. Where this was given, one of five family court advisors would review the file and attend the pre-proceedings meeting. If a court application was made the same person would be appointed as the children's guardian for the case (Cafcass 2010). A team from Lancaster University was commissioned to monitor the scheme through a study of 30 pre-proceedings cases, 20 comparator cases which went direct to court and interviews with professionals and parents.



At the date of the interim report, 27 cases had been recruited to the pilot, of which only 7 had entered proceedings in the short period since the letter. The impact of the additional work on the proceedings was not yet known. Family court advisors encouraged parental engagement; more parents also obtained legal advice in both areas following the introduction of the scheme. They also provided helpful advice on the local authority's plans for assessment or support. In both areas, the contribution of the family court advisor was generally viewed as having a positive influence. The advisors themselves liked the scheme because it allowed them 'a head start' so they could narrow the issues brought before the court' (Broadhurst et al. 2012a; Broadhurst and Holt 2012; Holt and Kelly 2012a, b; Holt et al. 2013).

Rolling out this scheme across the country poses substantial problems, not least Cafcass' lack of resources to meet its existing statutory duties. Providing Cafcass staff for cases that are diverted from court imposes an additional demand, which is unlikely to be matched by more limited work in cases that go to court. Only a minority of family court advisors has the experience of those initially working on the pilot work; advice of Cafcass staff with more limited experience in child protection is likely to be less acceptable and less useful to local authority staff. Introducing yet another new professional at this stage may undermine the skilful blend of support and challenge that is usually given by the parent's legal representative. Where the parent attends the pre-proceedings meeting unrepresented, an additional professional may leave the parent feeling more vulnerable, even if that professional is independent of the local authority. Whilst a Cafcass officer might take a conciliatory approach, their role is not to act as a mediator but to scrutinize proposals and provide advice. Moreover, the idea of additional external scrutiny does not fit with Eileen Munro's view of strengthening social work within local authorities or the Family Justice Review's wish to avoid duplication.

### **Publically funded legal services**

The fee for providing pre-proceedings legal advice was increased in May 2011 to £405 but reduced to £365 as part of the general 10 per cent cut in legal aid fees in February 2012. More substantial changes impacted on family law solicitors first through the bidding process for a new legal aid contract in autumn 2010 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) (Masson 2011). The bidding process resulted in some established family law firms failing to get a legal aid contract, and parts of the country having very few firms dealing with care work. Dissatisfaction with the bidding process resulted in a successful legal challenge by the Law Society. The contract was struck down (*Law Society v Legal Services Commission* [2010] EWHC (Admin) 2550) but not before some firms had decided to close. LASPO dealt a further blow to family lawyers by removing much of private family law (disputes between parents etc) from the scope of legal aid, effectively cutting state financial support for this work. Although public family law (care work) continues to be funded on the same basis as before, firms that derived their income from both areas of work must restructure to remain financially viable. The number of family law firms is declining, leaving areas without a service, and removing any choice of solicitor for clients elsewhere.

## Modernisation of family justice

Following on from the Family Justice Review the government established a Family Justice Board with the aim of driving improvements in the performance of the family justice system. The Board will have a particular focus 'tackling variations in local performance' and its terms of reference include 'to identify, disseminate and monitor the implementation of local best practice' (Family Justice Board 2012b). Judicial independence means that judges are not members of the Board but are only 'observers'. A separate Family Justice Modernisation programme, under the leadership of Ryder J, was established to examine issues such as judicial leadership, management and training, and case management (Judiciary 2012a). One aspect of the work of this modernisation programme is to be a Family Court Guide, a 'framework for good practice' which will 'signpost' existing and new guidance, research evidence and include 'Expectations Documents' for agencies that contribute to family justice (Judiciary 2012b). These will be approved by the Family Justice Board and the President of the Family Division and set out 'what the court expects' of local authorities and Cafcass. Drafts were published, for consultation, in early 2013.

The Expectations Document relating to local authority's contribution to care proceedings refers to the Children Act 1989 Guidance, Volume 1 (DCSF 2008) as 'the good practice LAs must follow' and includes a section on pre-proceedings, which largely focuses on preparation of the application for the court. It states:

'Where the local authority concludes, following any further work with the family and the legal planning meeting, that "threshold" appears to be met and that care proceedings are likely to be the best way of safeguarding the child, the LA will move swiftly and decisively. It will:

- Complete, where consistent with children's safeguarding, the pre-proceedings work with parents and the wider family, including issuing the pre-proceedings letter to enable the family to secure legal advice and support at the pre-proceedings meeting.
- Alert the relevant court so the court's planning for cases can begin.
- Commission any additional assessment ... (FJB and the Judiciary 2013).

Presented in this way, the pre-proceedings process seems to be just another step on the route to care proceedings, designed to enable the parent to secure legal advice. This may be inevitable, given the purpose of the document – to set out the court's expectations of the local authority. It fails to recognize the social work elements of pre-proceedings work, or any purpose beyond facilitating the proceedings. Judicial independence means that there are no documents setting out how the court should respond to local authority pre-proceedings work; judges will be expected to use their case management powers as they were under the PLO.

### *Pre-proceedings protocols*

There have also been local responses to the Family Justice Review, notably a 'Pre-court proceedings protocol' developed in Cheshire and Merseyside (Cheshire and Merseyside Local Family Justice Councils 2012), which has been disseminated to other areas. It includes a brief and selective summary of some key research findings, a list of actions local authorities should take, brief guidance about assessments and a 'position statement' from Cafcass. It provides 'Key Principles for Local Authority Effective Practice' and lists 'critical issues for all social workers pre proceedings', a list of basic factual information social workers should collect, and requiring them to identify the 'specific child protection issues' and 'specific measures' to address risk, for which it gives a list. The protocol includes two short paragraphs on the pre-proceedings process and states that 'pre-proceedings letters follow or precede a pre-proceedings meeting' (para 10), but without explaining how parents can obtain legal aid if they have not been sent the letter. The document might work as a succinct aide-memoire for practitioners, but there is no recognition of the complexity and ambiguity of much of the work or the pressured and resource-limited context in which it is undertaken.

The Family Rights Group stressed the importance of a pre-proceedings protocol in their evidence to the House of Lords Committee on Adoption, on the basis that the original Guidance (DCSF 2008) was 'inadequate, outdated and no longer fit for purpose' and social workers had too much discretion (FRG 2012b, para 2.5-6). The Committee, and the Justice Committee, which reported in December 2012, (Justice Committee 2012) stressed the value of good pre-proceedings social work, particularly quality assessments, but neither recommended a protocol or more-prescriptive guidance.

### **Children and Families Bill 2013**

Draft legislation to enact those parts of the Family Justice Review that require changes to the Children Act was published in September 2012 to allow for consultation (DfE 2012d). The Justice Committee began a process of pre-legislative scrutiny (Justice Committee 2012). The draft bill contained provisions intended to curtail the use of experts in proceedings; expert evidence will be inadmissible unless obtained with court approval, which can only be given where it is 'necessary' to decide the case (clause 3). It also provided legislative backing for reducing the time taken by the court to decide care cases. The 26 week limit, proposed by the Family Justice Review, was contained in clause 4. This requires judges and magistrates to draw up a timetable for completion of the case within 26 weeks, and to have regard to the impact of the timetable on the welfare of the child and the conduct of the proceedings (cl 4(3)). These provisions were revised and included as clauses 13 and 14 when the Bill was introduced to Parliament in February 2013. Use of the pre-proceedings process should make it easier to complete cases within the time limit by making it clear to the court that less coercive alternatives have been tried.

## 1.8 The Structure of the Report

Having introduced the pre-proceedings process and the contexts in which the research took place and is published, the remainder of this report sets out the research methods (Chapter 2); the theoretical framework for the research (Chapter 3); the findings; and the conclusions the research team draw from them. Six chapters explore the findings; describing the families and children in the study (Chapter 4); examining the decision to use the pre-proceedings process (Chapter 5); the letter before proceedings (Chapter 6); the meetings (Chapter 7); and the impact of the process (Chapter 8). The impact is assessed specifically on the use of care proceedings, the time taken before court applications were made, and on court proceedings. In Chapter 9, the findings are reviewed from the theoretical perspectives set out in Chapter 3. The final Chapter sets out recommendations and good practice messages derived from the research findings, and from the series of seminars the researchers conducted with policy makers and professionals (lawyers and social workers) at the end of the project.

The research has produced a wealth of data, both quantitative and qualitative. This report provides an analysis of that data to answer the research questions set out at 1.2 (above). The material is complex; as would be expected, the practices in the 6 local authorities in the study and by individual social workers and lawyers varied; and views and practices were not always congruent. Parents too had different experiences and reflections on their dealings with social workers and their lawyer. The researchers have sought to manage that complexity and provide a clear picture of the operation and impact of the pre-proceedings process, identifying the range of practices, views and outcomes. For those who want to focus on the main points, each of the chapters ends with these. A short summary of the research with the key findings is also available at [www.uea.ac.uk/socialwork/research](http://www.uea.ac.uk/socialwork/research) and [www.bristol.ac.uk/law/research/researchpublications/](http://www.bristol.ac.uk/law/research/researchpublications/)

### Key points

- **The pre-proceedings process was introduced in 2008 with the aim of diverting cases from care proceedings, and where this was not possible, to allow better case preparation and so reduce the length of care proceedings.**
- **Statutory Guidance (DCSF 2008) states that the process should be used unless the ‘scale, nature and urgency’ of safeguarding concerns are such that it is not in the interests of the child to do so.**
- **Parents are sent a letter before proceedings (LbP) informing them of the local authority’s concerns and inviting them to a meeting to discuss these. They are entitled to free legal advice and to bring a lawyer to the meeting.**

- The only national monitoring of the use of the pre-proceedings process is by counting the bills paid by the Legal Services Commission for parents' legal advice.
- The introduction of the pre-proceedings process was followed by a decline in care applications. From November 2008, there has been sharp and sustained increase in care applications, which has put pressure on children's services and the family justice system.
- There were wide-ranging reviews of Local Authority child protection and the family justice system in 2010-2012. The legal and social work environment is currently subject to major changes:
  - The establishment of the Family Justice Board with aim of driving 'significant improvements in performance' and a separate judicial programme of modernisation for family justice;
  - Legislation – the Children and Families Bill 2013 introduces a 26 week time limit (with exceptions) for care proceedings and restrictions on the instruction of experts;
  - Changes to the legal aid contract leading to closure and merger of family law firm;
  - A change in the context of social work practice with greater emphasis on professional judgment and less on central prescription;
  - Substantial cuts in local authority budgets.
- The substantial increase in cases and reduction in resource adds to the pressure on services.

## Chapter 2 Method

### 2.1 Research design

The research was designed as a mixed methods study, using a quantitative study of material from local authority legal department files to capture the use of the pre-proceedings and the impact of the process on case duration and outcome; and observations and interviews to explore perceptions, practice and experiences of the process. A *quantitative* approach allowed the use and impact of the process to be measured whilst the *qualitative* elements made it possible to understand why and how the process achieved these effects. The file study was necessarily *retrospective*; it would only be possible to establish the impact of using the process on cases that went to court if data could be collected about the whole of the court proceedings. In contrast, following up observed cases provided a *prospective* element. Cases where pre-proceedings meetings were observed could be followed up to find out whether, how and when they were diverted from care proceedings. The two approaches enabled the researchers to make comparisons between current (observed) cases and concluded cases in the files and so to consider changes in use of the process in the local authorities between 2009 and 2011.

File-based research has two well-recognized limitations (Scott 1990; Hakim 1993). First, files are often incomplete; the information that researchers want to understand decision-making is often missing. Secondly, the information that is recorded is partial; documents and notes in files are recorded by people with responsibilities for specific purposes. Where legal files are concerned, the documents are drafted or collated for legal processes, particularly court proceedings.

The local authority files accessed for the research were those held by local authority legal departments. In the best documented cases, these contained all the various documents relevant to the pre-proceedings process: – attendance notes relating to any legal advice given by a local authority lawyer on the case; notes from the legal planning meeting, including copies of documents such as case conference minutes and chronologies provided to the legal panel; a copy of the letter before proceedings; the written agreement and minutes of the pre-proceedings meeting. However, local authority practice varied, particularly whether legal panels were given case documents, and the extent to which pre-proceedings meetings were minuted. Legal files also included other correspondence, with legal representatives for the parents and with professionals and others. Where proceedings were issued, the legal file included the court bundle. The bundle is the set of documents available to all parties and the court on which (with further oral evidence) the case is decided. It contains the application to court and documents filed with it such as the social work chronology and core assessment; statements and reports from all parties, witnesses and the children’s guardian; directions issued by the court and the final order. There is no difference for the researcher between collecting information from the bundle in the local authority file and from the court file, the documents are the same and access to them requires permission of the courts (see below). Bundles are clearly organized and indexed and are generally complete, in contrast to court files (Masson et al. 2008). It was efficient to access files in local authorities; pre-proceedings and court proceedings materials were in one place, and file reading could be arranged alongside observations and interviews.

A pre-coded recording schedule, based on the one used for the *Care Profiling Study* (Masson et al. 2008) was devised for the collection of information from the legal department case file. This included information about the child and family; the involvement of the children's services department; the way the pre-proceedings process had been used, including the contents of letters and agreements, timings of and attendance at meetings etc; and for cases that resulted in care proceedings, the court process.

Information was collected about one 'index child' – the child whose care had triggered the local authority's actions. This was usually but not always the youngest child in the family. Brief details including age, court orders and placement were collected for other children involved in the process. In addition, field workers prepared a 'pen picture' of each case, summarizing the concerns, action and outcome, and recording particular issues of note. These pen pictures were used to support the quantitative analysis.

The qualitative elements of the study were designed to explore aspects of the process not available from files - practitioner and parental perceptions of the process and how the meetings operated in practice. Preliminary work was undertaken, examining what had been said about pre-proceedings work by the lawyers from local authorities or private practice interviewed as part of the Parents' Representation Study (Pearce et al. 2011), with social workers and lawyers who attended seminars at Birmingham University on the pre-proceedings process (Morris et al. 2009) and through contacts of the investigators. These enabled the researchers to identify issues to be covered in the interview topic guides.

Semi-structured interviews with professionals focused on their understanding of, experience with and views about the process. To ensure answers grounded in experience, professionals were asked initially to consider the way the process had been used in one of their recent cases; if possible, the interviewer focused on a case where she had observed the meeting. Interviews with parents were also semi-structured; interviewers used a topic guide to ensure key areas were covered but sought to give parents the opportunity to give their account of their relationship with children's services, the social workers and their lawyer. Parents were always asked about the pre-proceedings meeting that had been observed, with the interview focusing on the experience of the meeting and the broader context of the parents' dealings with children's services. It was clear that some parents had attended numerous meetings with Children's Services; interviewers sought to focus parent's answers on the pre-proceedings meeting which they had observed. All interviews were audio recorded (with permission) and fully transcribed.

Given the novel nature of the process, involving lawyers in a meeting with social workers, it was important to establish the part lawyers played in the discussions, and whether the presence of lawyers shaped the content of the meeting, its conduct or the participation of parents. Meetings were not audio recorded. Local authority concerns about recording discussions with parents who might subsequently be involved in proceedings and the practicalities of obtaining consents from all involved led the researchers to consider that requiring this would make it much more difficult to recruit local authorities and to avoid disrupting meetings. Instead, detailed field notes were made, capturing the order of speaking, what was

said, information about the room arrangements and length of the meeting. (For an alternative approach, see Broadhurst et al. 2012b. They observed 15 meetings of which they were able to get consent from all parties to audio-record 'a large percentage' (p. 522). This does enable them to give a detailed and instructive analysis of the verbal interactions, but based on a small number of cases.)

Combining these qualitative and quantitative elements made it possible to set the file data in broader and deeper perspectives not contained in local authority files. Interviews with parents provided their perspective, which was largely lacking from local authority files; whilst interviews with parents' lawyers covered practical and business considerations which, though relevant to the operation of the process, were not a concern for local authorities. Observations of pre-proceedings meetings provided far more detailed accounts than even the full, formal minutes of meetings kept by some local authorities, allowing analysis of the meeting process. Different sources and the perspectives of service users, lawyers and social workers provided ample opportunities for triangulation. This revealed many consistencies but also contradictions. For example, the period of notice a social worker said she gave parents of the pre-proceedings meeting could be confirmed or contradicted by parents' and lawyer's accounts. Different explanations of what had happened reflected the contrasting understandings of those involved, and/or their adherence to their pre-conceived notions about the purpose of discussions or actions.

Sample sizes for both the quantitative and qualitative elements of the study were determined to allow robust conclusions to be drawn. For the file sample, this meant having at least 30 cases in proceedings from each local authority; for the qualitative sample, it meant seeking interviews with at least two informants of each 'type' (social work manager, social worker and local authority lawyer) and aiming at observations of four to six meetings, in each local authority. A sample of 30 qualitative interviews is generally sufficient to ensure that the full range of themes is identified; this was applied to the sampling of local authority perspectives, albeit that those interviewed had different roles and professional backgrounds. A legal perspective was strengthened by including a similar number of private practice lawyers, again drawn from those who practised in the study areas.

Obtaining research interviews with members of hard to reach populations such as parents involved in the child protection process is acknowledged to be difficult (Farmer and Owen 1995; Freeman and Hunt 1998; Brophy et al. 2005). It was hoped that seeing the parents first at the pre-proceedings meeting and making a direct request for interview would reduce barriers to participation so as to make it possible to recruit at least 24 parents. However, contingency plans were made with the Family Rights Group to interview parents should this not prove possible. In the event the target samples were reached for all aspects of the Study.

The sample of observations was opportunistic. The study was designed to allow for observation of any pre-proceedings meeting occurring during the fieldwork period in that local authority up to a sample of six in each authority. This approach was taken with the knowledge that these meetings were sometimes arranged at short notice, and that both cancellation and rearrangement were common. In practice, the small number of meetings held, particularly in local authorities E and F meant that a researcher



attended most of the pre-proceedings meetings that they were informed about during the 10 week field work periods in each local authority.

Details of the samples are included in tables 2.1 to 2.3 below.

## **2.2 A focus on policy and practice**

The study sought to find out how the pre-proceedings process was working with the intention of identifying potential developments and changes. However, the investigators were well aware that their position as researchers and educators does not necessarily make them able to devise policy or good practice which will operate successfully. For this reason, they sought to engage staff at the local authorities being researched and national policy makers in the research by providing regular updates on the study and holding two one day seminars, once the initial analysis had been completed. These seminars were part of the research process, allowing the researchers to explore views about the implications of the findings for policy and practice, and to discuss potential reforms.

The team prepared a newsletter which they distributed by email to participating local authorities and others who had expressed interest in the research. This provided updates about the research process and more general news about pre-proceedings, care proceedings, child protection social work and the legal process. For example, it provided information about the Cafcass pre-proceedings pilot and links to the Munro and Norgrove Reviews. Details of the planned seminars were also included so that those interested in attending could note the date.

### *Seminars*

Seminars were held in London and Bristol at the end of April and early May 2012. Approximately 50 people attended, including policy makers from the Departments for Education, Ministry of Justice, Legal Services Commission, Cafcass and Cafcass Cymru. There were also representatives from the Family Rights Group (FRG), the Association of Lawyers for Children (ALC), the British Association of Social Workers (BASW) and the Children's Legal Centre (CLC). Publicity to the Association of Directors of Children's Services led to attendance by senior social work managers from authorities not included in the study. Practitioners, social work managers (who chair pre-proceedings meetings), local authority lawyers and Independent Reviewing Officers attended, including from local authorities which had not participated in the research. Lawyers in private practice also attended each seminar.

Each seminar combined presentations on the research findings, opportunities to ask questions about these and small group discussion. Members of the research team recorded discussions on: measuring the success of the system; how duplication and delay could be avoided; the changes the attendees would like to see; making the meetings more effective; how the courts should respond to the pre-proceedings process; and whether the process has a future. The participants' views were explored in further analysis of the data. These discussions and those at feedback seminars for participating local authorities have helped to shape the recommendations for future practice included in the final chapter of this report.

### *Focus group*

The seminar participants suggested that the researchers should obtain judicial perspectives on the process. This was not something that had been included in the original design but appeared relevant given the findings that use of the process appeared to have no impact on court proceedings (see Chapter 8). To this end, the researchers sought and obtained permission from the President of the Family Division to conduct a focus group with judges. This took place after the end of the project with financial support from the two universities; seven judges with experience in care proceedings took part. The focus group was audio recorded, transcribed and incorporated in the analysis.

### **2.3 Ethics, Access and Anonymity**

Research with families on the edge of care requires sensitivity; those with responsibilities to families in children's services, in the court system or because parents or children are their clients are understandably concerned that their work is properly understood, staff time is not wasted, confidentiality is maintained and clients are protected. The study was subject to scrutiny from 5 separate bodies in addition to the ESRC who funded it. Ethical approval was obtained from the relevant research ethics committees in the two universities. Approval from the Research Committee of the Association of Directors of Children's Services was required before most local authority children's services departments would consider participating. Access to court documents, including documents prepared for court and contained in the court bundle held by the local authority, necessitated permission from HMCTS Data Access Panel and the President of the Family Division in accordance with the Family Procedure Rules 2010. Confidential court documents can be disclosed to a person conducting an approved research project for the purposes of research (Practice Direction 12G).

A research access agreement, setting out the volume and nature of the work that the team sought to undertake in each local authority, the co-operation required from local authority staff and the contribution the research team would make to staff development was drafted and agreed with each participating local authority. It was a term of the research agreement that the participating local authorities would not be identified. Similarly, the Privileged Access Agreement the researchers signed to obtain access to court documents required them to protect the identity of individuals involved in court proceedings.

Information was prepared for circulation within local authorities to inform social work and legal department staff about the study. A list of solicitors' firms who had acted for parents in pre-proceedings in each of the study areas was obtained from the Legal Services Commission. These firms were then contacted to inform solicitors about the research, particularly the possibility of requests to observe pre-proceedings meetings attended by their clients, and to respond to any concerns. All the firms were supportive of the research.

Interviews and observations were all conducted with the consent of participants. Whilst obtaining consent for, and recording of, interviews with professionals were unproblematic, observing meetings raised ethical issues. The researchers were concerned that their actions should not discourage parents

from attending meetings which could prove important for parents' future relationships with Children's Services, and their care of children. They recognized that, however much care they took, letters about the research could be confused with letters about the meeting and therefore sought to preclude this possibility. For these reasons, they did not plan to contact parents about the research in advance of the meeting but to seek parents' permission for the observation only when they attended the meeting, and to rely on parents' lawyers as a source of early information about the study for parents. To this end, they prepared a leaflet for parents that lawyers could give to their clients. The Research Ethics Committees at both universities accepted this approach.

The researchers obtained no information about the meeting, except the time, the location and the name of the parent's solicitor (if known) in advance of consent from the parent. If the name of the parent's solicitor was known, the researchers attempted to make contact in order to establish whether they viewed the researcher's attendance as problematic. Consent for the observation was sought by the researcher immediately before the meeting started. A researcher spoke to each parent individually. Where possible, this was done outside the meeting but where parents attended late and the professionals had already convened, it occurred after the parents entered the meeting room but before the meeting started.

If parents had not received the leaflet in advance of the meeting they were given a copy at the end. The leaflet gave contact details for the researcher and for the study team. Parents were also asked if they would be willing to be interviewed, and if they were, their contact details were collected. The leaflet explained why the researchers would like to interview parents, the things they wanted to talk with parents about and offered an incentive (£20) to parents who completed the interview. This accords with the practice of recognizing the contribution parents make through giving time to be interviewed. Where possible, interviews were arranged directly after the end of the meeting, for later in the day or the next day. If this was not possible, parents were contacted by telephone or text to arrange meetings at a location convenient to them.

In order to protect the identity of those who participated, pseudonyms have been used for the families and children concerned, and some identifying details have been changed to minimize the possibility of identification, but not so as to impact on the substance of the research. Professionals who were interviewed are each referenced with a unique number and are not linked in this report to the areas where they practised. The local authorities involved are referred to by letters, A to F.

## **2.4 Selection of local authorities**

Three complementary strategies were used to identify local authorities where the study could potentially take place. The researchers identified the characteristics in terms of national and regional location, local authority structure, geography and demography which they sought to have represented in the sample, so as to include a wide range of cases and different local authority pressures within the Study. Secondly, with colleagues at Birmingham and Sheffield Universities, Masson ran a series of three free seminars for local authority lawyers and Family Group Conference co-ordinators to explore the

operation and interrelation of different approaches to alternative dispute resolution in local authority child care and child protection cases (Morris et al. 2009). These seminars were publicised to existing contacts and via Research in Practice links. Staff from 19 local authorities attended, including from three of the six authorities, which were subsequently recruited to the study. Staff from three others expressed an interest; these offers were not accepted because they failed to meet other criteria for the sample or conducting fieldwork in such locations, distant from the investigators' bases in Bristol and Norwich, would have imposed too great demands on the project resources. Thirdly, using Legal Services Commission data on lawyers' bills for providing pre-proceedings advice and Cafcass /Cafcass Cymru data on the number of care applications, the researchers identified local authorities which matched the criteria and undertook sufficient pre-proceedings and care proceedings work to meet the required sample size. Approaches were then made to recruit specific local authorities. One of the local authorities recruited had reduced substantially its use of pre-proceedings and care proceedings by the time the fieldwork was undertaken; in this authority the intended sample size was not met and all possible cases were included.

Preliminary discussions were held with lawyers and /or social work managers from potential local authorities to establish whether each local authority kept sufficient records of their use of the pre-proceedings process for the research. Researchers wanted to understand the basis for the decision to use the process, what had happened at the meeting and whether cases in care proceedings had been preceded by the process. It was also necessary to establish that it would be possible to access files where cases had been closed. All the selected local authorities had such systems but it became clear during the fieldwork that these were not always followed, and in the case of one local authority, F, had not been in operation throughout the sample period.

The sample comprised six local authorities: two shire counties, A and E, two London Boroughs, B and C, and two unitary authorities, D and F, one of which, F, is in Wales.

## **2.5 Sampling strategy – case files**

The aim was to achieve a sample of between 200 and 220 cases, with approximately equal numbers in each local authority, and which included: cases where the pre-proceedings process had been used but proceedings had not been brought, 'pre-proceedings only' cases; cases where the pre-proceedings process had been followed by care proceedings, 'pre-proceedings and s.31 cases'; and cases where care proceedings had been used without the pre-proceedings process, 'court only' cases. For each local authority, the sample should be proportionate to the use made of the pre-proceedings process and care proceedings. The sample should be recent but allow for care proceedings to have completed by the end of the fieldwork period.

The case file sample was drawn using lists of cases where the local authority legal department had advised the use of the pre-proceedings process or issuing care proceedings during a six month period. Fieldwork in the first two local authorities was planned for autumn 2010, so January to June 2009 was chosen as the sample period. This allowed for up to six months in a pre-proceedings period followed by

12 months in proceedings. The sample periods for the second and third pairs of local authorities were April to September 2009 and July to December 2009, respectively. Nevertheless, lengthy care proceedings meant that 5 cases overall, drawn from all sampling periods, had not been completed by the end of March 2012.

During piloting work in one authority it appeared that it could be difficult to identify 'pre-proceedings only' cases, i.e. cases that did not subsequently go into care proceedings. For this reason, it was decided to take a 100 per cent sample of such cases, and to achieve the desired total sample by randomly sampling from the lists of cases that went into proceedings. One local authority (F) reduced its use of care proceedings in 2009-10; it was therefore necessary to include all possible cases there.

Case lists are held by local authority legal departments to record and track the work they do for the 'client' children's services department. Whilst cases in proceedings could be readily identified, 'pre-proceedings only' ('PPP only') cases could not be in some of the local authorities, which had not introduced legal monitoring of these cases. Rather, there were lists of cases where a legal planning meeting had been held and/or advice had been given. Files for all these cases were inspected to see whether they had been subject to the pre-proceedings process; where this was so cases were included. Additionally, some cases which appeared as 'pre-proceedings only' cases were found to have become subject to proceedings, and were therefore excluded from the pre-proceedings only sample and added to the list of care proceedings cases.

**Table2.1: Sampling percentages**

<b>Local Authority</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>TOTAL</b>
% of 'PPP only' cases included	100%	100%	100%	100%	100%	100%	100%
N s.31 cases in sample period	<b>53</b>	<b>41</b>	<b>33</b>	<b>55</b>	<b>39</b>	<b>13</b>	<b>234</b>
Sample percentage	57%	73%	91%	62%	92%	100%	74%
% of 'PPP+s.31' in sample	70%	57%	37%	44%	39%	62%	50%
% of 'court only' cases in sample	30%	43%	63%	56%	61%	38%	50%
Letters of intent as % 'PPP+s.31' cases	29%	24%	7%	26%	28%	8%	27%

The number of ‘pre-proceedings only’ and care proceedings cases in each local authority was recorded. The proportion of care proceedings cases where the pre-proceedings process was calculated from the selected sample, on the basis that the selection process, effectively from a single list, was random. These proportions have been used to estimate the total number of ‘pre-proceedings and s.31’ and ‘court only’ cases, that is where the pre-proceedings process was and was not used, and to calculate the percentage of cases where pre-proceedings process was used and the case did not proceed to care proceedings for each authority (see below, Chapter 5, table 5.1). In calculating this percentage, cases where the pre-proceedings process was only used to notify parents that proceedings would be started (letter of intent cases) were excluded. Again the number of letter of intent cases was estimated from the proportion found in the sample, see above, Table 2.1.

**Table 2.2: The file sample**

<b>Local Authority</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>TOTAL</b>
<b>‘PPP only’ (a)</b>	<b>7</b>	<b>4</b>	<b>4</b>	<b>10</b>	<b>4</b>	<b>5</b>	<b>34</b>
<b>Sample s.31 cases (b)</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>34</b>	<b>36</b>	<b>13</b>	<b>173</b>
<b>Sample ‘PPP+s.31’ (c)</b>	<b>21</b>	<b>17</b>	<b>11</b>	<b>15</b>	<b>14</b>	<b>8</b>	<b>86</b>
(letters of intent) (loi) (d)	(8)	(5)	(1)	(4)	(4)	(1)	(23)
<b>Sample of ‘court only’ (e)</b>	<b>9</b>	<b>13</b>	<b>19</b>	<b>19</b>	<b>22</b>	<b>5</b>	<b>87</b>
<b>Sample full PPP (c-d = f)</b>	<b>13</b>	<b>12</b>	<b>10</b>	<b>11</b>	<b>10</b>	<b>7</b>	<b>63</b>
<b>Sample with any PPP (a+c)</b>	<b>28</b>	<b>21</b>	<b>15</b>	<b>25</b>	<b>18</b>	<b>13</b>	<b>120</b>
Sample a+f	20	16	14	21	14	12	97
<b>Sample s.31 + Loi (d+e)</b>	<b>17</b>	<b>18</b>	<b>20</b>	<b>23</b>	<b>26</b>	<b>6</b>	<b>110</b>
<b>TOTAL SAMPLE</b>	<b>37</b>	<b>34</b>	<b>34</b>	<b>44</b>	<b>40</b>	<b>18</b>	<b>207</b>

The actual sample of the different types of case is shown in Table 2.2. Overall, there were 207 cases in the file sample, of which 173 involved care proceedings and 34 only the pre-proceedings process. The total number of cases where the pre-proceedings process was used, including where the letter specifically stated that proceedings would be brought (a letter of intent) was 120. It follows that the care proceedings sample includes almost equal numbers of cases with and without the pre-proceedings process (86 and 87, respectively). However, if the cases where the process was used to inform the parent that proceedings would be issued (23) are grouped with ‘court only’ cases (87), that gives 110 cases where there was no attempt to avoid care proceedings under the pre-proceedings process, and 63 cases where the pre-proceedings process had a possibility of diversion but was followed by care proceedings (‘PPP and s.31’), see above, Table 2.2.

Table 2.3 summarizes the qualitative aspects of the study, showing the numbers of interviews and observations in each of the six local authority areas.

**Table 2.3: The interview and observation samples**

<b>Local Authority</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>TOTAL</b>
<b>SW manger interviews</b>	2	3	3	4	2	2	<b>16</b>
<b>Social worker interviews</b>	5	3	4	2	2	3	<b>19</b>
<b>LA lawyer interviews</b>	3	3	2	3	2	3	<b>16</b>
<b>Total Local authority interviews</b>	<b>10</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>6</b>	<b>8</b>	<b>51</b>
<b>Parents’ lawyer interviews</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>19</b>
<b>Parent interviews</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>24</b>
<b>Meeting observations</b>	<b>6*</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>34*</b>

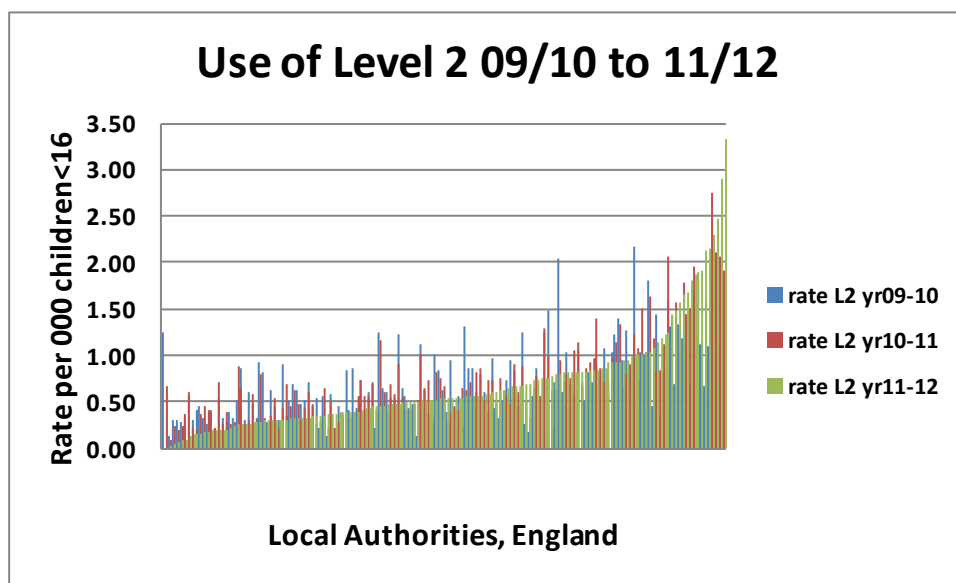
\*2 reviews of observed PPMs also observed increasing the total to 36

## **2.6 The sample in the context of the national picture**

National data on the use of care proceedings and the numbers of bills paid by the Legal Services Commission for legal advice at pre-proceedings meetings allow comparisons between the selected local authorities and others. In terms of the rate of use of care proceedings in 2009-10 (per 10,000 children under the age of 16 years), one of the English local authorities (E) was a low user, in the bottom third nationally, two (A and C) were average users, and two (B and D) were high users, in the top third nationally. Figures were not available for the numbers of children involved in care proceedings in Wales.

Legal Services bills data showed that substantial numbers of parents were obtaining legal advice to attend pre-proceedings meetings in all the study authorities. Indeed, use of the process was one of the criteria for the researchers' selection so as to make the Study viable. Ranking the local authorities by numbers of bills submitted in 2009-10, only one local authority (C) was in the bottom half of a list containing all English local authorities. In terms of rate of use, calculated by numbers of bills per 10,000 children under 16, two local authorities (C and E) were in the mid third of the list of all local authorities and three (A, B and D) were in the top third. The Welsh local authority was similarly in the top third of Welsh local authorities in 2009-10 but its ranking was considerably lower in the subsequent years. The numbers (and the rate per 10,000 children under 16 years) declined nationally between 2009-10 and 2011-12 and also changed somewhat in the local authorities in the Study, see chart 2.1.

**Chart 2.1: Rate of Level 2 bills 2009-10 – 2011-12 in the Study local authorities**



## 2.7 Analysis

The quantitative data was analyzed using SPSS 18 (PASW 2009); the qualitative data was organized into a database for analysis using NVivo 9. A separate database was also created to allow the systematic analysis of the observed cases. The quantitative and qualitative analyses were conducted iteratively and in parallel; codes in the recording schedule were reflected in some nodes in the qualitative analysis. The quantitative data was interrogated to establish the frequency of issues and patterns raised in the interviews and observations, and to establish whether impressions from the data reflected statistically significant differences between local authorities or types of case. The richness of the qualitative data was not constrained by the more limited file information. Indeed, field notes made during the file analysis and included with the pen pictures were used to help explain patterns observed from the data.



In analysing the data from interviews and observations the researchers drew on the grounded theory approach (Glaser and Strauss 1967, 1971).

In addition, short narrative case studies were prepared for each observed case. These case studies incorporated background information obtained at or after the meeting; the impressions the field worker gained through the observation; the main reactions of the parents and professionals; and information about outcome obtained through follow up interviews with social workers or local authority lawyers. The preparation of these cases studies was a matter of collective discussion amongst the research team, with members of the team reading the source material and reviewing drafts of the case studies to agree that the various sources were reflected in the account, and to ensure that identifying details were removed so far as possible, whilst maintaining the essence of the pre-proceedings meeting. Examples taken from the case studies have been used to illustrate aspects of the process which were explored in more detail in interviews and through observations, and more broadly in the file data. All the case studies are included in Appendix 2.

### **Data Archiving**

In accordance with the conditions for the ESRC award the data collected for the study was offered to the UK Data Archive. It was deposited in September 2012 with access embargoed until August 2013 to allow the researchers to complete their initial work with publication and dissemination.

### **Key points**

- **The study, conducted between 2010 and 2012, used quantitative and qualitative methods to examine the operation and effectiveness of the pre-proceedings process in 6 local authorities in England and Wales.**
- **Five of the 6 local authorities were above-average users of pre-proceedings.**
- **Files/court applications and records (207), selected randomly, were analysed to establish how the process was used and to what effect.**
- **Pre-proceedings meetings (36) were observed. Parents (24) who attended these meetings were interviewed, and the cases were later followed up through the local authority.**
- **Semi-structured interviews were conducted with professionals: local authority lawyers (16), social work managers (19), social workers (16) and solicitors who represent parents (19). A focus group was held to obtain judicial perspectives.**
- **Policy and practice issues were developed through discussion with policy makers and practitioners at two seminars.**

- **Names used in the report are pseudonyms; professionals are identified only by their occupation and local authorities are anonymised.**

### Chapter 3: Understanding the pre-proceedings process – theory and literature

This chapter sets the pre-proceedings process in a number of wider contexts, identifying a range of theoretical perspectives and policy debates that can help to shed light on the societal and organisational forces that lie behind it and shape the way it is put into practice. The various perspectives reflect the inter-disciplinary approach of the study, social work and law, exploring the interweaving of social work and legal principles and practice in the operation of the process and the decision-making of all involved. The chapter draws on theory and empirical research on matters such as the nature of professional decision-making and thresholds of intervention, the role of the law in regulating behaviour and resolving disputes, the balances between family support and child protection, and the challenges of parental participation and independent advice in child protection cases.

In offering these perspectives, we are aware that there was no public consultation or piloting of the pre-proceedings process that might have brought such matters to the fore. There had been preliminary work and time for further preparation, because the *Review of the Child Care Proceedings System in England and Wales* in 2006 had recommended that parents be sent a document in plain language to explain the authority's concerns before proceedings, and that they be encouraged to seek legal advice. It had also recommended the piloting of a fixed fee legal advice scheme (DfES and DCA 2006, 5-6). The main impetus behind the proposals appears to have been pragmatic, to corral resources (a limited amount of legal aid funding) to create a process (the opportunity for legal advice, and the meeting) in the hope that this might help to change parents' attitude to children's services, or at least impose legal order on the case to make subsequent court resolution easier and quicker. How or why such a relatively limited process would operate this way, and what other (possibly negative) impacts it might have, were not publicly debated or tested. It is also worth noting that the new process was introduced at a time when proceduralisation – creating yet another set of processes to be followed and regulations to be obeyed – was still the standard response to perceived problems in social work practice and the courts. In some ways the pre-proceedings process reflects this trend (it was a top-down injunction on local authorities and lawyers) but in others (the very little guidance on what to do) it shows a lack of detailed planning, and it was left to individual agencies to work out how to implement it.

The process may have lacked explicit theoretical foundations, but that does not mean that theory cannot contribute to understanding it. This chapter therefore offers a variety of perspectives, some alternative and some complementary, that highlight different features of the process. It resists any claim that there is a single, straightforward model that captures it all. It would be unrealistic to expect this, when the process covers so many aspects of state-family intervention, professional roles and responsibilities, and organisational activities and dynamics.

The chapter is in four main sections. The first outlines a 'naturalistic' approach to the use of discretionary decision-making that is especially useful for understanding the complex nature of professional activity generally, and child protection work in particular. The second part outlines three theories about the role of the law, its benefits and limitations, in regulating societal and private conduct, and resolving disputes, outside the formal court setting. These are juridification, procedural justice and

responsive justice. The relevance to family and child welfare matters is explored for each approach, and the application to the pre-proceedings process. The third part focuses more specifically on the tensions of child protection work, focusing on four dimensions. It identifies the tensions between prescription and professional judgment; parental participation and the focus on child protection; family support and the dangers of delay; and debates about whether too many or too few children are taken into care. Finally, the chapter considers research that has recommended independent advice and advocacy for parents in child protection cases. It highlights the complexities of measuring 'success' in this work.

### **3.1 Discretion: positivist or naturalistic?**

Child protection involves not only social work assessments but a myriad of exercises of discretion by the whole range of professionals involved in the child protection process. Socio-legal scholars exploring discretion have sought a more naturalistic understanding of the way discretion gets exercised, studying it through day to day practice in a range of organisations with legal powers.

#### *Influences on decision-making: 'surround', 'field' and 'frame'*

Hawkins (1992, 2002) uses the concepts of 'surround', 'field' and 'frame' to break down the various influences, both macro and micro on organisations, such as local authorities, whose decision-making is both policy-led and generated by internal policies (Hawkins 2002, 47). There are parallels here with Dingwall et al.'s (1983, 2<sup>nd</sup> ed. 1995) classic, ethnographic study of child protection practice (discussed further below), which highlighted the social, organisational and professional influences that shape practitioners' decisions about whether or not children are 'at risk'. This wider approach to decision making chimes with the ecological approach to social work (Cicchetti and Valentino 2006) and the recognition that risk for children arises from the interaction of multiple factors in their carers' lives, the interactions of professionals with the families, and the interactions within and between agencies (Brandon et al. 2008). There are also links with the conceptual approach to thresholds put forward by Platt and Turney (2013), also discussed below.

In Hawkins' analysis, the broad context, the 'surround' for a decision are matters that are beyond the local authority's control, such as the increased public and political imperative for child protection in the wake of the Baby Peter case, alongside generalized beliefs about the importance of family integrity and privacy, and mistrust of social workers, including by the courts. The 'field' includes local authority policies and practices, both written and informal, which influence staff, such as policy objectives to bring proceedings only as a 'last resort', concern to manage local authority resources, and policies relating to the use of child protection plans. The 'law determines the contours and reach of the field of a legal bureaucracy' (Hawkins 2002, 50) including the ways that local authorities perform statutory social work. The management or legal department's interpretation of the statutory guidance, and their approaches to compliance with it, are also in the field, as are sets of ideas about how child protection social work is to be performed. The 'frame' for the decision includes the decision-makers' values (Lempert 1992), experience and interpretations both of formal processes and of the case presented to them. Cases are framed through workers' theoretical or disciplinary perspective and the importance given to individual

or groups of factors. It is not the factors themselves that are important but the meaning given to them (individually and jointly) – that is, the way they are framed. For example, the use of the pre-proceedings process in a particular family may be framed by the family’s previous dealings with children’s services, including previous court proceedings. Whilst factors in the surround may apply across all local authorities, those in the field and frame are shaped by, and within, each local authority, and in the processing of each case. Hawkins is clear that these influences are interconnected and interacting; change in the surround – for example, the approach taken by the courts or the death of Baby Peter – may prompt a change of practice, as individual workers modify their own practice to accord with their understanding of the changed (or unchanged) expectations of them.

Similarly, Platt and Turney (2013) identify various sense-making processes that front-line workers use to evaluate information when making decisions about child protection thresholds. These processes include the operational strategies workers adopt to manage the range of pressures their work entails, coming from outside and within the local authority. Platt and Turney argue that a naturalistic approach to decision-making provides a better basis for trying to improve practice than a positivist, ‘rational choice’ model, which assumes that social workers will be able to make better decisions simply because they are made more aware of the importance of specific information. There is a need for a better understanding of the way ‘background child-related, individual professional/interprofessional and organisational factors ... are mediated through complex structures of sense-making’ (Platt and Turney 2013, 16). Without this, it is not possible to understand whether or how new information or new processes will be used as an aid to decision-making.

#### *A systematic bias towards the least overtly coercive form of intervention?*

Dingwall et al.’s (1983, 2<sup>nd</sup> ed. 1995) study of child protection practice in the 1970s is an early but still compelling example of a naturalistic approach to everyday practice and decision-making in child care cases. Law, policy and organisational structures have changed greatly since then, but as Dingwall et al. say in the postscript to the second edition, ‘the practical problems and moral dilemmas’ have remained the same (Dingwall et al. 1995: 245).

Dingwall et al. identified an ‘institutionalised preference for an optimistic version of the events’ (1983, 73), and for the least overtly coercive form of intervention. This has three main aspects. First, there is the organisational context, of high workloads and limited resources, which creates a tendency for staff to minimize risk factors and screen out cases that might, if investigated more vigorously, turn out to be ill-treatment. There simply is not the time to scrutinize everything, so short cuts have to be taken, and explanations accepted at face value until that becomes untenable. Second is the ‘division of regulatory labour’, the number of different agencies and different professionals involved, with different expertise, experience, status and roles. The range of different perspectives creates another bias against compulsory intervention, because, as they put it, it is rather like getting three lemons on a gambling machine (Dingwall et al. 1983, 77).

Third, there is what Dingwall et al. famously called ‘the rule of optimism’. This bias means that the most favourable light will be shed on events and explanations, until this is no longer feasible. It has two components – ‘natural love’ and ‘cultural relativism’. The first holds that caring parent-child relationships are a natural fact, so any accusation that this is not the case in a particular family is especially grave, and has to be backed up by strong evidence. The second holds that different styles of child rearing are valid in their own cultural context, and should not be illiberally suppressed unless there is clear evidence that they are harming the child.

With regard to contemporary child protection practice, and in particular the pre-proceedings process, the three ‘frames of reference’ can be seen in the tendency to give parents ‘another chance’ to make the required changes, to look for a clear agreement between the social work and legal perspectives on the case, and to delay taking a case to court.

The rule of optimism has proved a controversial concept. It has been used to criticize social workers for being naïve and unquestioning of parents (as in Brent 1985), but it is important to appreciate its original meaning. It was *not* about individual social workers’ gullibility, but part of a wider, social and political understanding of child protection work (in Hawkins’ terms, the surround). Given that our society places such high value on freedom and family privacy, state intervention is only allowed on the basis of a ‘social contract’ that minimizes the likelihood of compulsory action.

If this is the case, though, it challenges the standard reaction to child abuse deaths, to identify the mistakes, blame the professional(s) who made them and add another set of procedures. One counter to that is to argue that some deaths from maltreatment are inevitable, and society needs to accept that mistakes happen, and low probability events happen (Munro 2011, 13); but Dingwall et al.’s view is rather more sophisticated than that, that such deaths are not just because of human fallibility. Their naturalistic analysis shows that the system itself builds in more risk than it would if children’s safety alone were the sole consideration. They end their book with the rhetorical questions, ‘How many children should be allowed to perish in order to defend the autonomy of families and the basis of the liberal state? How much freedom is a child’s life worth?’ (Dingwall et al. 1983, 244).

#### *The decision-makers’ horizons*

An alternative naturalistic perspective, ‘the decision-makers’ horizons’ is presented by Emerson and Paley (1992), which can also illuminate influences on decisions about use of care proceedings. In their work on decisions to prosecute, they observed that decision-makers considered factors in the case history, the way the case had already been processed, including who had investigated it, and also looked to the future and made judgments, which were not limited to winning or losing but encompassed the impact of the proposed intervention on all involved, including the decision-makers themselves.

Direct comparisons can be made with legal planning meetings, the local authority forum that considers whether care proceedings or the pre-proceedings process should be used. The past horizon – that is, the quality and depth of work undertaken with the family or the circumstances precipitating the request for proceedings – may be seen as justifying a swift application to court. Conversely, cases may be seen as

requiring more work before proceedings are initiated and so indicating preliminary measures, for example the use of the pre-proceedings process, both because of the future horizon in the court and the institutional horizon of maintaining standards. Unlike the decision-making studied by Emerson and Paley, legal planning meetings involve a group. The involvement of more than one person may extend the horizons, bringing into focus legal or social work factors that a sole decision-maker would not have. It also adds dimensions of the relative influence of the lawyers and social work managers, a factor which may depend on the experience and personalities of individuals and the structure of the organisation, as well as professional role and status (Dickens 2006).

There is an important distinction between the exercise of discretion to prosecute, a major theme in much socio-legal work, and child protection work. Prosecution is a response to past events, where the decision-maker interprets and selects from a factual matrix; child protection work is ongoing, with new facts which continually necessitate re-interpretation of earlier actions and review of decisions already made (Munro 2011a; Laming 2003). Indeed, it is often the failure to do this adequately which results in either inaction or inappropriate intervention.

The naturalistic approach to decision-making suggests complex and dynamic interactions through which information is understood and processed. However, decision-makers can reduce the demands they and those with responsibility for implementing decisions face, by adopting a usual way of dealing with cases or a policy to handle most cases in a specific way, as Dingwall et al. (1983) observed. Manning (1992) argues that such routinization frequently develops in bureaucratic organizations as a means of managing case volume. Many policies and practices in child protection social work may do this, particularly those which produce a 'tick box' approach, and practitioners have been noted to narrow their thinking and take short cuts in decision-making (Macdonald 2001; and see Munro 2010, 2011a, b). A naturalistic approach helps us to see that short cuts are inevitable responses to the pressures of the job, both workload and complexity (Sinclair and Corden 2005); but when things go wrong, short cuts are held up as shortcomings.

Integrating these approaches from socio-legal studies and social work sheds light on the use of the term 'threshold'. It does not denote a single clearly defined standard for intervention, but rather there are different thresholds at different points in the child protection system (Brandon et al. 2008; Education Committee 2012) and for making different orders in the courts (*Re K and H* [2006] EWCA Civ 1898; *Re L-A* [2009] EWCA Civ 822). Moreover, decision-makers in legal planning meetings make different sense of the information they have according to its context, their position and the internal and external pressures on the local authority. The interpretation of the threshold is within the decision-makers' frame and how a court will apply the threshold is one of many matters on their horizon.

### **3.2 The role of the law in resolving disputes outside court**

#### *Juridification*

'Juridification' refers to the increasing expansion of law into ever more areas of life, and how it thereby changes them, a phenomenon identified by social theorists and lawyers towards the end of the

twentieth century (see Blichner and Molander 2005 for a useful analysis of the different senses of the term). Whilst the focus of key texts is the increased regulation of labour, company and social welfare law (Teubner 1985), Habermas, a leading theorist, wrote about the impact of law on family relationships, and also on the relationships between schools and pupils and their families (Habermas 1987). Although he recognized that the introduction of law into families' lives provided more equal relationships and recognition of children's rights to protection, Habermas argued that that, beyond these reforms, introducing law to family and school relationships distorted social interactions. Law has the effect not merely of supplementing existing ways of interacting, it 'converts' them into legal(istic) ways. Through this process, law encourages individuals to relate to each other instrumentally rather than communicatively, a process which amounts to law's 'colonisation of the lifeworld' (Habermas 1987, 362). (Law's 'colonisation' of child and family welfare matters is well illustrated by King and Piper 1990 and King and Trowell 1992. For the counterview, that welfare rather than legalistic approaches have become dominant, see Donzelot 1980; and for an interactionist position, Parton 1991, White 1998, Dickens 2008).

For Habermas, the protection of children's welfare could only be achieved by allowing the state to intervene in the family, but the provision of state services created dependence on the state. In the courts, disputes about welfare were dealt with by judges who took a narrow approach, with limited evidence. Also, judicial practice, negotiating case outcomes with the youth-welfare office, precluded participation by parents. Thus what started as reforms to introduce rights and the rule of law became a mechanism through which professionals imposed their views of child care on parents. These sorts of cases required a different approach, based on a broader understanding of children and families. Moreover, the dominance of law meant that alternative ways of resolving conflicts were not developed. Habermas favoured minimum state intervention to protect children's rights and a reduction of judicial discretion in family cases: 'Legislative regulation ... must do everything possible to de-judicialize the conflict' (Habermas 1987, 370). However, in his later work, Habermas took a more positive view of what judicial decision-making could achieve by striking a balance between the interests of families and the state through an 'application discourse' which enabled general principles such as welfare to be applied in ways that take account of 'the different world views of the participants' (Habermas 1996; for an application of Habermas' ideas to social work, see Houston 2003).

Habermas' work is highly conceptual and does not address how children would be protected if not by state intervention. However, it does provide a counter to the often-assumed benefits of creating legal rights and duties. The notion that law limits and changes communication, and displaces social interaction with legal interaction, is relevant to the introduction of a new process, involving lawyers before court proceedings. This might bring the benefits of law and lawyering, a forum where all parties have support and can contribute to an understanding of the issues, and social workers can be required to explain and justify their actions in accordance with the law. Alternatively, it could have negative consequences. Constructing meetings between parents and social workers as a legal pre-proceedings process might make normal, direct communication between parents and social workers more difficult, particularly if lawyers take on the role of their client's spokesperson. Additionally, the meeting might



become focused on issues of more concern to lawyers than social workers, such as admissions, proof and evidence.

The introduction of the pre-proceedings process can be seen as an extension of legalised procedures beyond the courtroom into local authority meeting rooms, before the local authority has sought compulsory measures, expanding legal regulation and juridifying relationships between social workers and families. Whatever this might achieve, there is a risk that legal process reduces communication between parents and social workers, replacing it with discussions between professionals, as occur in court. Not only are parents routinely physically excluded from negotiations at court, the language in the courtroom frequently descends into jargon which they cannot understand (Freeman and Hunt 1998; Pearce et al. 2011). Not only could juridification disadvantage parents, it would also make social work more difficult. Communication via lawyers is likely to be more formulaic and so provide less opportunity to understand and respond to parents' own perspectives. Also, social workers themselves may lack confidence with legal process and can feel undermined if lawyers and legal language dominates discussions.

### *Procedural justice*

Procedural justice is achieved through dealing with the parties to a dispute fairly and with respect, for example, by allowing them to participate fully, ensuring they are listened to and heard. Procedural justice theory postulates that treatment that is agreed by the parties to be fair makes even adverse decisions more acceptable, encouraging compliance, reducing the risk of conflict in future and developing more positive attitudes to legal authority generally. Belief in the fairness of treatment generates a willingness to co-operate, encourages individuals to engage and do the right thing, thereby reducing the need for enforcement (Tyler 2004). There are different views about why being treated fairly has these wider effects; Thibault and Walker (1975) proposed that this was linked to the greater control disputants had over the way the dispute was handled, particularly in informal settings, which enabled them to achieve a solution that was best for them. Later models have viewed the effect as relational; fair treatment indicates that importance of the relationship with the other parties and affirms a positive self identity (Tyler and Lind 1992).

However, the power of procedural justice does not mean that fair *outcomes* (distributive justice) are not important as well. Disputant satisfaction is a matter of both/and, fair process and outcomes, not either/or. Moreover, fair procedures may not achieve these positive effects for all types of disputes. Whilst Tyler (2004, 449) provides evidence for the effectiveness of procedural justice in and between different communities, he stresses the importance of societal context (Tyler and DeGoey 1996). The influence of procedural justice to create the positive outcomes of co-operation, compliance and acceptance may be weaker amongst the socially excluded.

Early work on procedural justice was laboratory-based, but procedural justice effects have been found in real life studies. These have identified key aspects of procedural fairness as: opportunities to participate; neutrality of the forum; trustworthiness of authorities; and being treated with respect (Tyler 2004, 445).

Much of Tyler's work has focused on the criminal law, and citizens' willingness to keep the law or pay penalties for infractions, such as speeding (Tyler 1990). However, the impact of procedural justice has been examined in a study of child custody decision-making (Kitzmann and Emery 1993), an emotive area but not one as visceral as child protection. Although research links perceptions of procedural fairness to informal dispute resolution, with mediation viewed as fairer than formal trial, Kitzmann and Emery found that mothers were equally positive about mediation and formal trial. In contrast, fathers were more satisfied with the increased participation and control they experienced with mediation (p 554). They suggest that this may be because mothers were favoured by the standard approach to child custody cases operating at the time (p 564). Also, the disputes involved both parents seeking sole custody but some were resolved with orders of joint custody. In such circumstances, both parties may have felt the dispute had not actually been resolved and process may have had a more important role than outcome in their satisfaction.

The pre-proceedings process appears fair in terms of providing parents with an opportunity to participate in a discussion about children's services' concerns about their children. The meeting is less formal, and therefore possibly less intimidating, than an initial child protection case conference. Parents can be accompanied by a lawyer whose presence can support the parent and restrain the social workers, in terms of the requirements they may wish to impose on parents. It should not be problematic for social workers to treat service users with respect. However, the pre-proceedings meeting is not a neutral forum; these meetings are usually held in a children's services office and chaired by a social work manager, employed by the local authority, and local authority personnel usually outnumber the parents' side. Local authority children's services are certainly not regarded, universally, as trustworthy by families. Indeed, the Family Justice Review noted a widespread lack of trust (Family Justice Review 2011a para 13, b, para 3.3) which is reflected in newspaper reports and, particularly, on the internet. Even where families trust their own social worker, they may not trust the local authority, either because of a poor experience in the past, or because of the prevalence of negative views about local authority child protection work. Moreover, many parents in child protection cases are socially excluded (Featherstone et al. 2012). Fathers who are not living with their children may also feel excluded by the mother and or by the social worker and children's services. Consequently, they may be less willing to participate in, and agree to, plans for children's care made in pre-proceedings meetings.

Procedural justice theory suggests that the pre-proceedings process may be viewed positively by some parents, who may then co-operate better with children's services. Given the limited form of procedural justice provided, the context of distrust and the very high stakes (which can include permanent removal of children from families), it seems unlikely that the process would result in parents being more willing to accept care proceedings. Indeed, if the local authority takes the case to court, it will be because the pre-proceedings process has *not* resulted in sufficient co-operation by the parent and improvement in the children's care.

### *Responsive regulation*

Responsive regulation was initially an attempt to bridge the gulf between counter claims for increased regulation and de-regulation in business. The 'third way' suggested that a more flexible approach should be taken with increased regulation where the circumstances demanded, illustrated in the form of a 'regulatory pyramid' with self regulation at the bottom and court control at the point (Ayres and Braithwaite 1992). Regulation was not limited to government-imposed rules, but included education, encouragement and persuasion. Nor should progress up the pyramid be based on the importance of the matter being regulated, but rather on the insufficiency of any lesser action to produce change (Parker 2012). Responsive regulation is associated with procedural justice; it gives those who are subject to regulation the option of taking control over their actions so as to avoid more intrusive intervention, and in doing so is seen to be more fair (Braithwaite 2002, 78; Neff 2004). In this way it also preserves the time and efforts of regulators, for cases where self regulation has not been effective.

The ideas of responsive regulation have had wide application, including in the area of child protection (Braithwaite et al. 2009; Harris 2011). For example, the use of family group decision-making gives primary responsibility for child protection to families, with formal state systems only becoming involved if the family is unable to agree an adequate protective plan (Neff 2004; Burford and Adams 2004; Morris and Connolly 2012). Harris (2011), writing from an Australian perspective, argues that a responsive regulation approach rather than one which focuses on parental compliance has the potential to reduce some of the problems in child protection systems, particularly the disempowering effect of coercion which alienates parents, propels them towards ever more coercive intervention and prevents children receiving the help they need. Harris recasts the regulatory pyramid in two ways: in terms of decision-making, with informal decision making at the base, family group conferences in the middle and court at the point: and in terms of engagement, with collaborative assessment at the base, mandatory appraisal (more formal assessment) in the middle and forensic assessment at the point.

Whilst there are similarities between the Australian and English and Welsh child protection systems (Gilbert et al. 2011) there are also considerable differences in their legal frameworks, particularly in the use of formal intervention and availability of support without this. Despite high thresholds there are greater possibilities of informal support in England and Wales. The regulatory pyramid appears to reflect the approach of supporting most children as 'children in need', but moving cases up to more formal child protection plans where good enough care is not maintained. The use of the pre-proceedings process could operate as a further step, with court proceedings being used only where adequate parental (or alternate) care is not secured or maintained. However, family group decision-making does not fit simply into this model because it ought not to be regarded simply as a method of increased intervention; rather families should be assisted to undertake this at any time where children are in need, or in need of protection (Ashley and Nixon 2009).

There is another way of looking at responsive regulation in relation to the pre-proceedings process. It is not only families that are regulated through the child protection system, so are local authorities which are held increasingly accountable for their actions. Accountability is weak at the bottom of the pyramid

where families are seeking services from local authorities. Families may make complaints about their treatment, but complaints services are largely internal to the local authority. Child protection plans are subject to more external scrutiny through the interagency safeguarding system but local safeguarding children's boards are not intended to make agencies accountable to individual service users. Initiating the pre-proceedings process gives the parents access to legal advice and the possibility of questioning local authority actions with an adviser present. Where the matter gets before the court, local authorities are exposed to the possibility of wider criticism of the handling of the case, and to their plans being rejected as not in the child's welfare. Thus, moving a case into the pre-proceedings process increases regulation of both parental and local authority action.

### **3.3 Policy tensions in child protection and social work**

This section reflects on the current theoretical and policy debates about child protection and social work, highlighting their relevance for the pre-proceedings process. It draws on the recent national reviews of social work, child protection and the family courts; recently-published research on child safeguarding and local serious care reviews; current steps to cut back central government prescription; theory and research about empowerment and participation in child protection work; and the 2011-12 House of Commons Education Select Committee Inquiry into Child Protection (Education Committee 2012). The key messages from these sources, and the areas of difficulty and debate, are not new; on the contrary, they are all well-known, enduring challenges. Four areas of tension are especially relevant for the context and implications of the pre-proceedings process.

First, there is tension between the heavily bureaucratic, proceduralised forms of practice that have long been dominant in social work in England, and the calls for a renewed emphasis on professional skill and judgment. As noted earlier, the pre-proceedings process sits rather uneasily between the two – a new top-down imposition, but with very little guidance about how to employ it.

Second, there are tensions between wider policy calls for greater empowerment of service users and their enhanced participation in decision-making, against a sharper awareness of the dangers of feigned or short-lived co-operation. The tensions are especially pronounced in child protection work, and the challenge for the pre-proceedings process is to give an opportunity for parents to participate in a meeting which leads to greater, sustained and genuine engagement.

Third, there is tension between the need to reduce delay in protecting children, before and during care proceedings, against the imperatives of fairness for parents. This is especially acute because of increased awareness of the harm caused by long-term neglect and emotional abuse. The pre-proceedings process may give be an opportunity for a fair warning to parents and a re-invigoration of the support plan, but it risks adding to delay.

Fourth, and linked to the third point, there are tensions between demands for more decisive action to safeguard children by bringing more into care, against calls for more effective preventive services, meaning fewer children in care.

### *National reviews of social work, child protection and the family justice system*

As described in the Introduction, Chapter 1, the period since the launch of the pre-proceedings process has seen important reviews of social work, child protection and the family justice system. There has been the Social Work Task Force and then the Reform Board; Lord Laming's progress review and the Munro Review of Child Protection; and the Family Justice Review. The key messages from all emphasise the dangers of losing sight of the child in the complex and demanding priorities and systems of local authorities and the courts. The major risks come from the bureaucratic work setting, miscommunication with other professionals, and the challenges of working with very needy families. In particular, the Munro Report identifies the perverse impact of the procedure-bound nature of local authority child protection practice; and the Family Justice Review brings out the challenges of inter-agency and inter-professional working by exposing the strained relations between the courts and local authorities. The Family Justice Review identified a culture of mistrust between the two sides, but also noted that there was awareness from both about the extreme seriousness of the decisions to be made. It concluded that these combined to lead to routine commissioning of new assessments, duplication of work and 'a vicious cycle of inefficiency and delay' (Family Justice Review, 2011a: 101).

These messages are not new, and the call for earlier, more decisive action to protect children is reiterated by the recent overview of findings from the Safeguarding Children Research Initiative, discussed below. Yet the fact that they have been found in previous child abuse enquiries, reviews and research is a clear enough warning of how hard it is to make these changes: after all, none of the workers involved want children to be killed or suffer harm, so it is safe to assume that if the changes were easy they would have been achieved by now. Lord Laming's 'NOW JUST DO IT' (Laming, 2009: 6) misses the point. Child protection work itself is complex, and beyond that there is an ambiguous political and societal context, demanding swifter action to protect children and better support for families, all within a context of tightly restricted resources.

### *Delay for children versus fairness for families*

*Safeguarding Children Across Services* (Davies and Ward, 2012) is a summary of 15 research projects, eleven of which were commissioned by the government in response to the Victoria Climbié inquiry (the Safeguarding Children Research Initiative, SCRI). The focus was on emotional abuse and neglect, and there were three priority areas: identification and initial responses; intervention after maltreatment had been identified; and inter-agency working. Details of the various studies, together with the overview report and key messages for practitioners, are available on the SCRI website: ([www.education.gov.uk/researchandstatistics/research/scri/](http://www.education.gov.uk/researchandstatistics/research/scri/)). The second of the priority areas, intervention after maltreatment has been identified, is particularly relevant to decision-making about whether or not to start care proceeding. The three empirical studies in the SCRI are most useful. These are the *Significant Harm of Infants* study (Ward et al. 2012), the *Neglected Children Reunification* study (Farmer et al 2012), and the *Home or Care?* study (Wade et al. 2012).

The overriding message of the research summary is that ‘too many children are left for far too long in abusive families where there is insufficient support, and that more, rather than fewer, would benefit from being looked after away from home’ (Davies and Ward 2012, 14).

Underpinning that conclusion, four key points stand out. First, that there is a need for decisive early intervention, with clear plans and timescales for parents to achieve change, and the consequences of not doing so being clearly spelt out, and acted upon if necessary; but there must also be recognition that some families will need on-going, long-term support, and cases should not be closed over-hastily (pp. 82-3, 147-8). Second, that parents appreciate social workers who listen to them and are honest with them, but social workers must be conscious of the limits of partnership working, and especially need to be wary about feigned compliance (pp. 84, 125-6).

Third, that parents who succeed in making the required changes are likely to have had a ‘wake up’ moment – this could be sparked by various events, including permanent separation from older children, or the birth of a new child. But an important finding (from the Ward et al. study) is that if the necessary changes do not occur within six months of the birth, then any minor changes are unlikely to persist or be sufficient within the child’s timescale (although it is noted that the parent(s) may be able to make the necessary changes in time for a subsequent child. The Ward et al. study is a small sample, only 57, and the authors themselves acknowledge the need for further research to test the findings (Ward et al. 2010, 84-5, 99-100). Even so, these are important messages for the pre-proceedings process, especially as one of its perceived advantages is that it gives a clearer framework for engaging with parents and planning work before a child is born.

Fourth, the overview concludes that specialist assessments are often over-used, to show that parent’s rights have been considered rather than to identify whether the necessary changes have been, or realistically could be, achieved. Experts’ reports add to delay, and are often unreliable in reaching over-optimistic conclusions (Davies and Ward 2012, 78-9). Again there are important messages for the pre-proceedings process, and especially what happens when cases do go into court. Are the pre-proceedings assessments accepted by the courts? Or does the powerful tendency to order further assessments prevail? (Family Justice Review 2011a).

For all that, the overview also notes that there are few cases where there is unequivocal evidence right from the start (p. 75), and furthermore, that some families *are* successfully supported to care for their children, and some children are successfully returned home. The *Home or Care?* study found that 41% of the children who went home were in stable placements after four years, although the researchers scored their well-being lower than those who had remained in care. The *Neglected Children Reunification* study found 43% had achieved stability at home at their five year follow-up. The researchers considered that a third of them had poor well-being, but a third satisfactory and the other third good (Farmer et al 2012). This sample was 138 children who had become looked after by the local authority because of neglect. This means they were likely to be at the more severe end of the spectrum. Five years after return two-thirds were in stable placements back at home, with satisfactory or good wellbeing. It is also worth noting that only two-thirds of the children in the sample were subject to care

proceedings, and that the plans made in those proceedings did not work in over 60% of cases (Farmer et al 2012, 184, 189).

The point is that while it is important to hear the messages about thorough assessments, good planning, clear decision-making and decisive action to avoid drift, it is also important not to fall into simplistic, knee-jerk and punitive responses; and to recognize that even if the court is involved, plans do not always work out. Again, there are messages here for the pre-proceedings process, about how much time is allowed for parents to make the required changes, and how much leeway is given for breaches of the agreement.

The importance of accurate assessments, effective help for extremely needy families and decisive action when necessary are reiterated by the findings of 'serious case reviews'. These are local enquiries into cases where children have died or been seriously injured, and abuse or neglect is known or suspected. Such cases are the extremes, and not all will have been known to social care agencies; but the impact of extreme cases on national policy is well-known (Masson 2000), and the local reviews also make many recommendations for changes to policy and practice.

Brandon and colleagues have conducted four overview studies of serious case reviews in England. These cover the periods 2003-5 (161 cases: Brandon et al. 2008), 2005-7 (189 cases: Brandon et al. 2009), 2007-9 (268 cases: Brandon et al. 2010), and 2009-11 (184 cases: Brandon et al. 2012). This gives a total of 802 cases over eight years. The overviews confirm the range and multiplicity of problems that the families were facing, notably mental illness, drug and alcohol abuse and domestic violence. Child neglect is a background factor in the majority of reviews. Poverty is another common feature, but the recommendations rarely address these wider aspects (Brandon et al. 2012, 6).

In summarizing the first three reports, Brandon et al. highlight the 'toxic trio' of domestic violence, parental mental ill health and parental substance misuse, which often co-exist (Brandon et al. 2010, 53-4). They also drew attention to the frequent lack of parental co-operation with agencies, listing the forms this can take: 'deliberate deception, disguised compliance and "telling workers what they want to hear", selective engagement, and sporadic, passive or desultory compliance' (Brandon et al. 2009, 76). They argue that social workers have to be careful lest 'efforts not to be judgemental become a failure to exercise professional judgement' (Brandon et al. 2009, 27). All practitioners must be alert to the dangers of what they call the 'start again syndrome' (Brandon et al. 2008).

### *Reducing prescription?*

The Social Work Task Force and the Munro Review have sent out forceful messages about the unhelpful effects of yet more regulations and procedures, but it is proving far from easy to turn round the juggernaut of prescription and procedure. This is illustrated by findings from Brandon et al.'s most recent overview of serious case reviews (Brandon et al. 2012). These were held between 2009 and 2011, the very period when the calls to reduce prescription and build up professional judgment were at their height, and yet Brandon et al. found an average of 47 recommendations per review. They comment on the sheer volume and the character of those recommendations:

‘... the largely successful endeavour to make [the recommendations] specific, achievable and measurable has resulted in a further proliferation of tasks to be followed through. Carrying through these, often repetitive, recommendations consumes considerable time, effort and resources – but the type of recommendations which are the easiest to translate into actions and implement may not be the ones which are most likely to foster safer, reflective practice. The typical route to grappling with practice complexities, like engaging hard to reach families, was to recommend more training and the compliance with or creation of new or duplicate procedures. Fewer recommendations considered strengthening supervision and better staff support as ways of promoting professional judgement or supporting reflective practice.’ (Brandon et al. 2012, 6)

There are three notable challenges in shifting from prescription to professional judgment.

First, at a national level the calls to reduce prescription are heeded only selectively, and political rather than professional considerations are more likely to determine what is cut and what is added. Recent examples of increased central prescription include the April 2011 implementation of extensive guidance and regulations on care planning and case review of children looked after by local authorities, and on the role of the independent reviewing officer (DCSF 2010a, 2010b); and the government’s highly prescriptive adoption action plan, with targets and scorecards (DfE, 2011b). As the Munro progress review observes, this creates a ‘confusing narrative’ (Munro 2012, 53). A striking illustration is that revised adoption targets were published in May 2012, just a month before the consultation drafts of the hugely slimmed-down statutory guidance on safeguarding (which covers *Working Together*, the child in need *Assessment Framework*, and the role of the local child safeguarding board to promote learning and improvement (DfE 2012c)).

Second, a reduction in *central* prescription is not necessarily the same as overall reduction in procedures. Rather, the source of the rules, guidelines and timescales is likely to drop to local level, as proposed in the DfE consultation on reduced safeguarding guidance. The Munro progress report observes that rather than ‘removing guidance’ it is better to talk of ‘moving some guidance’, to professional and local levels (Munro 2012, 10). The draft guidance for the assessment framework speaks, for example, of local authorities and their partners being required to develop a local framework, based on principles of timeliness, transparency and proportionality. Doing so will make more demands on the time of local authority managers.

It is also worth noting the emerging findings from the trials of greater flexibility for local authorities in undertaking assessments of children and families (Munro and Lushey 2012). In response to the Munro review, and in preparation for the reduction in statutory guidance, in March-September 2011 the government authorized eight local authorities to depart from the statutory guidance and timescales on conducting initial and core assessments. The authorities developed new single assessment processes, but six of them retained the old statutory time limits, saying that this was important to prevent delay and drift.



Third, the challenge is not just about reducing top-down guidance, but also building up skills and confidence amongst field level staff – and not just confidence in their own abilities and professional judgments, but confidence that they will be supported by their managers, and by local and national politicians, if things do go wrong (Munro 2012, 53). Until that happens, social workers, managers and local authority leaders are likely to be wary about leaving the apparent security of the rules for the risks of professional judgment (even though, in reality, any security the rules may offer frequently proves illusory – because the more rules there are, the more likely it is that the worker will be found to have infringed one or more of them, as noted over 20 years ago: Howe 1992).

#### *Participation and empowerment in child protection*

More effective participation and greater empowerment of service users are long-established goals in social work. The principle of working in partnership with parents was one of the core values of the Children Act 1989 (DH 1990), and has become even more important for social work policy and practice since then. There are ethical, legal and pragmatic reasons for promoting partnership working. Ethically, involving people in decisions about their own lives is seen as a practical demonstration of core values of respect and recognition, treating people as ‘ends in themselves’.

In legal terms, consulting parents about decisions relating to their children is a key requirement in the Children Act 1989, reflecting the inclusion of provisions based on the rights protected in the European Convention on Human Rights. Notably, article 8, the right of respect for private and family life is recognized as having both procedural and substantive elements – the state respects family life through the way it takes decision, not just the decisions it takes. Also it not only operates negatively to limit intervention, but requires positive action to recognize family rights. The Convention therefore provides both a rights based foundation for working in partnership and challenges actions taken without such involvement, unless this is allowed by law and necessary for the protection of other rights. (Challenges to child protection intervention in the UK and elsewhere are more commonly founded on article 8 than the narrow fair trial protection in article 6.)

Finally, there is an appreciation that plans are more likely to be effective if the people at the heart of them, the service users themselves, have had genuine involvement in making them. These imperatives lay behind changes in the early 1990s for parents to be invited to child protection case conferences (Thoburn et al. 1995; and see section 3.4 below).

Since then, the importance of involving service users, ascertaining and responding to their needs, wishes and entitlements, has become central to wider policy drives to make public services more responsive and accountable (e.g. PMSU 2007; DH 2007, 2010). Such policies acknowledge that this entails risks, that service users and others need to be protected from harm, but the rhetoric is that ‘... risks need to be weighed alongside benefits. Risk should not be an excuse to restrict people’s lives’ (DH 2010, 5). In child protection work, though, the risks (to children’s lives and professionals’ careers) are especially sharp: as Ferguson (2011, 33) puts it ‘... this desire to collapse hierarchical power relationships sits uncomfortably with the need to use authority in child protection’.

In May 2012, a special issue of the journal *Child and Family Social Work* addressed the theory and practice of engaging with parents when children may be at risk (vol. 17, no. 2). The issue contains a number of helpful papers that tackle the questions of why parents may resist engagement (even though they know the likely consequences), and how best to engage them. Forrester et al. (2012) identify five reasons for resistance: the bigger context of poverty, inequality and disadvantage that shapes the lives of many service users; the power imbalance of child protection work; parents' feelings of ambivalence and lack of confidence; their denial and minimization of the harm they have caused; and the quality of the interaction with the social worker. Forrester et al. (2012), Turney (2012) and Shemmings et al. (2012) all consider how social workers can build effective working relationships with parents. Turney emphasizes the importance of establishing a dialogue, and the pre-proceedings meetings can be a setting for an exchange of information and perceptions between the parent and (often) the social work team manager. Shemmings et al. emphasize the importance of professionals working hard to show empathy, even to reluctant and resistant families. Forrester et al. note that communication skills of listening and reflecting are known to be central to effective helping relationships: the challenge is that there are multiple goals, to safeguard the child, engage the parent and bring about change – so the conversation must be 'client-centred yet directive'. Turney also speaks of the importance of workers listening to parents whilst keeping an open mind to the risks to the child and the dangers of dishonesty. She suggests the goal is for workers to have an approach of 'authoritative doubt', but she notes that uncertainty often provokes anxiety, and this creates dangers for workers as well as parents. For parents it can lead to anger and resistance, for workers to punitive responses. Again, the empirical material in this study certainly shows examples of both of those reactions. Featherstone and Fraser (2012), reporting on a Family Rights Group advocacy scheme for parents involved in child protection meetings, make a plea for greater understanding of how intimidating the processes are for parents, and hold that parents are unlikely to engage if they are frightened. They also found that parents are likely to claim more positive changes from the involvement of the advocate than the social workers perceive there to have been. Both of these findings have implications for evaluating the pre-proceedings process, where parents may well be frightened by the threat of care proceedings, and when they will look to their lawyer for support and advice.

Turney's use of 'authoritative doubt' echoes a phrase used by Ferguson (2011) in his observational study of child protection practice. He speaks of the importance of using 'good authority', or authoritative and empathic 'negotiated child protection' (Ferguson 2011, 172-9). His point is that authority must be used in an ethical and skilful manner, to find a middle way between practice which does not identify dangers to children or challenge abusive parenting, and practice which is always confrontational and coercive. Workers need to be clear about what is not negotiable, what has to change or what has to happen, and clear about the criteria for progress and the consequences of not achieving them; but also, able to see where there is room for flexibility and negotiation, to take time to build relationships and trust, to work together with parents to make a plan. Ferguson stresses the importance of good supervision for workers to help them work this way, support from colleagues and a positive organizational culture.

*'Too few, too late' or 'too many, too soon'?*

In July 2011, the House of Commons Education Committee started an inquiry into the child protection system in England. It reported in November 2012 (Education Committee 2012). The written and oral evidence submitted to the inquiry is available on the select committee website. The familiar issues that had been raised in the earlier reviews came up again (bureaucracy, delay, difficulties in inter-agency working, high thresholds, great pressure on resources, the need for skilled and well-supported social workers, the challenges of engaging with resistant families). But evidence to the inquiry also exposes a fundamental split between the view that (on the whole) too few children are being taken into care, too late, and that there are then too often further delays in finding suitable long-term placements, notably adoption; and the counter view, that not enough is being done to help families sooner, that children are taken into care without good cause, and that some are adopted too rapidly, without proper checks and balances.

The differences are shown most clearly in the oral evidence given on 13 December 2011 by Martin Narey (representing the former view) and John Hemming MP (the latter). Hemming leads the campaign group *Justice for Families*. He accepts that some children need to be taken into care, but holds that others are taken into care for spurious reasons, and that the social work and legal system is neither fair nor transparent. He considers that there are too many miscarriages of justice, and that social workers sometimes 'sex up' their evidence to get children adopted. Narey, the government's adviser on adoption, takes the more mainstream view that too many children are left in abusive families for too long, that social workers are too optimistic about the chances of families changing, and (more controversially) that more children should be placed, more swiftly, for adoption.

It should be noted here that research evidence on the use of care proceedings emphatically does not support Hemming's view (Masson et al. 2008; Brophy 2006; Cafcass 2012a); the cases that come before the courts show the highest levels of need and significant harm, and legal proceedings are nearly always held to be appropriate, or even that they should have been taken sooner. Even so, without subscribing to Hemming's views, there is a case to be made for more and better family support, fewer care proceedings, greater use of (and support for) extended family and friends to provide alternative care for children. Indeed, such proposals are central to the Munro Review and the Family Justice Review, and to current government policy on 'early intervention' (e.g. Field 2010, Allen 2011, DfE 2011a). The Family Rights Group is a leading voice for such policies, but there is much support for it within social work (e.g. Ferguson and Woodward 2009, Ayre and Preston-Shoot 2010), including in local authorities (ADCS 2012, Goodman and Trowler 2012), and from the findings of social work inspections and research (e.g. Ofsted 2011, on approaches helping young people on the edge of care; and Thoburn 2011, a research briefing for the Education Committee on approaches to supporting parents).

The fundamental difference of approach – too few, too late, or too many, too soon – is long standing. It was at the heart of the debates about the child abuse scandals of the 1980s, notably the messages for more authoritative practice from the Jasmine Beckford case (Brent 1985), and for more measured responses from the Cleveland Inquiry into cases of child sex abuse (DHSS 1988a), but they go back even

before then. An example is the different interpretations of the workings of the child protection system offered by Parton 1985 and Dingwall et al. 1983. Parton held that the system took more children into care than necessary, because it did not offer adequate support to families and held them individually responsible for their difficulties rather than seeing them in a wider social context of poverty and inequality, and tackling those dimensions. On the other hand, Dingwall et al., as discussed earlier, held that the system works at every stage to minimize the likelihood of identifying maltreatment and taking (overt) coercive action.

### **3.4 Foundations in practice**

Although there was no open discussion about the theoretical and policy dimensions and dilemmas for the development of the pre-proceedings process, there had been previous research that had identified the use of early advice, support and advocacy for parents in child protection cases and recommended its expansion. There was research on child protection social work and court proceedings in the late 1980s and early 1990s, linked with the implementation of the Children Act 1989 (Freeman and Hunt 1998, Hunt et al. 1999) and research into the provision of independent advice and advocacy for parents in the late 1990s (Lindley et al. 2001a, b, Lindley and Richards 2002). The potential value of providing legal advice to parents has also been suggested by research into emergency intervention (Masson et al. 2007).

There are useful lessons for parental involvement and legal representation in pre-proceedings meetings from the earlier research on child protection work and the role and impact of advocates in child protection case conferences. In particular, the research highlights the question of how the role is to be viewed and how success is to be measured – encouraging parental cooperation or challenging the local authority; producing better engagement or different outcomes; in terms of utility or rights.

In England and Wales, initiatives to include parents in case conferences developed from the mid-1980s onwards, underpinned by beliefs about the importance of parental participation (as described above) but also provoking considerable anxieties as to how it might work in practice (for example, whether it would inhibit inter-agency exchange of information and views: discussed in Thoburn et al. 1995; Corby et al. 1996). Inviting parents, 'where practicable', to attend all or part of the case conference became a requirement in the 1988 *Working Together* statutory guidance (DHSS 1988b, para 5.45), but there was no mention then of attendance with an adviser or advocate. Given the imbalance of power between the parents and the professionals, the daunting nature of the meeting and the vulnerabilities of many of the parents there is a strong case for an adviser or supporter, and this was added in the 1991 guidance; but this also stated that the conference was not a tribunal to decide whether abuse had taken place, and therefore legal representation was not appropriate (DH 1991). Rather than playing an active and possibly confrontational role as legal representatives, advocates were expected to play a more constructive role as advisers and supporters, helping their clients to participate in the meeting (see Law Society 1997; *R v Cornwall County Council ex parte LH* [2000] 1 FLR 236).

This approach to independent advice and advocacy is that its primary purpose should be to influence parental attitudes, particularly to help them understand the need to co-operate with children's services and the consequences of failing to do so. Freeman and Hunt (1998) found that parents experienced the local authority's application to court as 'a wake-up call' but their response was often too late for them to show the necessary changes to parenting and family life within the child's time scale. The researchers proposed that:

'Involvement of a third party in the relationship between parents and agency might also help to overcome one of the primary difficulties reported by parents, the lack of appreciation of the agency's position and intentions before the decision is taken to initiate care proceedings. This is not necessarily a result of any obfuscation by social workers. As noted earlier, with hindsight many parents realised that they had been warned about the possibility of court action but had not taken it seriously. A family advocate might therefore have a useful role in translating agency concerns and encouraging a more appropriate response.' (Freeman and Hunt 1998, 94-5)

Lindley et al.'s (2001a, b) research, undertaken in 1998-9, found that there were few specialist advice and advocacy agencies, but the roles and tasks were being undertaken by a wide range of people: specialist advocates, non-specialists, lawyers, relatives and friends. The study entailed interviews with parents, advocates and local authority child protection staff (43 parents; 28 advocates from a range of specialist organisations and solicitors' firms; 35 local authority employees in a variety of posts). The researchers found that parents welcomed independent advice and information from someone who they felt they could trust. Much of the work of the advocate was done in private, rather than in the case conferences, building up a trusting relationship with the parents, giving them information about the process, helping them prepare for the meetings and assisting them to recognize the authority's concern and the need for changes in their own behaviour. Advocates said they were prepared to challenge the local authority when necessary, but '... in the main, their advice to parents tended to be to cooperate, and to find a negotiated solution to the child protection case. Indeed, one solicitor felt that persuading parents to cooperate and address the problems was, for her, an indication of a successful outcome' (Lindley et al. 2001a, 182). However, advocates recognized that they could not be too directive in their advice-giving: in the end, it was the parent who had to live with the decision, and they should decide.

It remains relatively unusual for parents to have legal representation in child protection conferences, because the conference does not make decisions about starting legal proceedings and because of restrictions on funding for lawyers to attend (Lindley et al. 2001a, 176; Law Society 2013). Aside from legal representation, a number of specialist advocacy services have developed around the country, although funding is precarious (Featherstone et al. 2011: 173). An advocacy project run by the Family Rights Group, in two phases from 2006 to 2010 and 2009-10, is evaluated by Featherstone et al. (2011) and Featherstone and Fraser (2012). Some of the advocates had a professional background as qualified solicitors, but their work for the advocacy agency was not as the client's solicitor. The striking finding of the two evaluations is that whilst the majority of parents and professionals thought that advocacy helped the parents to engage better with children's services, there was much less certainty about whether it had affected the outcome. In the second evaluation, 13 of 18 parents reported that advocacy

had been helpful, but only 6 thought it had influenced the outcome (7 were not sure because their case was still on-going); 13 of 19 social workers (reporting on 23 cases) thought the advocacy had increased parental engagement, but that this had led to a different outcome in only 3 of the cases; and 12 conference chairpersons reported on 29 cases, saying that advocacy had increased parental engagement in almost 80% of them, but had led to a different outcome in less than half (Featherstone and Fraser 2012, 245-6).

The focus so far has been on *utility*, the possibility that advice might produce better understanding, co-operation and engagement with children's services; and perhaps, different outcomes. In contrast, a *rights*-based argument for independent advice comes from research into emergency intervention (Masson et al 2007). This found that the use of emergency court proceedings was frequently avoided by obtaining a parent's agreement for the child to be accommodated under s.20. Although there is 'agreement' in these cases, the research found that this might be obtained from distressed parents who did not understand that they could withhold or withdraw their consent, or that alternatives to foster care might be available. Furthermore, refusal to agree in these cases could lead to swift legal action, which might have been avoided through independent advice (as Freeman and Hunt, 1998, suggest). Masson et al (2007, 221) suggested that if parents are asked to agree to s.20 accommodation in circumstances where care proceedings would be started if they refused, they should be entitled to independent advice and representation so that they could understand the implications for them and their children. Once again there are challenging implications for the pre-proceedings process: how much is it based on, and implemented in the spirit of, a rights-based approach? Might there be any contradictions between parents' rights and children's rights? Are there any risks that the process undermines parents' or children's rights by attempting to resolve the difficulties away from the formal court arena?

### **3.5 Conclusion and key points**

This chapter has outlined a range of theoretical frameworks, policy dilemmas and research findings that highlight the complexities, uncertainties and contradictions behind and within the pre-proceedings process. Locating the process in these wider contexts, exposes the manifold complexities and challenges it was always likely to face when it came to be put into practice.

**The key issues and debates are:**

- **A naturalistic approach offers a better way of understanding decision-making in child care cases in local authorities than a positivist, rational choice model, in particular for exposing pressures and biases that lead away from formal court action.**
- **A consequence of this is that delay, repeated chances and extra assessments cannot be eradicated; but drawing on Dingwall et al. (1983), these are not to be seen (necessarily) as failings of individuals or the inter-agency system. Rather, they are inevitable consequences of a 'social contract' about state intervention that places high value on family privacy and freedom from unwanted and unwarranted interference.**

- **The law and legal principles have spread into the pre-court stages of regulating conduct and resolving disputes, but research findings about child protection case conferences show parents' lawyers and/or advocates play a relatively limited role there. Instead, advocates' work is largely done outside the meeting, by persuading the parents to cooperate with the authority. This raises questions about the exercise of influence and control in the pre-proceedings process.**
- **The pre-proceedings process must also be understood in terms of debates about parental participation and engagement in child protection cases. There are competing pressures to involve and empower them more, but also to be wary of feigned compliance and limited or short-lived change**
- **There is a further policy context of moving (not necessarily removing) procedural guidance and top-down prescription, and calls for greater use of professional judgment, set against the (legal and social work) imperatives of consistency and fairness.**
- **There are conflicting pressures to take more children into care quicker, and to offer more support to families and have fewer children in care.**
- **The pre-proceedings process may be understood in terms of fairness and responsiveness, rights and utility.**

## Chapter 4:

### Findings 1: The families in the study

#### 4.1 Introduction

This chapter provides demographic information about the families and children in the file and observation samples, and outline information about their involvement with children's services. It is provided to give as full a picture as is possible from the material available to the researchers, and to allow comparisons between these samples and those in other studies - of children's families at different points in the child protection process (initial case conference, emergency intervention or care proceedings), or from different years. Readers less concerned with these details may wish to read only the key points at the end, content in the knowledge that the file and observation samples were similar, and also comparable with that in the *Care Profiling Study*, of families subject to care proceedings in 2004 (Masson et al. 2008).

The families in the file study were a sample (see section 2.5, above) of those 'on the edge of' or entering care proceedings in the 6 in the study local authorities in 2009. Information about the families came from the documents held by the local authority legal department (child protection conference minutes, chronologies, social work statements letters before proceedings etc).

#### *Index children*

The focus of the data collection was on an 'index child' in each case. The index child was selected on the basis that their care had triggered the local authority action, that is, they were the principal subjects of concern. Where there was more than one such child, the youngest child was identified as the index child. In the sample of 207 cases/families there were 116 where the local authority's concerns focused on only one child, and 91 were concerns related to two or more children, including 20 where the care of at least 4 children was causing concern. Overall, the local authorities were concerned about the care of 368 children in the 207 families.

#### *Observation sample*

The observation sample comprised 33 cases on which pre-proceedings meetings were held between September 2010 and January 2012. Of these, the concerns focused on one child in 23 cases, and on two or more children in the remaining 10. There were three cases where the care of at least 4 children was causing concern. In total, the meetings considered the care of 56 children in the 33 families. There is less detail about the observed cases because the field researchers were not able to take a full history, but relied on their observations of the meeting, the summaries in the letters and their interviews with the social workers and parents. Nevertheless, the picture that emerges is consistent with the file sample, showing the multiple difficulties that nearly all the families faced, the long-standing nature of the concerns and the length of children's services' involvement (even if not always continuous). There is

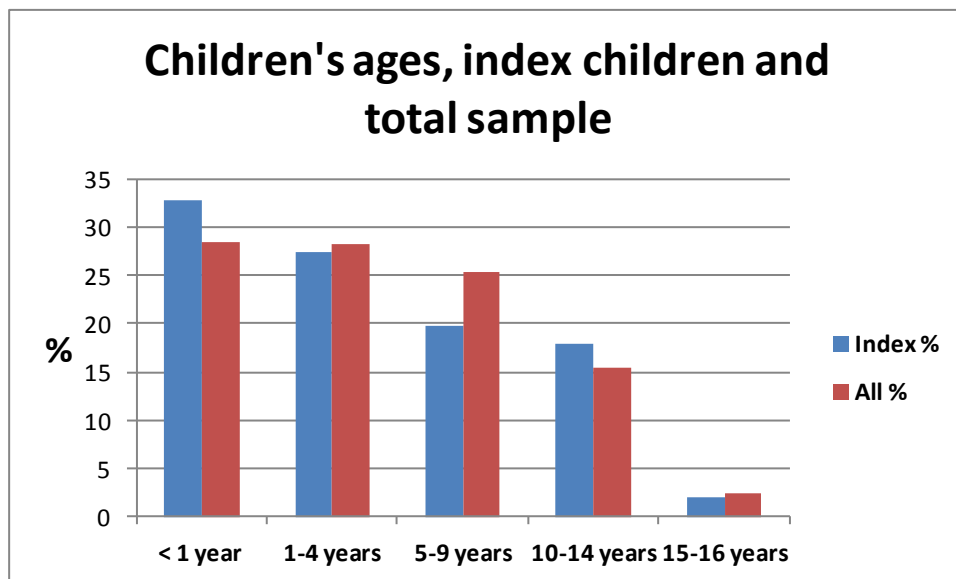


further information about the families in Chapter 7, on the meetings, and pen pictures of each of the families in the observation study are included in Appendix 2.

#### 4.2 The children and their families

Chart 4.1 shows the ages of the children in the file study, grouped to reflect the DfE data (DfE 2012a). There were 68 index children under the age of 1 year at the date when the local authority first considered taking legal action, of these 54 were unborn. In all there were 105 children under the age of 1 year in the file study families. There were 104 children aged between 1 and 4 years, 57 of whom were index children; and 93 children aged between 5 and 9 years, 25.6% of the sample. The sample of index children slightly under represented children aged 5 to 9 years, including only 41 children, 19.8% of the index sample. Children in the 10-14 year age group made up 15.5% of the sample (57 children) of whom

**Chart 4.1 The age of the children in the file sample**



37 (17.9%) were index children. Only 9 children aged 15 or over were found in the sample, of these 4 were index children. This age distribution is very different from the 'looked after children' population overall, and for those starting to be looked after under s.20; both these populations have a much higher proportion of teenage children (DfE 2012a; Sinclair et al. 2007). It is notable that legal action is focused on younger children; other researchers have noted that local authority formal case management reduces for children above the age of six years (Farmer et al. 2012, Ward et al. 2012).

The observation sample shows a similar pattern. There were 13 children under the age of 1 at the time of the meeting, of whom 9 were unborn and 2 very newly born. All of the 13 were index. Ten of them had older siblings, but in only two cases were these siblings still living with the mother. Eight of the 13 had siblings living elsewhere (that is, with relatives, foster carers or adopters), in five cases as a result of

previous care proceedings. There were 22 children aged between 1 and 4, of whom 13 were index children. In all, 35 of the 56 children (62%) were aged 4 or under, comparable to the 57% in the file sample. (The proportion of unborns in each sample is almost exactly the same: 9 out of 56, 16%, in the observed sample; 54 out of 368, 15%, in the file sample). Eight children in the observation sample were aged 5-9, of whom 2 were index children. There were 11 children aged 10-14, of whom 5 were index children. The observation sample has a somewhat lower proportion of children aged 5-9 than the file sample, but a higher proportion of children aged 10-14. There were two 16 year olds, neither of whom was the index child.

Legal files contained more information for cases entering care proceedings than for those subject only to the pre-proceedings process. Also, there was more information about mothers, who were more frequently children's carers than fathers. Lack of information about fathers has been noted in previous studies of care proceedings (Masson et al. 2008) and reflects both more limited engagement between social workers and fathers (Featherstone 2010, Ashley 2011) and less involvement of fathers in these children's lives (Ashley 2006). The identity of the father of the index child was not known to children's services in 20 cases (9.7%) and paternity was disputed or uncertain in a further 24 cases (11.6%). Only 110 (53.1%) of fathers of index children were known to have parental responsibility (PR). This is a higher proportion than in the *Care Profiling Study*, where only a third of fathers had PR, and is explained by the change of law in 2003 (Children and Adoption Act 2002, s.111). There were 130 children in the sample for whom fathers could have obtained parental responsibility by joint birth registration. There were 64 (30.9%) index children whose fathers were known not to have PR; information was missing or unclear for the remaining 33 (16%). Three fathers and 1 mother were known to have died.

### *Fathers*

The pattern of limited engagement and less involvement of fathers was also evident in the observation sample, but there was one case (Kanu) where the father was the main carer for the children, and others where the father was playing a key role in supporting the mother (e.g. Drury, Morgan). Simon Yardley was living with his father, although the observed meeting was with his mother (Mr Yardley did not attend meetings arranged for him). There were also cases where older siblings were living with separated fathers (Adcock, Barber, Neale, Rodgers). The Morgan and Cozens cases are similar, in that the fathers in both cases were new partners. In both cases the local authority intended to start care proceedings as soon as the child was born, mainly because of concerns about the mother's care of her previous children, but also their lack of knowledge and uncertainty about the fathers. Both these cases ended, eventually, with the children living with their parents under supervision orders. In the Hankin case, the father did not attend the pre-proceedings meeting but the baby was subsequently placed with him in care proceedings.

In the meetings, it was often not clear (to the researchers) whether the father had PR for the child, but fathers attended the observed meetings in 11 of the 33 cases. They were represented by their own solicitors in nine of those. There were also two meetings where father's lawyer attended without the father. Local authorities tried to offer separate meetings when there was concern about violence or a

conflict of interests: these were offered to fathers in seven of the cases, but in five of them the fathers did not attend. We observed one meeting that had been called specifically for the father (Imlach). Some fathers avoided contact with children's services altogether (e.g. David Yardley and Angela Verney's former partner Chris Wood), others had peripheral involvement (e.g. Wasim Mahmood, Peter Etherington). There were other fathers who said that they wanted to be involved but did not carry that through. In the Hernandez and Meloy cases, the fathers tried to attend a pre-proceedings meeting with the mother but were not allowed in. They were advised to get legal representation and then have their own meeting: neither did so. (The putative father also tried to attend in the Adcock case, but was refused because it was not certain he was the father.) There were other cases where the fathers were involved and attended the meeting, but their presence was unhelpful and intimidating (Ian Rodgers, Phil Upton).

### *Ethnicity*

The 2001 Census Groups were used to identify the ethnicity of the children and their parents. The families were predominantly white British; 151 (73.3%) of the mothers, 123 (68.3%) of the known fathers and 136 (65.7%) of the index children were white British. There were 19 index children of mixed ethnicity (white British and Caribbean), 4 (white British and black African), 6 white British and Asian and 12 with other mixed ethnicities, (nearly 20% of the sample). There were 10 (4.8%) 'Other White' children, mainly from Eastern Europe, 8 (3.9%) black African, 6 (2.9%) Pakistani, and 4 (1.9%) black Caribbean children. There was 1 white Irish child and 1 Chinese child. Most (85%) of the mothers were born in Britain; of those born overseas, 9 were from other parts of the EU, 14 were long-term residents in the UK, 3 were recent immigrants and 4 were refugees or asylum seekers. Approximately 10 per cent of the mothers needed an interpreter to communicate with their social worker and lawyer; 'Other White' and Pakistani mothers were most likely to require an interpreter. The known fathers were similar but 80% of those who were not white British were born overseas and 5 were currently not resident in the UK.

The ethnic mix of the populations in the six local authorities varied considerably. Whereas almost all the children in the sample from Areas A and E, the two shire counties, were white British, this was the case for only a quarter of the children from Areas B and C, the two London Boroughs. Conversely, more than a third of the cases from Areas B and C involved children of mixed ethnicity, there were very few such children in the cases in the other Areas.

The ethnicity of the children and parents in the observation sample was less diverse than the file sample. Just over 80% of the families were white British (27 of the 33 cases). All the families from Areas A and E were white British. There was more diversity in the other areas. There were two families of Asian origin, one from Eastern Europe, one from Latin America, one black British family and one where the child was of dual race heritage, white British and black Caribbean.

### *Family composition*

In the file sample, the mother's ages ranged from 14 to 50 years, with a mean of 29.8 years. Fathers were older, from 17 to 72 years, with a mean age of 34.5 years. There were 22 mothers (10.6%) under the age of 20 years, but at least 20% of the women had first become mothers under the age of 20 years.

More than half the cases related to only one child (116) but in only 30% were the children their mother's only child. There were 62 'only children'. The children in the other 54 cases had siblings or half siblings who were not the focus on the current concerns. Where the mother had more than one child, family structures were frequently complex. Half the mothers had children by more than one man; 40% of siblings whose care was also causing concern currently had a different father from the index child. Many mothers also had children in other households; 45% had children who were cared for by others, commonly by relatives or in foster care, and usually as a result of their parents' previous inability to provide adequate care. There were only 3 cases, all relating to teenagers, including an adoption breakdown, where there were no concerns about the care of any other children in the family. Similar information about fathers was generally not available. Fractured relationships were not confined to the current generation; almost a third of mothers and 11% of fathers were known to have spent time in care, usually because they had been neglected or abused during their childhood.

The majority (78.5%) of the index children were in the care of their mother; in 45.7% of cases the mother was a lone parent, a quarter of index children lived with both parents and 8.6% lived with the mother and her current partner. There were 8 children (4.2%) in the care of a lone father and 4 in the care of relatives. The remaining 15% were in other care arrangements including foster care, residential care and hospital. However, by the time the local authority was considering bringing proceedings or using the pre-proceedings process, many index children were no longer living with their usual carer. Only half were living with a parent (47% with their mother, and under 20% with their father and only 16% with both parents); the proportion in foster care etc had risen to a third and 10% were in the care of relatives.

Just over half of the mothers (104, 51%) were living only with their children; 47 (23.5%) also lived with the father and 18 (9%) with a partner, and a further 29 (14.5%) lived with relatives, friends or a carers, most commonly their parents or another maternal relative. As would be expected, mothers under the age of 20 years were more likely to be living with relatives or carers but there were mothers in all age groups living in extended families, as carers, because of housing difficulties or because they needed support with their children. Mothers who were living with the father or another partner were generally cohabiting (51, 25%) rather than married (23, 11.3%), indeed as many mothers were in a partnership but living separately ('living apart together') as were married and living together. This was the case in three of the case study families (Neale, Morgan and Vaughan).

The 8 fathers with care of their children were all white British; 5 were caring as lone parents and three were married or cohabiting, none was living in an extended family. A variety of circumstances from

abandonment by the mother to abduction by the father had resulted in these children living with their fathers, and to the children's care raising concerns with children's services.

In the observation sample, there was a similar pattern of complex relationships and children living in a variety of different settings. The index child was an only child in 12 cases (36%), leaving 21 who had siblings. In 11 cases, all or some of their siblings were also the subjects of the meeting, but in ten they were living with other carers.

There were 24 cases where the index child had been born (i.e. excluding the nine unborn babies). Of these, the index child was living with their mother in 18 – as a single mother in 10 cases, with the mother and father together in five, and with the mother and her mother in three. There were six index children living away from their mothers: three with maternal grandmothers, two with their fathers, one with an aunt and one in foster care.

There were nine cases out of the 33 where the mother and father were living together at the time of the meeting. In four of those, domestic violence was a significant problem (and in three of them, the child was subsequently taken into care).

#### **4.3 Family difficulties and parenting problems**

The so called 'toxic trio' (Cleaver et al. 2007) – mental health difficulties, substance abuse and domestic violence – were very common in the lives of the families in the study. Over 60% of mothers in the file sample experienced domestic violence, 51% misused drugs, or alcohol or both, and 44% were recorded as having poor mental health; more than three-quarters of the mothers were parenting under at least one of these difficulties. Where fathers were living with their children, their parenting was undermined by one of these factors in at least 71% of cases. Thirty-six mothers, (17.7%) and 13 fathers were identified as having some learning difficulties; these rates of learning difficulty are higher than those identified for the sample as a whole in the *Care Profiling Study*, but lower than those suggested by Booth and Booth (2004). These differences are likely to result from differences in the recognition or severity of parents' difficulties.

The main source of income for the majority of families was welfare benefits. Only 14 mothers were in work (4 full time and 10 part-time), and another 10 were seeking work. Under the benefits legislation in place at the time, mothers with care of a child under 12 years old were not required to register for work to obtain Income Support. Changes to the benefit will limit lone parents to Job Seekers' Allowance when their youngest child is aged 1, and they will therefore be required to show they are actively seeking employment. The information about father's employment and income was on file for only 127 of the index children's father; 35 fathers were known to be working, and a further 28 seeking work but as many were unemployed and not seeking work, including 11 who were in custody.

### *Children's difficulties*

Not only was the parents' parenting compromised, their children had greater needs than other children. Index children had physical disabilities (8), learning difficulties (46, 22.2%) or health conditions such as asthma or epilepsy (31, 15%); 20 had siblings with a health condition. At least 16 index children had been born with foetal drug or alcohol syndrome.

In the observation sample, there were 17 cases where the mothers were known to have been the victims of partner violence (either from their current partner, or the father(s) of their other children), which is just over 50%. There were seven cases where the meeting was concerned about the mother's problems with drugs or alcohol (20%), seven where there was concern about the impact of the mother's learning disabilities on her ability to care for her child/ren, and seven where there were concerns about the parent/s' mental health problems. (The rates of drug and alcohol problems and mental ill-health are considerably lower than the file sample, but it should be remembered that the profile of the observation sample is based on the concerns that were raised in the meetings: the actual incidence may have been higher, but the issue did not come up because the focus of the meeting was different.)

### *Children's Services Involvement – case file sample*

Almost all the families were known to Children's Services. Only 18 in the file sample were either unknown or known for under 3 months. There were many long-standing cases, where parents had been known to children's services in their teenage years or earlier; 30% of the mothers and 11% of the fathers had spent part of their childhood in care. In relation to the fathers this is likely to be an underestimate, reflecting the more limited information about fathers on case files. Over 80% of the families had been known for more than a year; it is unlikely that cases were continuously open with a social worker allocated throughout this time, rather there would have been sporadic children's services involvement following a referral. However, in 60% of known cases the current period of active work with the family had lasted for more than 6 months before legal action was considered.

The local authority's concerns largely related to abuse and neglect but some children had been managed only as cases for family support. Over 60% of index children (133) were currently the subject of a child protection plan and almost 10% (20) had had a plan previously. Only a quarter had never been subject to formal child protection processes. Almost a quarter of children were accommodated by the local authority at the point it considered legal action, and another 11 children were known to have been accommodated at least once previously.

Care proceedings had been brought previously in relation to the index child in 11 cases, with two sets of proceedings in one case. In 3 cases these proceedings had included siblings. It was far more common for care proceedings only to have only involved siblings; at least 41 children had siblings who were in care or had been adopted following previous legal action by the local authority.

### *Children's Services Involvement – observation sample*

The picture from the observation sample is similar. There were only six cases that were new or relatively new to the local authority. Four of these arose because of a referral about suspected physical abuse.

Of the other 27 cases, there were 20 where the concerns about the care of children in the family could be considered long-term. In seven, these were about the children who were the subjects of the meeting, but in 13, the previous involvement related to other children in the family, now older (in some cases, now adult). In 12 of these long-standing cases the mother had other children not in her care: in nine cases with their fathers or extended family, three currently in care, and one where an older child had been adopted. There had been previous care proceedings for older siblings in six cases. One of the index children had been the subject of previous care proceedings, which had ended in a supervision order (Longhurst). The mother's history as a carer was the major concern in nine of the cases involving unborn or newly born babies.

Almost all the children concerned were on a child protection plan – 29 of the 33 cases (nearly 90%). There were two cases where the children were not on plans because the pre-proceedings meeting was held ahead of a child protection conference, and one where the child was accommodated. The most frequent cause of concern was neglect, in 22 cases. Physical abuse was a concern in 11 cases (often because of the risks from violence between the parents), emotional abuse in eight and sexual abuse in one. Whether or not the child had any additional needs was specified in the meeting in relatively few cases. There was one case where the child's physical disabilities were discussed in the meeting, two cases with learning difficulties, and four cases where the children were displaying significant behavioural difficulties.

One of the mothers (Estelle Imlach) was currently looked after by the local authority, and we know that two others had been looked after when they were younger (Danielle Quirk and Jackie Merritt). Three of the fathers were currently looked after (Cooke, Imlach and Oldfield), and we know that two had been in the past (Obike Kanu and Lauren Adcock's current partner). There were three other young mothers (Holly Cooke and Stacey Whitely were both 17, and Nikki Oldfield was only 14).

Overall, the children and families in this study are similar to those in previous studies of care proceedings undertaken before the introduction of the pre-proceedings process (e.g. Hunt et al. 1999; Brophy et al. 2003, 2005; Masson et al. 2007, 2008). This study aimed to establish how the pre-proceedings process was operated, and what differences, if any, it made to the outcome of cases and the conduct of the care proceedings.

### **Key points**

- **The families in the study were comparable to families in other studies of child protection proceedings. Within that, the characteristics of the 33 families in the observation sample were comparable to the 207 families in the file sample.**

- **One in six of the children in each sample was unborn when the local authority began to consider legal action; over half the children were under the age of 5 years.**
- **The sample was predominantly white British, reflecting the populations of the local authorities in the study. A third of the children in the file sample came from minority ethnic families, with children of mixed ethnicities making up 20% of the sample.**
- **Over 80% of the families had been known to children's services for more than a year; 60% of index children in the file sample had a current child protection plan, which rose to 80% for those in the pre-proceedings process. The observation sample was very similar, with nearly 90% on child protection plans.**



## Chapter 5

### Findings 2: The use of the pre-proceedings process

#### 5.1 Introduction

This chapter examines the use of the pre-proceedings process in the 6 local authorities through a description of the processes they operated to make the decision to use it; the attitudes of the professionals involved about the use of the process; and what the analysis of the case files indicated about its use. The case files provide information about the history of local authority involvement with the family and what was known about them when the decision was taken about use of the process. Comparing these characteristics for cases where care proceedings were initiated without the pre-proceedings process, 'court only' cases, makes it possible to explore to what extent, if at all, cases directed into the pre-proceedings process were different from those which followed the traditional route to care proceedings.

The decision whether to use the pre-proceedings process is made with legal advice at a legal planning meeting, also referred to as a legal panel, legal meeting, a legal strategy meeting, or a legal gateway meeting, as described in 5.2 below. The arrangements for these meetings varied, particularly in terms of their formality and whether written information about cases was required. In all six local authorities legal planning meetings typically involved a social worker presenting a case for decision by a lawyer and senior manager. The lawyer's role is to advise about the use of proceedings and specifically whether the threshold for care proceedings appears to be met. The components of the threshold are described in Box 5A below.

Considering that the threshold conditions are met is a precondition not only for a court application but also for use of the pre-proceedings process (DCSF 2008, 3.25), although not all the local authority staff interviewed treated it as such, see section 5.2 below. Theoretically, the legal planning meeting has three choices open to it where it considers that a case satisfies the threshold: to authorise an application to the court; to require the social worker to send a letter before proceedings, initiating the pre-proceedings process, or to leave the case to be managed through normal casework. In practice, the distinction between care proceedings and pre-proceedings cases was more blurred; where proceedings were authorised the social worker might also be required to send a letter, informing the parents and inviting them to a meeting. The study sample only included cases where the legal planning meeting approved either starting the pre-proceedings process or making an application to court, but some cases had been presented to panel on previous occasions when legal action had not been authorised – in other words, the panel had not been satisfied then that 'significant harm' or the need for an order were met, at the threshold required in practice, for a court application.

#### **Box 5A: The threshold conditions for a care order**

The Children Act 1989 sets out the conditions the local authority must satisfy in order to obtain a care or supervision order. The child must be 'suffering or likely to suffer significant harm' which must be 'attributable' to the care being below the standard it is reasonable to expect a parent to provide, or to the child being 'beyond parental control' (s.31(2)). In addition, the court must give 'paramount consideration' to the child's welfare (s.1(1)) and can only make an order where it is considered better for the child than making no order ('the no order principle', s.1(5)). Any order must be 'necessary' and 'proportionate' in order to comply with the European Convention on Human Rights, art. 8(2).

The court is also required to have regard to the principle that any delay is likely to prejudice the welfare of the child ('the minimum delay principle', s.1(2), although 'planned and purposeful delay' is allowed). There are also legal duties on local authorities to 'safeguard and promote' the child's welfare (s. 17, s. 22), to support the upbringing of children by their families, as far as that is consistent with their welfare (s.17), to place children who are looked after by the local authority with their parents or other 'connected persons' (relatives or friends) (s.22C), if that is consistent with their welfare, and to take account of the wishes and feelings of children and parents (s.22(4)-(5)).

The 'significant harm' test in s.31(2) is referred to by lawyers (and others) as 'the threshold criteria', but a care order cannot be made unless the welfare principle and the need for an order are satisfied too. A key consideration for the latter is the reliability of parental cooperation. The local authority is required to submit a 'threshold statement' setting out the facts on which it basis its case for a court order, and must prove its case.

As discussed in chapter 3, the naturalistic approach to decision-making recognises that discretionary decisions, such whether a case should be referred to a legal planning meeting and whether care proceedings or the use of the pre-proceedings process should be authorized, involve not merely considering factors in the case, but as Hawkins has identified, the interaction of political, economic, social and organisational forces within and beyond local authorities (Hawkins 1992, 38). The threshold for care proceedings is not simply a standard reached when the ill-treatment is sufficiently harmful and adequately evidenced for an application to court. Rather, determining that a threshold *in practice* for a specific action (investigation, pre-proceedings, proceedings or emergency removal) is met, depends on the sense that managers, lawyers and workers, individually and collectively, make of the information they have in the broad context within which they practise (Platt and Turney 2013). Decisions to authorize the use of legal process are necessarily forward looking. They are made considering what the local authority seeks to achieve, but decision-makers draw on what has happened in the past in the family, the agency and the court. Past and future 'horizons' (Emmerson and Paley 1992), influence the consideration of the case and the legal planning meeting's decision.

A focus on the choice that discretion brings can distract from the practice of routinization, which frequently develops in bureaucratic organizations as a means of managing case volume (Manning 1992;

Broadhurst et al. 2010). A usual way of dealing with cases, or a policy to handle most cases in a specific way, reduces the demands on decision-makers, and sometimes on those responsible for implementing decisions. There are limited opportunities to routinize legal planning meetings whilst making an assessment of the strength of the case and the risk to the child. However, policies of general use (or non use) of the pre-proceedings process can do so. None of the Study local authorities had such a written policy but some used the process more frequently than others (see table 5.1), and most more than the national average. In general, the pre-proceedings process added to the volume of cases to be considered in legal planning meetings because cases could return, as many did, for proceedings to be authorized.

Perceptions of the pre-proceedings process generated through the interactions that Hawkins has identified, influence decisions in legal planning meetings and serve to reinforce decisions about its use. It is therefore crucial to understand the value or meaning the process is seen to have. Is it understood in terms of rights, utility or simply as procedure? In terms of rights, use of the process could be seen as a *parental right*, and reflected in an obligation on the authority to use the process according to the *Guidance* – in all cases except where the ‘scale, nature and urgency’ means that it would be contrary to the child’s interests. Alternatively, using the process might be understood as the *right (ethical)* way to work with parents, giving rise to a professional obligation on the social worker. In terms of utility, the pre-proceedings process is just *another way of working*, which might be useful in some cases. Cases would be directed into the process if the decision-makers think that doing so will serve a purpose; use of the process appears instrumental (but may also be ethical). The aim indicated in *Guidance* – to avoid proceedings by improving parental engagement – also reflects social work ethics of supporting parents to improve their care. As procedure, it is merely as *a task that has to be done* – a requirement to comply with *Guidance* or to placate a manager, whether or not there appears to be any chance of influencing the outcome of the case. The obligatory nature of the process was stressed in the introduction of the PLO. Pre-proceedings assessments and other steps were a ‘critical feature’ of the PLO (President of the Family Division 2008); local authorities were required to file pre-proceedings letters with the care application and told that ‘courts will closely and routinely consider’ the local authority’s pre-application actions (MoJ 2008, 5). However, presenting the process in terms of an obligation to the court does not override the potential for decision-makers or practitioners to view it in terms of parents’ rights or ethical practice, or to value it because of its capacity to impact on cases.

A focus on rights rather than utility may not result in different action in an individual case; belief that the process can lead to an improvement in parenting may encourage social workers and managers to try as hard to make the process effective as a rights-based commitment to it. Conversely, viewing the process merely as an obligation may mean that little consideration is given to what can be done through letters and meetings to make the process most effective. Different views about parents’ rights, ethical practice in child protection, the advantages the process may bring and whether the process is merely something that must be done before care proceedings are issued will be reflected in rates of use, the range of cases where it is used and the point in a case when the process is used, and can be identified in the views of practitioners, see section 5.4 below.

## 5.2 The decision-making process

This section describes the process of deciding to use the pre-proceedings process, and highlights one of the key questions about the appropriate circumstances in which to use it – namely, whether the threshold for care proceedings is considered to be met or not. The decision-making procedures varied between the authorities, as summarised in Box 5B below, and there were different answers to the threshold question. These two aspects show that even as ‘simple’ a matter as deciding whether and when to use the process is much more complex than the 2008 government guidance recognised.

### *The decision-making process*

The decision to use the pre-proceedings process was made at a formal meeting between the social worker, their manager and the local authority lawyer, and perhaps others, referred to here as a legal planning meeting. There were two main approaches to organising these meetings: in three authorities, they were arranged on a case-by-case basis, and in three, cases had to be booked in to a pre-scheduled panel that discussed a number of cases.

Either way, the meeting brings together legal and social work staff, and legal and social work perspectives. It is used to discuss whether the pre-proceedings process is appropriate, notably whether the s 31 criteria are met, whether further work should be attempted before starting it, or whether the case needs to go straight into care proceedings. It also considers whether there is sufficient evidence for the proposed plan (whether that is pre-proceedings or care proceedings), such as a satisfactorily completed core assessment, a chronology and other reports. It is a way of trying to ensure consistency between different social work teams, and managing the workload and resource implications. Inevitably there is overlap and blurring of the social work and legal roles and approaches, and different views about how well this works (Dickens 2005). The formal position is that the social work side decides how to proceed after taking advice from the lawyers.

#### **Box 5B: Procedures for deciding whether to use the pre-proceedings process**

**LA A:** legal planning meetings are usually arranged on a case-by-case basis, although occasionally a number of cases might be discussed at the same meeting. Attendees are the social worker, team manager, area manager and the lawyer who works with that social work team, and possibly others such as the manager of the family assessment team. The meeting could be held by telephone or e-mail in an emergency. Case reports should be supplied in advance by the social worker.

**LA B:** a special panel, held monthly, which considers a number of possible pre-proceedings cases. (Cases that are being considered for care proceedings are discussed at a different panel, held on alternate fortnights to the pre-proceedings panel. In urgent situations, a pre-proceedings case could be discussed at the other panel.) There is a checklist that specifies the documents that have to be submitted in advance. The meeting is chaired by a children’s services ‘service manager’. Decisions to go into care proceedings require further ratification from the assistant director, but decisions to go into the pre-proceedings process are made by the meeting, unless they require assessments that

need extra funding, in which case they then have to go to a funding panel.

**LA C:** legal planning meetings are arranged on a case-by-case basis, usually a week or two ahead, but can be held on an emergency basis, or by conference call, if necessary. A request for a legal planning meeting has to be approved by one of two nominated senior managers. There is a form for information that the social worker has to provide, together with any chronologies, core assessments, conference reports etc. There is a monthly tracking meeting between children's services and legal, to monitor what is happening with cases that have been to legal planning meetings.

**LA D:** legal planning meetings are arranged on a case-by-case basis, one or two weeks ahead. The social work team manager completes a request form with family details and a synopsis of the case, attaching an up to date chronology, core assessment, case conference minutes and child protection plans where these are available. The case is allocated to a lawyer who reads the documents. The lawyer, social work team manager and social worker meet for an advice session which is recorded in a formal note. The decision on further action (care proceedings or use of the pre-proceedings process) is then taken by a service manager, on the basis of the advice note and other documents.

**LA E:** there is a weekly legal panel. Prior authorisation from a service manager is necessary before a case can be taken to this panel (this step had been recently introduced at the time of our fieldwork). The panel is chaired by a senior manager, and other attendees are the social worker, team manager and lawyer. If the decision is to use the pre-proceedings process, the meeting might also give authorisation to go into care proceedings later, if that turns out to be necessary, or require the social worker to return to the panel for new authorisation.

**LA F:** there is a weekly legal meeting, chaired by one of two service managers on an alternating basis. The meeting usually discusses 3 or 4 cases, and lasts up to half a day. Social workers have to book in a time slot to discuss their case. Non-urgent cases will be put back to the following week if all the slots are taken. Emergency cases can be dealt with by telephone call. The decision to bring a case to the meeting is made by the team manager. The manager and social worker attend, and the case is presented verbally by the social worker. There is not usually any pre-meeting documentation for the lawyer or service manager. If the decision is to go into pre-proceedings, the meeting might also give authorisation to go into care proceedings later, if necessary, or require a further discussion.

### *A legal meeting and/or social work supervision?*

One of the challenges for the legal planning meetings is to strike an effective balance between legal advice and advice on social work practice (Dickens 2005, 2006). The two are closely linked, of course, especially at this stage, but in theory, the lawyer's role is to assess the strength of the evidence, whether or not the grounds for care proceedings are met, and to advise on the legal options. To do this effectively, he/she would need full information about the case, ideally before the meeting. A social work manager's input is more likely to focus on what additional or different social work intervention is

required at this point, balancing the time needed for this, and the likelihood of success, against the risk of further harm to the child. This could include renewed attempts to engage with the family, home visits, a family group conference, more information from other professionals, other assessments, and additional services.

Two interviewees commented on the blurring of these purposes and roles, and our observations of two panel meetings in one of our authorities confirmed the dual aspect. Whether this was a problem or a benefit was viewed differently by different interviewees. In one area, a local authority solicitor said that the children's services manager had been unhappy at the way that the legal meetings were being used:

*'... [She] felt that they were being misused, because she felt that they were being used almost as supervision for the social workers – so they were getting an opportunity to come along and speak about a particular family, and bounce a few ideas off people and make sure that they were doing things correctly ... It was apparent in some of those cases that they weren't ready to be brought to a legal meeting – whether they were ready to issue, whether there was threshold. Either the social workers didn't appreciate that or they did but they brought them anyway ... they would actually come in and get advice from the senior social work staff ...'* LAS16

The lawyer went on to say that this use of the meeting had declined, and attributed this to the service manager tightening up the requirements on the social work side. The manager had insisted that all paperwork should be in at least 24 hours before the meeting, so that everyone had time to read it. The lawyer appreciated the usefulness of this, giving her time to prepare her legal advice.

This contrasts with the view expressed in another area:

*'At panel there is a service manager and a lawyer and it's [the social worker's] chance, if you like, to have up to an hour to really thrash out what the issues are, what they've been doing. And the service manager is often able to point them into doing other things – 'Have you tried this, have you tried that? Do you think you could do this?' So they're looking at it from a social work point of view, but they're also very aware of the legal context. Then we'll [lawyers] give the advice about whether the grounds are met for care proceedings, and then if the grounds are met for removal. It is a very useful forum because they go away either knowing they've got a list of things to do, or they know they're got a pre-proceedings meeting to arrange, or they know they've got to get on with their report because there are going to be proceedings.'* LAS11

This ambiguity about the way that the legal planning meeting should be conducted and what makes it most effective is reflected in uncertainty about the threshold for entering the pre-proceedings process.

### *The threshold conditions*

In practice, the threshold applied for court intervention is often high. The Children Act 1989, s.31 only sets the minimum standard for an application (Mackay 1989, 506); it is met in almost all cases taken to court (Masson et al 2008) and Cafcass guardians have identified more than a quarter of applications as

made late (Cafcass 2012a, 6), inferring that the threshold would have been met earlier. The text of the 2008 *Guidance* states that the pre-proceedings process should be used when *'the local authority decides, having sought and considered legal advice, that it intends to apply for a care or supervision order'* (DCSF, 2008: 3.25). However, the wording of the template letter, in Annex 1 to the *Guidance*, is subtly but importantly different: *'I am writing to tell you that [name of the Local Authority] is thinking about starting Care Proceedings in respect of [name(s) of child(ren)]. This means that we may apply to Court ...'* (DCSF, 2008: 73; and see App 1 to this report). In ordinary usage there is a marked difference between 'intends to' and 'thinking about', and the different wordings suggest different purposes and timings for the pre-proceedings process (i.e. is it strictly a last resort or a somewhat earlier intervention?). It therefore leaves an ambiguity about whether the s.31 criteria and the need for an order have to be met before going into the process.

The majority view from our interviewees was that the case should have met the threshold conditions for care proceedings in order to enter the pre-proceedings process, but some interviewees voiced uncertainty about this, from two perspectives: first, whether this was strictly necessary, and if the process could be used earlier; and second, whether there was any point using the process if the conditions were already met (in those circumstances, it might be better to go direct to court). There were also signs of occasional disagreements between social workers and lawyers about whether the threshold had been met (two social work interviewees, from different authorities, spoke about times when, in their view, local authority solicitors had been overly cautious about advising that the conditions were met to start care proceedings). These doubts and disagreements suggest that in practice there are different levels of concern, different thresholds, for entering the pre-proceedings process or going direct to court, and that these are not straightforward, unambiguous criteria.

The following quotation, from a local authority solicitor, captures the majority view but also the underlying uncertainty about the need to meet the threshold, and shows a degree of flexibility:

*'... my interpretation of the PLO is that you should not be entering into PPMs if you can't meet the threshold for proceedings. However, I'm not entirely sure that's how the legislators intended it to be interpreted, and I have had at least one set of proceedings where I felt it was very borderline as to whether threshold was met and we decided to follow the pre-proceedings process'. LAS4*

The difficulty with using the pre-proceedings process on a case where the concerns do not yet pass the significant harm and necessity thresholds, is that the local authority may find itself in an awkward position if the parents do not comply and yet, even after that, they still do not have sufficient evidence of the threshold. As the solicitor put it:

*'... to say to parents "you've got to make these changes" and then find that they're not making those changes, and then have to accept that we're not going to be able to issue an application anyway, is just giving a really, really unhelpful message to them.'* LAS4

Even this is not straightforward, though. Some breaches of the agreement may not be as serious as others, and still not take the family past the practical threshold for care proceedings. As a social work team manager said:

*'... what's a breach? Is it that they're not doing one of the things? I think probably not, actually. I think a breach is a bit more than that – that they're just generally not doing any of it ... I think the decision making process would look at that and how reasonable it was. Whether they were blatantly breaching it, or whether it just wasn't achievable. It's about whether they missed one medical appointment or five, isn't it?'* SWM10

Over time though such 'minor' breaches can accumulate, and repeated inaction can leave children suffering significant harm (Davies and Ward, 2012); the difficulty is deciding when to step up the intervention.

A lawyer from the same authority as LAS4 quoted above, said that she might advise a pre-proceedings meeting even if the threshold conditions were not established, *'if we needed to get a little bit more evidence'* but more likely:

*'... I would probably advise to continue to try and work with [the parents] and perhaps make some suggestions as to how they could do things. It's quite difficult – but normally cases don't really come to us [local authority lawyers] unless they're either very close to threshold or threshold is crossed. It is very rare to get cases that aren't, really.'* LAS10

Another local authority lawyer, from a different authority, was more robust in arguing that it was acceptable to call a pre-proceedings meeting if the 'in practice' threshold for the s.31 criteria was not met. If, subsequently, the parents did not carry out the tasks required of them, then this itself may increase the level of harm to the child and would also be further evidence of the parents' non-engagement, thus demonstrating the need for an order:

*'I don't think you have to. I think you can probably anticipate – I mean, from memory the PLO doesn't say that the s.31 threshold has to be crossed to have a pre-proceedings meeting. I think you can anticipate that threshold is going to be crossed unless something is done. And that's where I think pre-proceedings fit in, in that scenario where it looks like it's going to go into proceedings.'* LAS5

Overall though, this lawyer was sceptical about the whole pre-proceedings process, arguing that there was little point using it if the social workers already had a plan for working with the parents, and little point if they had already made up their mind that they intended to issue care proceedings. She had a rather rigid view about the circumstances where it might be advantageous, as the quotation shows. She did not think it was necessary or advisable to have a pre-proceedings meeting if the decision had already been made that the threshold for care proceedings was met: *'If you're going to go into proceedings you might as well go into proceedings – there's no point in having a pre-proceedings meeting if you think that threshold is crossed.'* LAS5



It is not unusual for local authorities to use the pre-proceedings process to notify parents of their intention to start care proceedings (see 5.3, below). In those cases, the authority's view is that the s.31 and no order thresholds are met at the level required in practice for care proceedings, and there is nothing further to be gained by delaying court action, but it is appropriate for the local authority team to meet the parents and their lawyer before the first hearing. Such an approach is distinct from the use of the pre-proceedings process in an attempt to avoid proceedings.

Resource considerations might also play a part in decisions about whether to enter the pre-proceedings process or go direct to court, but again not in a straightforward manner. On the one hand, care proceedings are expensive (not only the court fees, but the costs of legal representation, court-ordered assessments, and social work time), and this is an incentive to keep cases out of court. As a social worker put it:

*'It costs a lot for a LA to go down the care proceedings route, so at every level you want to be offering alternatives, you want to be offering that the child stays within the family. So I think it gives that time and that opportunity to look at other options or any other ways of dealing with the situation.'* SW14

Against this, though, there was a financial consideration in favour of going into care proceedings, partly because of experience, discussed further below, that new or repeat assessments would almost always be ordered by the court whatever the local authority had done first (so why waste time and money on pre-proceedings assessments?), and also because the cost of assessments in care proceedings would be split between the parties, rather than borne solely by the local authority. As a social worker put it:

*'You know, for example, that this mother needs this assessment, but you know that this assessment will cost thousands of pounds. You know if you go into proceedings, the cost of that assessment will be shared by 4 or 5 parties, and you know that, and you know your service manager and team manager know that.'* SW16

### *Net widening*

The idea of 'net-widening' comes from criminal justice research, where using a lesser intervention, a caution rather than a prosecution, is recognised as having the potential to draw more 'offenders' into the criminal justice system (Sarri 1983). For example, Blomberg found that failure to co-operate sufficiently with the services designed to keep juvenile offenders out of court frequently resulted in referral to court, although the original circumstances had not been thought to require this (Blomberg 1979). In this way, a process aimed at reducing use of the court could result in more, less serious cases being taken to court.

Notes of the legal planning meeting were available for three quarters of the cases in the file sample. In all but one case these indicated that, on the evidence presented, the local authority lawyer considered the threshold to be satisfied. In this case there was a clear conflict between the lawyer and the social work manager. The lawyer used the legal department file on the case to record their advice, that the

poor quality of the core assessment meant the local authority did not have a sufficient basis for showing the threshold was met. This was not a case where the manager wanted proceedings issued but to use the pre-proceedings process. The implications of doing so in the absence of a case for care proceedings concerned the lawyer:

*'He [team manager] wants LPM to discuss whole PLO business. He was very keen to set a date for a PPM with parents and solicitors to say that if they do not do certain things we will issue. I said I find this very difficult because it presupposes we are going to issue proceedings and I don't believe there are grounds yet. He says he will put it all in a letter to the parents. He looks upon it as a means of resolving issues to avoid proceedings now. His view is that it is not committing the LA to do anything even if we do not go ahead and issue.'* (LA solicitor's file note **4411**)

In the event the pre-proceedings meeting did not take place and care proceedings were started two months later, resulting in a special guardianship order in favour of an aunt, who was already caring for the child at the time the legal planning meeting was arranged.

Despite formal procedures, the pre-proceedings process might sometimes be started without going to a legal planning meeting, for example where a parent's lawyer raised concerns about the way a case was being handled:

A note on the legal department file (case 5211) contained a letter from the mother's solicitor complaining about the local authority's actions:

*'[It is] unacceptable for children to be removed from a parent under an informal agreement without legal advice, and for that agreement to remain in place for 6 months. S.20 powers are in place as a holding or temporary position if you consider that to do so would safeguard or promote the children's welfare. We are not aware of any work or support that has been put in place prior to the current parenting assessment.'* (letter from parents' solicitor to local authority solicitor)

A meeting was held involving the local authority lawyer, social worker, the mother and her lawyer. Following this, the local authority lawyer wrote to the social worker about the next steps to be taken:

*'We think there needs to be a clear framework around this case to ensure tight planning so a formal pre-proceedings approach would be appropriate. You could either bring the case to [a legal planning meeting] to get authority for the pre-proceedings approach or alternatively, given that we have already embarked on a procedure involving our legal and solicitor for [the mother] your service manager may be willing to authorize without you having to come to panel.'* (LA solicitor's email to social worker).

Although these cases were exceptional, they illustrate that neither the threshold test nor a legal planning meeting provided a simple gateway into the pre-proceedings process. Moreover, lawyers' concerns both about providing the correct legal advice and ensuring that the local authority acted in

accordance with the law could influence the way the pre-proceedings process was used. Concerns about the quality of legal advice to social workers were highlighted in Baby Peter’s case, where the local authority had advised that the threshold was not met, shortly before he was killed (Haringey 2009, para 3.67 Laming 2009, 8.1).

### 5.3 The use of the process in the 6 local authorities

The *Guidance* was explicit that use of the pre-proceedings process would not be appropriate in all cases (para 3.30). The need for urgent or immediate child protection could make it inappropriate to take time to invite parents to a meeting or even to inform them of plans to obtain a court order. In the *Care Profiling Study* (Masson et al 2008) in just over 40 per cent of cases, care proceedings were brought in response to a crisis. Not all of these cases were so serious as to necessitate immediate action but in almost 24 per cent of cases children were subject to an emergency protection order at the start of proceedings (p.42).

The statistics collected by the Legal Services Commission (see table 1.1, above) suggest a wide variation in the use of the pre-proceedings process in different local authorities but do not make it possible even to estimate the proportion of care proceedings where the process has been used. This information was available for the file sample and has been used to estimate the figures for each of the study authorities, (see table 5.1).

**Table 5.1: Estimates and numbers of types of case in each LA during sample period**

Local Authority	A	B	C	D	E	F	TOTAL
Pre -Proceedings only (PPP)	(7)	(4)	(4)	(10)	(4)	(5)	34 (34)
‘PPP+s.31’ cases	37	23	12	24	15	8	119 (86)
Total use of PPP	44	27	16	34	19	13	153 (120)
‘Court only’ cases	16	18	21	31	24	5	115 (87)
Total cases	60	45	37	65	43	18	268 (207)
% with PPP	73%	60%	43%	52%	44%	72%	57%

*Figures in brackets are the actual numbers of cases in the Study sample*

The pre-proceedings process was used in 57% of cases where a legal planning meeting had found the threshold for care proceedings met. The proportion in the 6 local authorities varied from 43% in C to 73% in A. Indeed the local authorities appeared to fall into three groups, A and F with over 70% of cases being subject to the pre-proceedings process; C and E with fewer than half their cases doing so and B and D falling in between. The differing views of local authority staff about the use of the pre-

proceedings process are discussed in the next section. Differences between the cases where the process was (or was not) used are discussed in section 5.7.

Table 5.1 does not distinguish between the two types of pre-proceedings letter. Those which inform parents of a decision to bring proceedings, *letters of intent*, and those where the local authority indicates that the parents could take action to prevent the local authority applying to court. *Letters of intent* were sent in 23 cases. There was considerable variation between authorities in the use made of such letters, see table 5.2.

**Table 5.2: Use of pre-proceedings process and letters of intent in the 6 local authorities (file sample)**

Local Authority	A	B	C	D	E	F	Total Average %
Pre-Proceedings (PPP)	20 54.1	16 44.1	14 41.2	21 47.7	14 35.0	12 66.7	97 46.9
Letter of Intent	8 21.6	5 14.7	1 2.9	4 9.1	4 10.0	1 5.6	23 11.1
'Court only' cases	9 24.3	13 38.2	19 55.9	19 43.2	22 55.0	5 27.8	87 42.0
<b>Total sample</b>	<b>37</b>	<b>34</b>	<b>34</b>	<b>44</b>	<b>40</b>	<b>18</b>	<b>207</b>

The separation out of letters of intent provides a somewhat different picture of the use of the pre-proceedings process. Local authorities do not send both types of letter at the same time; sending the usual form of pre-proceedings letter precludes a letter of intent. It is not therefore surprising that Area F made so little use of such letters, considering its high use of the usual letter. Area A made far more use of letters of intent than all the other Areas with 8 out of 28 letters (28%) being letters of intent. Area E remained the lowest user of any pre-proceedings process. Area F was now clearly the highest user; separating out letters of intent, Area A looks much like the other four Areas.

High use of letters of intent in comparison with usual pre-proceedings letters may suggest a more selective use of the usual letter, with a focus on the cases where diversion from court seems possible or there is some other specific aim to be achieved. Alternatively, it may reflect the importance ascribed to trying to comply with the process (a letter inviting parents to a meeting) even in cases where this could not change the course of the case. However, distinctions were not always clear cut; letters of intent did not necessarily preclude work with the family, particularly in cases concerning an unborn baby. Also, professional views about how cases should be managed could change even between the letter and the meeting as Mr and Mrs Randle, who received a pre-proceedings letter but were told at the start of the meeting proceedings were being brought, found out to their distress.

## 5.4 Attitudes in local authorities towards using the process

The interviews revealed a range of attitudes within the local authorities about using the pre-proceedings process. There was a range of views, but on the whole legal and social work staff were positive about the process in principle. The difficulties and differences came in saying how it could work best in practice, what the benefits might be, and for what sort of cases it might be most suitable. The generally positive approach was countered in particular by an awareness of the risks of adding to delay, and an overwhelming sense of disillusionment and frustration when interviewees came to speak about the way that the pre-proceedings work was treated by the courts.

This section describes the views of local authority interviewees – social workers, managers and lawyers – under the three broad headings introduced in section 5.1. There are utility-based views, rights-based views and procedural views. It is worth recalling that the interviews were conducted in 2010-11, so 18 months to 2 years after the cases in the file sample. The interview data therefore reflects changes in practice and understanding that developed in the intervening period (this was something that we asked interviewees about).

The *utility-based views* have two aspects, the impact of the process on the families and its usefulness for staff, with positive and wary views on each. The *rights-based views* also have two angles, legal and ethical. The *procedural views*, that it is something that just has to be done, also reflect a number of different perspectives about why it is an obligation, and ‘who to?’ – for example, to comply with government guidance; to satisfy local authority managers and lawyers; or to meet the expectations of the court. There are, of course, overlaps between these three broad understandings, and it was not the case that any individual thought in only one way; rather, it is the *interaction* of the different values and imperatives that makes the process so much more complex and ambiguous than it might appear at first glance.

### *Utility-based views*

Local authority social work and legal interviewees valued the process in terms of its potential impact on parents, and its benefits to them, as workers. They saw it as a way of putting the authority’s concerns across clearly to the parents; ensuring that parents had legal advice and representation; as a potential ‘*wake up call*’ to parents; a way of arranging assessments; possibly involving members of the wider family; and heading off care proceedings. In terms of the benefits to the local authority, staff saw it as an effective way to help their planning of the work on the case; ensuring that they could show and account for the work in court; and a way of saving money for the local authority if proceedings were diverted.

Social work interviewees generally liked the formality of the process, and the involvement of the lawyers, as ways to bring home the seriousness of the situation to parents. This was countered by a small number of social workers who expressed concern that the formality might go too far and become overwhelming and intimidating to parents. Social work interviewees also hoped that the process might finally engage families who had not responded satisfactorily (in their view) to the child protection process (i.e. as a ‘step up’ from child protection, and at the same time ‘another step’ before court), but

some voiced doubts about how well this could work, given the depth of the problems and the efforts that had already been made to engage with the parents. For example:

*'The meeting can make a difference if parents have got a reasonably high level of understanding of what is required of them and they feel it's achievable. I think it's really difficult in terms of cases of neglect and long term neglect, because the capacity to change is so difficult for the parents within the timescales ... so bearing in mind neglect constitutes a huge amount of our work, we have to be realistic about how many of them we can divert.'* SWM6

The mixture of potential benefits to the parents, giving them a last chance to engage and make the required changes, and to the local authority, helping them to plan the work well, is captured in the following quotation:

*'... the most obvious purpose is to avoid issuing care proceedings. After all, that's what the letter says the meeting is going to be about. But, as I said earlier, it does help to clarify our minds on whether threshold has been reached – it makes us get together the necessary evidence. Last chance I suppose for the parents to show that they can change – that's if they take account of how serious it is.'* SW3

A more doubtful view came from a team manager in one of the low-using authorities. She said that she thought her authority used the pre-proceedings process *'very pragmatically'*, but went on:

*'The aim of the pre-proceedings should be to stop cases going into care proceedings, but the thing is, by the time we get into legal panel, things have to be really bad ... So, I think the reality is that we only go into pre-proceedings on the cases where things are so bad that actually by that point the likelihood of turning it around is already pretty poor... I think the aim is to keep cases out of care proceedings – and it doesn't really. That's not what's happening in practice.'* SWM11

Local authority interviewees were strongly aware that utility could be undermined by drift and delay, but this awareness was not always sufficient to prevent it happening. Delay might happen at a number of stages and in a number of ways. There might be delays before deciding to use the pre-proceedings process and taking the case to the legal planning meeting; delay between the planning meeting and sending the letter; between letter and the pre-proceedings meeting; between the meeting and confirming the agreement; in arranging the agreed services or assessments; between initial and review meetings; in responding to breaches of the agreement, or deciding what to do about partial or minimal engagement; in 'trying again' or arranging further assessments; in starting proceedings; and again in court, see below, Chapter 8.

Despite the risks of drift and delay, local authority interviewees felt that there were cases where they *had* to give the family one more chance, as a matter of potential utility, rights, and procedural necessity. As one social worker expressed it:

*'One really obvious [danger] is that it may involve even more delay in a case, just because it takes a while to set up the meeting, then parents don't always find themselves a solicitor immediately and the initial one has to be postponed because of that. Then there has to be a built in review period, say, at least another two months ... But you've got to give that that one last chance, haven't you? So if they do take on board the seriousness of it, you never know, it might be the shock they need to turn things around.'* SW12

The difficulties, of course, are first to identify those cases where there is still time and potential for change, and those where the level of harm to the child and/or the inability or reluctance of the parents to engage means that 'another chance' is only likely to bring further delay; and second, to make sure that cases are closely monitored so that non-compliance with the agreement is responded to promptly and appropriately. (This does not necessarily mean going straight into care proceedings – further chances, or revised plans, may be suitable). The importance of monitoring and reviewing is discussed in Chapter 7.7 below.

Local authority interviewees also valued the utility of involving a lawyer for the parents, seeing this as a crucial way to enhance the likely impact on the parents. The hope that the parent would listen to their own lawyer, even if they were not prepared to listen to the social worker, was widely held across our six authorities, by social work and legal practitioners. As one team manager put it, when asked what factors she thought made the whole process effective:

*'Maybe it is about their solicitor becoming involved, and their solicitor would say to them clearly, 'this is serious stuff' – so it's not just us as a department saying it – or nagging them to death, as they might well see it – there's somebody else outside the authority actually saying to them that this needs to change.'* (SWM1)

Local authority staff were not so impressed with lawyers who took (what they saw as) an overly combative role. They presented this as unhelpful to the parents, not just to them. This was clearly apparent in the case of Estelle Imlach, where there was a very difficult meeting (discussed more fully in Chapter 7.3). The social worker said:

*'I feel like her solicitor didn't do her any favours ... I mean to avoid things escalating, and improving on things that we are concerned about. She should be saying [that the mother] should take part in things we are saying for her to do and show willing to do that ... she should have given [the mother] a fair chance in terms of agreeing to things instead of saying "well we have come to fight, to fight everything that you wrote in that letter ..."'* SW20

### *Rights-based views*

Interweaving with the utility arguments are rights-based perspectives on the pre-proceedings process. These emphasize notions of fairness and transparency, the importance of giving families time to get independent advice and proper warning of what is likely to happen if they do not engage. This view

holds even when there is no chance of avoiding care proceedings, and the process is being used to notify parents of the authority's intention to go to court:

*'I think that from a parent's point of view, the fact that they're getting legal representation – so the first time they meet their solicitor isn't at court on the day of the ICO – I think that is good and right for them. So I think that is beneficial.'* SWM1

The point is that even if legal representation makes life more difficult for the local authority (because they might be challenged by the parents' lawyer), it is still the right thing to do, legally and ethically. Local authority interviewees recognized this, but always moderated a rights-based view with utility-based considerations.

This counter-balancing process is exemplified by views about the role of the parents' lawyers. Local authority interviewees, from law and social work, and across all the authorities, acknowledged that the purpose of parents' lawyers attending the meetings was to support and represent parents, but were always pulled back to the view that the lawyer could – and should – reinforce *their* views, and get parents to cooperate:

*'Yes, they do work. I think parents feel empowered that they have their legal brief as they call it, they have someone on their side fighting their corner – and I think that's good, because I think some people think they are up against this huge system and no one's listening to them. So they do need someone that is for them and can advise them. We have some really good local solicitors, and they will echo what we have been saying to the family for years, and they will listen to them because it's their solicitor, so yes.'* LAS14

And a social work manager expressed a similar view:

*'One of the advantages of having solicitors present is that quite often people will listen to solicitors whereas they won't listen to social workers. So it's a way of having perhaps a bit more of a meaningful discussion where everyone is engaged – even if it's via a solicitor, rather than fully themselves. It's a way of reaching some common ground, even if it's just about an understanding about how this will go forward if things don't change ... Sometimes you do get quite angry parents, but certainly the advantage you've got is they have a solicitor present, so the solicitor – if not necessarily calming them, it's certainly someone they will listen to and not be as angry generally.'* SWM12

Although the process was valued for securing parents' rights this did not dispel the feeling that for some families it was a waste of time. As a matter of rights it was not seen as right for all, in the sense of its utility:

*'I see the point of PLO because ... nobody can make any guarantees that a family has been sat down properly by a social worker and spoken to properly and told 'Come on – you have to do this now – otherwise this is what's going to happen'. So PLO ensures that's done – in black and white,*



*with legal advice if they need it. So it's almost a rubber stamping exercise isn't it – a safety mechanism for everybody. So I can see the virtue of that. I can see why PLO is here. I just think there are some families who, you could tattoo it on their foreheads – and all you're doing then is wasting time.'* LAS16

### *Procedural views*

Some local authority interviewees spoke of the pre-proceedings process as a procedural requirement, but such phrases were used in a variety of ways, and the picture is, again, a complex and subtle one. Some, like LAS16 above, saw the procedural aspects as '*really important*', a way of ensuring good practice; whilst others described the process as 'procedural' in order to belittle it. Such negative attitudes were more commonly expressed by parents and their lawyers downgrading its importance.

There were different views about whether the procedure had become more or less of a routine feature of practice since it was launched in 2008, even within the same local authority. The LSC statistics (above, chart 2.1) show a decline in usage in all except one of our six authorities over the three years 2009-10 to 2011-12, and markedly so in authorities A, B and F. In one of them, a lawyer spoke about the pre-proceedings process becoming *less* of a routine feature:

*'It had been drummed into everybody that this was really important and everybody needed to get to grips with it – so I think there was some initial panic on everybody's part that we absolutely needed to adhere to this. I would take the guidance with me everywhere and say "Right, we have to do this, this and this" – and that's just completely gone now. It's almost as though people have either lost faith in it or decided to ignore it. It's been completely side-lined as far as I'm concerned.'* LAS16

Against this, a team manager from the same authority thought that cases would normally go down the pre-proceedings route, and even that '*You might have cases where you think you want to initiate proceedings and it goes down the PLO route first*' (SWM10). A social worker from the same authority said:

*'This is the procedure which the government brought out now, that we have to take it to PLO first. And then if they don't work with us with PLO, then we take it for proceedings.'* SW5

In another area, where there had been a drop in use of the pre-proceedings process, a team manager said:

*'I think there is a sort of a cultural expectation in the organisation that we will try the pre-proceedings route first ... it has to be a fairly stark and obvious need for it to go straight into proceedings.'* SWM5

So even though usage had declined, interviewees were mindful of the expectation that it should be considered. This is apparent in a comment from a social work manager in the one authority that had seen an increase in usage:

*'We are encouraged to think about them, and to be fair, I would probably just automatically consider it anyway. So yes – I think it has just become what we do.'* SWM16

Another manager expressed some discontent about this routinization of the pre-proceedings process. She complained that it undermined her experience and professional judgment, and risked adding to delay:

*'I've been doing this long enough – I've issued enough sets of care proceedings, I've done long term plans for children ... I get frustrated if I believe that something really needs to be in care proceedings, that I have to do pre-proceedings first. I think it causes delay for the child.'* SWM3

Here, the risks of delay (dis-utility) are used to argue against the process becoming 'just' a procedure. Even SWM16, the social worker who said that she would automatically consider the pre-proceedings process, expressed some misgivings about the way that it had become a routine step:

*'Sometimes I think 'OK we do need to give them another chance.' And there are other times when I think we're just showing our workings out for when we get to court.'* SWM16

The worker's misgivings here are that decisions to use the pre-proceedings process are not being made on a case-by-case, utility basis, but in order to satisfy the requirements of the court. Another jaundiced view about the pre-proceedings process as procedure with limited value, is captured in the following quotation:

*'They do the job, in the sense that we as a local authority have a plan that we always – we have to cover arse don't we, in case something happens to that child ...'* SW17

Overall, local authority respondents generally valued the pre-proceedings process in terms of rights, utility and as a procedure, but gave different weight to each; negative attitudes were explained in terms of delay and ineffectiveness:

*'Well of course it's absolutely necessary, because the family needs to be represented and we've got ours. I think ours was useful in the way that they're being straightforward with the family ... and really just dotting the i's, the legal stuff, so down the line those things can't be challenged or said they weren't clear. Like I said, I thought maybe the [parents'] solicitor was a bit positive and the past a bit brushed over a little bit, but of course it has to be that way to be fair and equal.'*  
SW10

### *Impact in the courts*

Across all six of our local authorities, social work and legal staff alike expressed great disappointment at the courts not seeming to value their pre-proceedings work, and ordering new or repeat assessments. Examples were mentioned of the courts accepting the pre-court work, but these were notable exceptions. Parents' solicitors also noted that the courts often did not pay attention to the pre-court work.

The following quotations capture typical views from the social work side. The first is a team manager from authority D, which made high use of the pre-proceedings process and had a high rate of diverting cases. Nevertheless, there was a sense of frustration about what happened when cases got to court:

*'I think the aim of the pre-proceedings meeting is to make sure also that we've got all the assessments in place so that when we go to court, we're not starting from a blank canvas. We can say to the court, "well, we've done all this assessment, we're quite clear where we're at, therefore we can progress." But I think when we get to court, the courts like to start right at the beginning again.'* SWM7

A social worker (from a different authority), described the double impact of pre-court and in-court delay in a particular case:

*'I inherited the case before we went into court, and felt that there had been so many assessments done under the PLO process and when we went to court, the court ordered more assessments to be done ... There was a delay because we had to go through the PLO process, then there was a delay once we were in court and they wanted further assessments.'* SW18

Some of the strongest expressions of disillusionment came from the local authority lawyers. As one put it:

*'... the whole point as we understood it was the judiciary would be a lot firmer on the number of assessments, particularly if we have done them before, because the whole point is to frontload it and to avoid all of that under care proceedings. In theory, care proceedings are meant to be shorter. But what we were finding was that even though we did assessments, and they were agreed by the parents with the letters of instruction, we would get into court and we were asked to re-do certain things ... we were almost back at square one. So maybe in certain cases, if we know we are likely to issue anyway, we might as well do it under care proceedings, we save six months.'* LAS14

Two social work managers spoke about it being unpredictable whether or not the court paid regard to the pre-court work. They thought it depended on who the judges, magistrates, or children's guardians were, but the risk had deterred the authority from doing extensive work pre-proceedings:

*'We had a case where we had agreed to do some assessments and when we got it to court, the judge went, "I don't care what you have done in your pre-proceedings I am totally going to disregard it" and we then had to do a whole other raft of assessments. So I think it does feel very much a lottery with the judiciary about how they view the work you have done pre-proceedings ... we had a run of cases and we felt a little bit depressed, so in the long term we kind of decided to bypass the PLO and go back to the old style and just instigate proceedings. We weren't ticked off by the court at all, and I think we are not really clear about how the court views the PLO process.'* SWM15

Further views about the impact in the courts, and statistical evidence from the case file study, are presented in Chapter 8. The key point from the local authority perspective is that once in court the process did not '*make a difference*' (LAS2) (with a few exceptions), so the utility of the process was limited to its effect on work before court, for families and for the local authority.

### **5.5 A choice to use the pre-proceedings process?**

The analysis in this section is based on the file sample of 207 cases, 120 where the pre-proceedings process was used and 87 'court only' cases, where care proceedings were initiated directly. Supporting information is drawn from the 33 case studies compiled from the observations of pre-proceedings meetings and associated interviews.

In two distinct circumstances the members of the legal planning meeting have no choice about using the pre-proceedings process or going directly to court: cases concerning unborn babies; and cases where there is an immediate need for a court order. Legal proceedings can only be brought once a child has been born (*Re F (in Utero)* [1988] Fam 122); the pre-proceedings process provides the only framework beyond child protection planning for engaging with parents-to-be. Both the vulnerability of these families and criticism of decisions to remove babies at birth (*R (G) v Nottingham CC* [2008] EWHC 152 (Admin); 400 (Admin); *Re CA (a baby)* [2012] EWHC 2190 (Fam)) may encourage the use of the pre-proceedings process to enable parents to have legal advice and support in discussions with the local authority. In relation to cases where a child needs immediate protection, the *Guidance* is clear: an application to court should not be delayed by use of the pre-proceedings process (paras 3.27 and 3.30).

#### *Pre-birth cases*

There were 55 (26.6%) cases in the sample where the legal planning meeting was planned before the child's birth; plans for local authority involvement were made before the baby's birth in 52 of these. Ten of the 33 observed cases (30%) related to unborn children. These cases were taken to legal planning meetings because concerns about the parents' ability to provide adequate care due to neglect or abuse of previous children and/or the mother's current problems including substance misuse, a chaotic lifestyle, learning difficulties or personality disorder, which individually or together impacted substantially on her capacity to care.

The pre-proceedings process was used in 75% of the 52 pre-birth cases, a higher percentage than for the sample as a whole (see Table 5.3). Use in the individual local authorities ranged from 58.3% to 90% of pre-birth cases. There was a statistically significant relationship between the use of the pre-proceedings process and whether or not the unborn baby was the parents' first child ( $p = .009$ ). In relation to first born children, it was more common for care proceedings to be started without the pre-proceedings process (30% compared with 21% of children with siblings were 'court only' cases). Where the expected baby had siblings, past experience provided a basis for planning for the unborn baby. In all the cases where legal planning meetings were held in relation to unborn babies with siblings, the local authority had had prior involvement with the family. None of the families was caring for all of their children and most had experienced care and/or adoption proceedings.

**Table 5.3: Pre-birth cases and the pre-proceedings process (file sample)**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>Total</b>
<b>Pre-birth cases referred to LPM</b>	<b>10</b>	<b>12</b>	<b>7</b>	<b>9</b>	<b>7</b>	<b>7</b>	<b>52</b>
<b>To avoid proceedings</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>6</b>
<b>To plan care at birth</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>17</b>
<b>To agree services / assessment</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>To notify of intention to s.31</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>13</b>
<b>'court only'</b>	<b>1</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>13</b>
<b>Pre-proceedings %</b>	<b>90.0</b>	<b>58.3</b>	<b>71.4</b>	<b>88.9</b>	<b>71.4</b>	<b>71.4</b>	<b>75.0</b>

Where the pre-proceedings process was used this did not mean that the local authority thought that care proceedings could be avoided; this was so in only 26 (50%) of the unborn baby cases. Letters of intent accounted for 13 of 39 letters sent in relation to unborn babies. Letters indicating that proceedings might be avoided were more common in relation to a first baby, (65% compared with 38% for subsequent children). Letters of intent were used where the parents had other children who had been the subject of care proceedings; only one letter of intent was sent to a parent in respect of a first child. In this case, the pre-proceedings meeting was used to agree arrangements for a pre-birth assessment of the mother; sending a letter of intent gave the mother a clear indication of what the local authority was planning unless the assessment provided a more positive view.

The main reason for not using the pre-proceedings process appeared to be the lack of time between the legal planning meeting and the child's expected date of birth. Where no letter was sent, the legal planning meeting took place closer to the child's birth, on average 3.2 weeks before the birth compared with 6.9 weeks for cases where the process was used ( $p = .008$ ). Two main reasons precluded a timely legal planning meeting – the local authority's knowledge of the pregnancy, and premature birth. Area B, an inner London local authority with a mobile population served by numerous large hospitals seemed to

find obtaining notification of pregnancies particularly difficult. In contrast, Area D, which had comparatively few maternity units, midwives who had worked long term in the community and a more stable population was able to use the pre-proceedings process in most cases where there were concerns about a parent-to-be's ability to care for their baby. Premature births were quite common in the sample, a reflection of the poverty and poor health, including substance misuse, of many of the mothers. It was a factor considered explicitly in at least some of the plans made before birth, for example for Jenny and Nathan Morgan's baby. At the pre-proceedings meeting to discuss the future care of the baby Morgan, the social worker agreed a plan for the baby's care but warned the parents that this plan would have to be changed if the baby was born early because there would be too little time to complete assessments.

### *Immediate proceedings*

The research treated cases as 'immediate cases' where the application for care proceedings was made within 15 days of the legal planning meeting. Thirty-nine of the 87 'court only' cases (44.8%), i.e. cases where the pre-proceedings process was not used, were immediate proceedings within this definition. In addition, there were 13 more 'court only' cases where proceedings were started as the baby was born, bringing the total of immediate cases to 52 (59.7%) with a range from 33.3% to 92.3% of 'court only' cases across the 6 local authorities (see Table 5.4).

The largest group of immediate cases were 'crisis' cases. The researchers applied the same definition for these cases as in the *Care Profiling Study* (Masson et al 2008). In 'crisis' cases the decision to bring proceedings was precipitated by an incident, such as a hospital admission where injuries were identified, allegations or disclosures of serious abuse or the child was found alone. There were 26 'immediate crisis' cases; emergency intervention was used in 15 of these, and in others it was only avoided by parents agreeing, temporarily, to the child's accommodation under s.20. The majority of these 'immediate crisis' cases were open cases with half actively worked for twelve months or more. Indeed, crises were sometimes seen as providing an '*opportunity to go into proceedings*' (2191) for cases where there was chronic neglect, a practice that has been noted in numerous other studies (Masson et al 2007; Burgess et al 2012; Ward et al 2012). There were only 6 cases where the immediate crisis resulted in an application to court and the family was *not* known to the Children's Social Care. In 5 cases, a baby's admission to hospital resulted in identification of serious physical abuse. In the remaining case, a 4 year old, found abandoned and taken into police protection, disclosed serious abuse by her foster carer. There were 7 'immediate' cases where the children were at home receiving services; in these cases refusal of, or disengagement from, services was a common factor precipitating an application to court. There were another 7 'immediate' cases where children were already living away from their parents, with relatives or in foster care. The local authority made the care application in response to threats by parents to remove children or withdrawal of parental consent to children's accommodation. Such threats did not necessarily preclude the use of the pre-proceedings process in other cases.

**Table 5.4: 'Immediate' and emergency cases**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>Total</b>
<b>New baby 'court only'</b>	<b>1</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>13</b>
<b>Crisis</b>	<b>1</b>	<b>5</b>	<b>9</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>26</b>
<b>Of which PP/ EPO</b>	<b>(0)</b>	<b>(4)</b>	<b>(6)</b>	<b>(2)</b>	<b>(4)</b>	<b>(1)</b>	<b>(15)</b>
<b>Services at home</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>5</b>
<b>Accommodated/ separated</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>7</b>
<b>Continuous legal proceedings</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>TOTAL immediate cases</b>	<b>3</b>	<b>12</b>	<b>13</b>	<b>7</b>	<b>13</b>	<b>4</b>	<b>52</b>
<b>N 'court only' cases</b>	<b>9</b>	<b>13</b>	<b>19</b>	<b>19</b>	<b>22</b>	<b>5</b>	<b>87</b>
<b>Immediate cases as % of 'court only' cases</b>	<b>33.3</b>	<b>92.3</b>	<b>68.4</b>	<b>36.8</b>	<b>59.1</b>	<b>80.0</b>	<b>59.7</b>

The figures in Table 5.4 provide a rather different picture of the non use of the pre-proceedings process from Tables 5.1 and 5.2. Overall, immediate cases and those relating to new babies where there was insufficient time to use the pre-proceedings process accounted for almost 60% of the 'court only' cases. Local Authorities B and F used the pre-proceedings process in all but one case where there was time to do so. In contrast, in Local Authorities A and D, only a third of 'court only' cases were 'immediate' cases and so it could have been possible to use the pre-proceedings process for some of these.

Recourse to immediate intervention is not simply a response to a crisis, it also reflects the local authority's capacity to undertake preventative work and avert crises or respond through planned intervention. One consequence of the increase in applications following the death of Baby Peter was the redirection of social work resources to cases in proceedings (ADCS 2010a, b, 2012). There was a very substantial and sustained increase in care applications by Local Authority B after 2007-8, something that other local authorities in the study did not experience until later (C and E) or at all (A and D). However, B's low use of direct applications to court in other than in immediate cases seems more likely to reflect commitment to the pre-proceedings process (see above) rather than to demand limiting its capacity to undertake preventative work.

### *Other factors in direct applications for care proceedings*

Timing of court applications is not determined solely by the views of the legal planning meeting about the urgency of the case, it is also a matter of resources both in the local authority and in the courts. Case volume and the number of hearings meant that local authority lawyers were not always able to prepare applications promptly. Pressures, such as crises with their other cases, meant that social workers were sometimes unable to prioritize drafting their statement, which was required for the court application. Similarly, courts, notably in E, were stretched to find time for first hearings, particularly where a contest was expected. When hearing slots were not available, applications were discouraged so that the court process did not appear to have been delayed. Legal department and court delays could allow time for pre-proceedings work as this advice, given to a social worker by a local authority lawyer in Area D recorded:

*Given their young ages, we agreed to start proceedings without going through the pre-proceedings stage as the girls' welfare requires us to act quickly. However, given that we may not be able to get the case into court for at least 6 weeks, it may well be appropriate to send a LBP to both parents to explain our position. I will leave this to you. (LA solicitor's file note 4261)*

There were 11 cases where care proceedings were started without the pre-proceedings process within a month of the legal planning meeting, leaving only 24 (27.6%) of the 'court only' cases where a choice appeared to have been made not to use the pre-proceedings process.

These 24 cases included 13 (54%) where the children were already looked after and 12 (50%) where children were over the age of 5 years. In both respects this distinguished these cases from cases where the pre proceedings process was used ( $p = .018$ ). Cases involving older children are often seen as less urgent than those relating to pre-school children for whom adoption may become the plan. Where children are safe, the need for proceedings may also be less pressing.

In a quarter of the 24 cases the legal planning meeting intended that the pre-proceedings process should be followed but the decision was not actioned, and events in the weeks after the meeting overtook the plan, resulting in a direct application to court. In the remaining cases, two perceptions, sometimes in combination, meant the pre-proceedings process was not used. The pre-proceedings process was seen as delaying cases or as a pointless exercise. Delay was a particular concern where cases had already drifted, as a quarter of these cases clearly had. For example, in a case of long-term neglect where the father was violent and mother an alcoholic, there had been 4 legal planning meetings over 8 months, each of which had agreed that the threshold for care proceedings was met. The second meeting (3 months after the first) recommended a family group conference and using the pre-proceedings process as soon as the core assessment was completed. At the third meeting (five months later) the authority solicitor noted, *'It is difficult to justify any further delay by commencing the PLO process now.'* [1041] In another case involving serious domestic violence and substance abuse, concern that there should be no delay in planning for siblings, aged 2 years and 2 months, led the meeting to agree not to use the process. [4261] There were 3 cases where a letter, including in one case a letter of



intent, had been sent the year before but not been followed by proceedings. It may be inferred from the subsequent direct application to court that those involved considered that repeating the process was pointless or would waste time by merely delaying court action. In another case, the local authority lawyer was explicit in advising against pre-proceedings:

*'It is difficult to see in this situation [intergenerational sexual abuse] the PP stage would assist at all. The long-term lack of sexual boundaries within this family and failure to protect the child is not something that I would respectfully suggest could be rectified within the limited timescale envisaged in the PP stage of care proceedings.'* [4281] [LA Solicitor's advice note]

Similarly, where children were already accommodated and parents had largely withdrawn from involvement in their care, the pre-proceedings process could appear to have little point.

### 5.6 How the pre-proceedings process was used.

The researchers coded the main purpose for which the pre-proceedings process was used using the information given in legal planning meeting minutes and the letters themselves. Where there was no explicit statement, it was assumed that the aim was to improve the parents' parenting and avoid the need for care proceedings; this was therefore treated as the residual code. It would have been better to allow multiple reasons, and only to code cases where there was positive information. Despite limitations of the coding strategy, there were real differences between local authorities in the way they used the process, see Table 5.5.

**Table 5.5: The main purpose of the pre-proceedings process**

Local Authority	A %	B %	C %	D %	E %	F %	% (N)
Improve care/avoid s.31	28.6	38.1	26.7	48.0	50.0	38.5	38.3 (46)
Letter of Intent	28.6	23.8	6.7	16.0	22.2	7.7	19.2 (23)
Plan care at birth	17.9	9.5	13.3	12.0	5.6	38.5	15.0 (18)
Agree rel care / accommodation	17.9	14.3	6.7	8.0	5.6	15.4	11.7 (14)
Agree assessment	3.6	14.3	46.7	4.0	5.6	0	10.8 (13)
Agree services	3.6	0	0	12.0	11.1	0	6.0 (8)
<b>N</b>	<b>28</b>	<b>21</b>	<b>15</b>	<b>25</b>	<b>18</b>	<b>13</b>	<b>120</b>

In Area C, in almost half the cases, the pre-proceedings process was used to get agreement to assessment. Area C had a contract with an external assessment service and used the process as part of its referral mechanism to ensure parents would co-operate fully. None of the other local authorities had such arrangements; they did undertake core assessments before or during the pre-proceedings process but were increasingly unwilling to commission expensive external assessments because of their experience of the courts ordering assessments regardless of the work done before the application. With this in mind, a local authority solicitor advised:

*'Whoever undertakes the work will need to be formally instructed, with the solicitors for parents confirming their approval. If parents don't have solicitors, they will need to seek advice before assessment starts – this might necessitate a pre-proceedings approach to trigger funding for them.'* [5101] (Solicitor's file note)

In the event the pre-proceedings process was not used in this case; before the letter was sent the mother gave birth prematurely. A mother and baby placement was agreed without a pre-proceedings meeting.

All local authorities made some use of the pre-proceedings process to agree placements with relatives or in foster care, and to plan for the care of new babies. For example, the meeting with Sally Fry, originally intended to take place before the birth of her baby was able to agree that Sally and the baby would stay with Sally's mother, and Sally would complete an intensive drug rehabilitation programme (which had been suspended for the birth of her baby). Assessments and the provision of services are not usually seen to require legal advice for clients. Although such matters were frequently discussed at pre-proceedings meetings, they were not usually given as the main reason for using the process but rather as ways to improve parenting and thereby to avoid proceedings.

## **5.7 A comparison of cases where the pre-proceedings process was or was not used**

Leaving aside cases where the circumstances of the case meant there was really no choice about which route to use, pre-proceedings or 'court only', there seemed to be little difference between the small number of cases where a court application was made and the much larger group which were directed into the pre-proceedings process. Most cases in both groups concerned children from families who were known to children's social care. The children were of similar ages, with a third under the age of 1 year (the majority of whom were unborn at the time of the legal planning meeting), a quarter aged between 1 and 5 years and the rest equally divided between the ages of 5-9 and 10-14 years. There were no index children who were over the age of 16 when the legal planning meeting took place. Given the length of care proceedings and the age limit for making care orders this cannot be regarded as surprising.

### *Known to children's services*

Almost all the families in file the sample were in contact with children's services before the child's circumstances were considered at a legal planning meeting. The majority of child protection work does

not involve legal proceedings; for a social worker to refer a new case to a legal planning meeting is exceptional. There were 16 cases with no prior social work contact. These cases came to the notice of children's services through incidents or injuries; only 3 were directed into the pre-proceedings process. It goes without saying that social workers knew little about these children and families; so what distinguished them from the cases that went directly to court? Concerns about children's immediate safety were allayed through care by families and friends. For example, Angela Verney's son Frankie, aged 18 months, who had been admitted to hospital with facial bruises, went from hospital to stay with his grandparents, who were fully supportive of Children's Services' intervention. A lack of information may also have militated against starting care proceedings here; the local authority knew very little about Angela or Frankie's father Chris Wood, and the police had not completed their enquiries into how Frankie got hurt. Using the pre-proceedings process provided a framework for working with the parents whilst information was gathered and assessments made. In contrast, many cases that went directly into proceedings were seen to require immediate court action because of the (uncooperative) response of the parents and the severity of the injuries.

This apparent preference for proceedings over pre-proceedings operated where social workers had been involved with the family for under 6 months. Whereas 32% of the care proceedings only cases had been actively worked for 6 months or less this was true of only 21% of the pre-proceedings cases. Conversely, a far higher percentage of pre-proceedings cases had been worked for between 6 months and two years (44.1% compared with 28.4%).

#### *Concerns about parenting and care*

Pre-proceedings cases were more likely to have concerns relating to neglect (73% compared with 60%), emotional abuse (53.8% compared with 37.8%) or children's behaviour (19.2% compared with 8.9%) and, conversely, less likely to involve allegations of physical abuse (28.2% compared with 38.9%), than the cases that went directly into care proceedings. There was no difference in the proportions of cases where the parents' behaviour was a reason for concern; this was a factor in over 70% of all cases at the legal planning meeting stage. That this figure was no higher reflects the limited information available at the legal planning meeting for some cases.

There were few differences between the concerns the local authority had about mothers' parenting in 'court only' cases and those that had some form of pre-proceedings process, (see table 5.6, below). Overall, these scores are slightly higher than for the mothers in the *Care Profiling Study* (Masson et al 2008) where the average was 7.3. Domestic violence marred the lives of more than half the mothers, and the parenting of a third was undermined through substance abuse. At the time of the legal planning meeting, there were more concerns about the mother's parenting, 9.22, where a letter of intent was sent, compared with 7.41 for 'court only' cases and 8.19 for those where full pre-proceedings process was used. Mental health difficulties were more prevalent amongst the mothers who received letters of intent; 65% compared with 45% of those receiving ordinary letters before proceedings, and 35% of mothers in 'court only' cases. Also, more than half the mothers sent letters of intent had spent time in care themselves, compared with a quarter and a third of the other groups. Non-co-operation was a

**Table 5.6: Mothers' problems known at the time of the legal planning meeting**

Mother's problems	Recorded Case type						
	PPP		Loi		'court only'		Total
	N		N		N		
MHP mental illness	44	45.80%	15	65.20%	30	35.70%	89
refusal to accept support for MHP	15	15.60%	6	26.10%	9	10.70%	30
Drug Abuse	40	41.70%	10	43.50%	24	28.60%	74
refusal to accept support for drug	11	11.50%	1	4.30%	6	7.10%	18
inability to us drug support consistently	13	13.50%	5	21.70%	9	10.70%	27
Alcohol abuse	31	32.30%	6	26.10%	30	35.70%	67
refusal to accept support for alcohol	13	13.50%	0	0.00%	5	6.00%	18
inability to use alcohol support consistently	5	5.20%	0	0.00%	11	13.10%	16
Crime	19	19.80%	7	30.40%	16	19.00%	42
Sched 1 offender	3	3.10%	0	0.00%	1	1.20%	4
Inappropriate visitors to home	30	31.30%	8	34.80%	22	26.20%	60
inability/failure to protect from partner	20	20.80%	7	30.40%	26	31.00%	53
sex abuse/failure to protect from sex			2		13		
abuse	18	18.80%		8.70%		15.50%	33
lack of co-op with CS	59	61.50%	17	73.90%	43	51.20%	119
lack of co-op re child's health	44	45.80%	11	47.80%	37	44.00%	92
Accommodation problems	36	37.50%	10	43.50%	23	27.40%	69
Neglect lack of hygiene/ repeat accidents	61	63.50%	17	73.90%	52	61.90%	130
Inconsistent parenting/emotional abuse	44	45.80%	9	39.10%	43	51.20%	96
Physical abuse/ over chastisement	14	14.60%	3	13.00%	18	21.40%	35
one-off physical assault	7	7.30%	4	17.40%	12	14.30%	23
Problems re school/ attendance	31	32.30%	5	21.70%	21	25.00%	57
inability to cope with/control child	23	24.00%	5	21.70%	17	20.20%	45
learning diffs	18	18.80%	6	26.10%	12	14.30%	36
physical disability	4	4.20%	1	4.30%	2	2.40%	7
sensory disability	1	1.00%	1	4.30%	2	2.40%	4
health diffs, incl. overfeeding	11	11.50%	1	4.30%	8	9.50%	20
DV	62	64.60%	16	69.60%	46	54.80%	124
Refusal/failure/inability to use DV support	10	10.40%	2	8.70%	11	13.10%	23
violence outside home	12	12.50%	5	21.70%	13	15.50%	30
chaotic lifestyle	41	42.70%	11	47.80%	28	33.30%	80
frequent changes of carer	4	4.20%	3	13.00%	9	10.70%	16
care history	29	30.20%	13	56.50%	22	26.20%	64
harassment	13	13.50%	5	21.70%	2	2.40%	20
<b>N mothers problems/ mothers Ave</b>	<b>786</b>	<b>96</b>	<b>212</b>	<b>23</b>	<b>623</b>	<b>84</b>	<b>203</b>
	<b>8.19</b>		<b>9.22</b>		<b>7.41</b>		

more common feature where letters of intent were used; almost three-quarters of recipient mothers were not co-operating with children's services at this point, suggesting that the full pre-proceedings process would not work. Whatever process was used, there were large numbers of mothers whose parenting raised concerns about neglect.

Social workers knew less about the children's fathers. They believed they knew the identity of 180 fathers, 110 of these were thought to have parental responsibility but only 51 fathers were involved in their children's care. There was no difference in the proportions of involved fathers in the pre-proceedings and 'court only' groups. Some information about the father's parenting was available for 169 fathers, but often this too was quite limited, particularly where fathers were not living with their children. Domestic violence (52%) and crime (25%) were known features of the fathers' lives; mental health difficulties (33%) and lack of co-operation with children's services (48%) were most common where letters of intent were sent.

### *Child protection plans*

Where the pre-proceedings process was used, a higher proportion of children had child protection plans. Overall, about two-thirds of the index children were the subject of child protection plans, 81.3% of those in the pre-proceedings process, 65.2% of those whose parents were sent letters of intent but only 46.5% of the 'court only' group. The seriousness and urgency of the intervention may have made child protection planning superfluous, for example because the local authority was seeking the child's permanent removal. However, a closer analysis of the cases in pre-proceedings suggested that the two processes were being used together despite the fact that neither *Working Together* (HM Government 2010) nor the *Guidance* (DCSF 2008) explained how they should be integrated (Masson 2010a). In just under a fifth of cases, the legal planning meeting took place before the initial child protection conference. There are two possible explanations. This may be simply a matter of logistics; it is far easier to arrange for a case to go to a legal planning meeting than to set up an initial child protection conference because of the number of people involved. Alternatively, use of the child protection process may have been a result of discussions at the legal planning meeting. In another third of cases, the legal planning meeting occurred within a month of the conference, suggesting that the initiative for the referral to legal planning came from the conference. A further quarter of meetings occurred between two and six months of the initial conference, with the implication that the decision reflected discussions or recommendations at a review conference. The remaining legal planning meetings occurred more than 12 months from the initial conference, with a spike at 18 months when concerns are likely to have been raised about the length of time the child had been on a child protection plan.

Referral to a legal planning meeting occurred where the parents were seen not to have engaged sufficiently with the child protection plan. Using the pre-proceedings process and '*bringing the lawyers in*' signalled the seriousness of the local authority's concerns. It was '*a step up*' from managing the cases just through child protection planning. Use of the pre-proceedings process also provided '*another step*' between (unsuccessful) child protection planning and care proceedings, giving '*another warning shot for [mother] and also a chance for her to seek legal advice.*' [5031] Used in this way, the pre-proceedings

process sought to avoid propelling cases into care proceedings by giving parents a stronger message about their need to change than had been delivered through the child protection conference, and a further opportunity for them to respond to this message. It also carried with it a potential for delay (see 8.5, below).

#### *Looked after children*

There were 48 children in the sample who were known to be looked after (accommodated under s.20) at the date of the legal planning meeting where bringing proceedings was at issue. Accommodated children were more likely to be made subject to care proceedings without the pre-proceedings process (i.e. 'court only' cases) ( $p = .018$ ); this was the case not only for 'immediate' cases, where accommodation was provided in response to a crisis, but also for children who had been accommodated for longer. Out of 24 'non immediate', 'court only' cases, 13 (54%) related to children who were accommodated. Indeed, that the child was accommodated appeared to be a factor in the decision not to use the pre-proceedings process. The referral to a legal planning meeting may have been a result of the child's LAC Review. However, there was no evidence on the legal department file that IROs, carrying out their responsibilities to consider whether the legal arrangements for the child's care should change, had referred cases for legal planning meetings or considered the use of the pre-proceedings process.

#### *Route to court*

The researchers coded the cases using the 7 categories from the *Care Profiling Study* based on earlier work on care proceedings (Hunt et al 1999). The figures are reproduced here, both at the point of the legal planning meeting and, for the cases where there were care proceedings, at the application to court. There was a statistically significant relationship between the route to court and the use (or non use) of the pre-proceedings process, reflecting the influence on the route used of the case circumstances ( $p < .0001$ ). In over half the cases where the pre-proceedings process was used, children were at home receiving services at the date of the legal planning meeting. This compares with under a sixth of 'court only' cases. Conversely, a high proportion of 'court only' applications related to children who were already separated. At the point when proceedings are started, the proportion of children at home receiving services is lower and the proportion accommodated higher, reflecting the increased risk associated with remaining at home when care proceedings are used, see Table 5.7.

Not all the differences apparent from Table 5.7 relate to the introduction of the pre-proceedings process; the reduction in the proportion of children in supervised settings is related to changes of practice following questions about the value of residential over community assessments and withdrawal of legal aid funding for such residential assessments.

**Table 5.7: Route to court at LPM, application and in the *Care Profiling Study* (2004 court applications)**

Route to court*	LPM PPP %	LPM 'court only' %	All at LPM %	Court 'PP+ s.31' %	Court 'court only' %	All at Court %	Court CPS (2004) %
Unborn/ planned application at birth	26.8	23.6	25.1	24.6	22.6	23.4	22.4
Crisis	5.2	33.6	20.3	11.5	36.8	27.5	41.9
Child at home with services	50.5	14.5	31.4	31.1	11.3	18.6	11.7
Accommodation/ separation	15.5	24.5	20.3	26.2	28.3	27.5	14.5
Supervised setting	0	0	0	3.3	0	1.2	4.5
Mixture services and accommodation	2.7	2.1	2.4	3.3	0	1.2	2.1
Continuous legal involvement	0	0.9	0.6	0	0.9	0.6	2.8
<b>N</b>	<b>97</b>	<b>110</b>	<b>207</b>	<b>61</b>	<b>106</b>	<b>167</b>	<b>384</b>

\*The letter of Intent cases are coded with the direct to care proceedings cases at both points.

Comparisons between cases at application to court with and without the pre-proceedings process, and the earlier *Care Profiling Study* show both similarities and differences. As might be expected, there is considerable similarity between the current sample of 'court only' cases and the *Care Profiling Study*. However, the sample of cases going into proceedings following the pre-proceedings process is rather different. Particularly, the proportion of crisis cases is lower, with higher proportions both of children receiving services at home and of accommodated children. This underlines the more planned nature of intervention where the pre-proceedings process is used and suggests that use of the pre-proceedings process reduces crisis intervention.

### **5.8 Conclusions on the use of the pre-proceedings process**

Overall, decision-making at legal planning meetings in 2009, in the local authorities in the study, generally resulted in use of the pre-proceedings process, with cases only going directly to court where there was *no time* for the process or lawyers and managers saw *no point* in using it. Rather than selecting to follow the pre-proceedings process on the basis that it would be useful to do so, legal planning meetings only decided *against* this route where they considered that it would serve no

purpose. This is not to say that individual managers, lawyers and social workers did not recognize that there could be specific reasons for, or advantages in, using the process but rather that, in the local authorities in the study, following the process had become the expected way of working. It was therefore not necessary to make a case for doing so. Rather, reasons were expected if the process was *not* going to be used.

This pattern is unlikely to apply across all local authorities; the rate of use of the process in all but one of the authorities in the study was above the average for England, see chart 2.1, above. The interviews, conducted in 2010-11, gave a picture of changing and uncertain attitudes – wariness about the using the process because of the risks of delay and the limited impact in the courts, but also a strong commitment to the principles of transparency, a ‘last chance’ and the benefits of legal advice to the parents (benefits for the parents and the local authority).

Decisions about whether and when to use the process are shaped by pervasive and complex influences on the use of discretion, such as personal and professional values, experience and organizational culture, as discussed in Chapter 3. The fundamental principle that care proceedings are a ‘last resort’ (Hunt et al. 1999) was an overshadowing influence. Local authorities are expected to have recourse to the courts only where alternatives have failed, are not available or cannot meet the child’s protection and welfare needs. Within local authorities this is underscored by the financial and staffing demands that care proceedings impose. Decisions in individual cases take place within this context; using the pre-proceedings process as a general practice can make it easier justify to managers the need for court proceedings. This is so whether or not using the process is personally seen as the right way to work with particular parents.

In 2009, the local authority lawyers in the 6 study authorities seemed still to believe that the courts expected the process to be followed. They were therefore looking forward to the possible proceedings when advising social workers to send a letter before proceedings. Also on the court horizon were matters such as proving the threshold and obtaining approval for the care plan, both of which might become clearer through the pre-proceedings process. Only where starting care proceedings straight away met clear protection needs or brought obvious advantages over gaining more information about the family, was the pre-proceedings route discounted.



## Key points

- **Local authorities in the Study (all but one of which were above average users of the pre-proceedings process) had integrated decisions about using this process into their legal planning system.**
- **Local authority lawyers, social work managers and social workers valued the process as a means of protecting parents' rights, an ethical way of practice and for the benefits it could bring. They recognized benefits for parents – helping parents to see the seriousness of the local authority's concerns, legal support and advice and another chance before proceedings, and for the local authority – the possibility of avoiding proceedings, increased co-operation and time to plan proceedings or care.**
- **Local authority staff also recognized that the pre-proceedings process could lead to delay of applications to court, compounding the time children spent before they were settled with adequate care. Using the process was seen more negatively as it became clear that courts were not changing their practice to take account of the local authority's and parents' actions during the pre-proceedings stage.**
- **In the Study local authorities, letters before proceedings were sent and meetings held unless there was no time to do so or social work managers and lawyers saw no point in such action because any further social work involvement necessitated a legal mandate. Where there was time but proceedings could not be avoided, a letter of intent was sent.**
- **The majority of children whose parents were sent a letter before proceedings were already on child protection plans. There were no formal links between child protection planning and use of the pre-proceedings process; the process was used as 'a step up' to indicate the seriousness of the local authority's concerns and also as 'another step' before care proceedings were started.**
- **A major use of the pre-proceedings process was to undertake assessments and make plans for unborn babies, more than a quarter of cases concerned unborn babies.**

## Chapter 6

### Findings 3: The process in practice - the letter

#### 6.1 Introduction

The 'letter before proceedings' is one of the distinctive features of the pre-proceedings process, giving a warning to the parent(s) that the local authority is considering going to court, inviting them to the meeting and urging them to see a solicitor for advice and representation. Such a letter is a new step in social work practice, but 'letters before action' are familiar to lawyers (and indeed, some of the legal interviewees used the term 'letter before action').

There is a template for the letter in the statutory guidance (DCSF, 2008), and the structure and initial phrases of this model were usually followed. An anonymised copy of the letter used in Area C is included in Appendix 1. It scarcely differs from the template, and this was generally the case in each of the other local authorities. There was more variation in the detailed sections or attachments that referred to the grounds for the local authority's concern, and (if it was enclosed with the letter) the terms of the proposed agreement. The *Best Practice Guide* (MoJ and DCSF, 2009) includes a template for a letter of intent; here too the letters sent by the study authorities were similar.

This chapter describes the processes of preparing and delivering the letter (the term includes the letter itself and the attachments). It gives information about who the letters were sent to, and what they contained. It also gives the views on the letter of local authority personnel, parents and parents' lawyers.

Three key themes emerge: issues of timing, notably the dangers of delay in preparing and delivering the letter, and giving sufficient notice of the meeting; questions about how much detail the letter should contain; and dilemmas about how the letter can be most effective. The challenge of effectiveness is that the letter needs to make an impact and be honest, but still respectful of parents' feelings and dignity, and likely to engage them rather than alienate them.

#### 6.2 The process of preparing the letter

When a legal planning meeting decides that a case should go into the pre-proceedings process, the first task is to prepare and send the letter. Sometimes the preliminary sentences were adapted to make them more directly relevant to the circumstances of the specific case, but on the whole the first part of the letter was followed closely.

The task of writing the letter usually fell to the social worker, but there were varying levels of support and oversight from their manager and the local authority lawyer. The letter would usually be sent out in the team manager's name. In one of our areas, the solicitors expected to see a draft, and said that they would often spend a lot of time revising it. In another area, the solicitor said that she would offer advice

about the letter in the legal planning meeting, and although she was prepared to look at a draft, she was not usually asked to do so.

In a third area, the two social work managers interviewed took different approaches. This authority used the pre-proceedings process to undertake a parenting assessment, and the letter would sometimes include a separate draft 'letter of instruction' to the assessment service, for the parents and their lawyer to see. This added an extra layer of work to writing the letter. One manager expected the social worker to do this and complained that less-experienced workers found it hard, creating a lot of extra work for her. She would have liked more help from the legal department. The other manager wrote the letter, and only looked to the social worker to provide the chronology and list of concerns.

There could sometimes be considerable delay between the legal planning meeting and sending the letter, see section 8.5, below. This might be because of to-ing and fro-ing between the social worker, manager and lawyer, or simply that other work, with a higher priority, intervened for any of those involved. In some cases letters needed to be translated, which could add to delay. Social work and legal interviewees recognised the need to set timescales and monitor the process of preparing the letter.

There were different views about how much detail the letter should include. On the one hand, there was an awareness that the letter and list of concerns needed to be kept as short and 'to the point' as possible, in order not to confuse parents or over-complicate matters. As one team manager put it:

*'... we try very hard within the letter to outline it really clearly ... we only have a few concerns, a heading in bold, and then under that it's 'this is what has happened, this is what we've tried to do, this is what we expect' – you know, a short paragraph. We don't overload, but we try to be clear on what each concern is. And then a bit at the end about what you can expect from us.'*

SWM14

On the other hand, parents' lawyers generally liked to know as much as possible about the background (discussed further in section 6.7 below), and the local authority side saw the value in the lawyers being properly informed so that they did not have to rely solely on the parents' account before hearing the rest of the story at the meeting. One team manager spoke about her approach to this dilemma, of enclosing separate documents with the added detail:

*'I don't make it too long a letter. I don't want to go through pages and pages of history and concerns. I want to put it in a nutshell. And normally it's no longer than a couple of pages, and there's an awful lot of blurb in that as well. So one of the things that is really helpful is that you include with that, so the solicitor gets it, a proper background. So I tend to send out a case conference report, a chronology, so that they've got a proper history, so that they know, they're fully briefed before they meet with us, where we're coming from.'* SWM7

If the child was already on a child protection plan, as most were, the plan would form the basis of the working agreement. From the local authority's point of view, the plan is strengthened if the parents agree to cooperate after receiving legal advice, in the presence of their lawyer.

### 6.3 Who was sent a letter

Of the 120 pre-proceedings cases, details of the letters, including the recipients were available in 109 cases and the number of letters in 97 cases. In 77 (79%) cases only one initial letter was sent, in 18 cases there were two letters, and in 2 cases three letters. Where only a single letter was sent it was sent to the mother in 51% of cases and the mother and father jointly in 47% of cases. In two cases only the father was sent a letter. Where two letters were sent, this was most commonly to the mother and father separately, with the father receiving a different letter, with separate action points and a different meeting time. The cases with three letters also included a letter for a relative carer. Overall 109 letters were sent to mothers but only 68 to fathers, of which 48 (70%) were joint letters with the mother. Fathers were slightly more likely to be sent letters of intent, a reflection that they would usually be parties to the care proceedings.

Letters were sent to fathers where they were living with the mother, but only 40% of separated fathers appear to have been sent a letter. In some cases it is likely that the mother did not tell the social worker the father's identity or whereabouts, indeed she may not have had this information. In others, the mother may have been reluctant to have the father involved, because of concerns about her own safety and that of her children, or because he had long since ceased to have any involvement with the family. The father's behaviour was a concern in many of the cases, domestic violence was identified in 60% of cases, although in some of these the behaviour of the mother's current partner not the children's father was the problem. However, it did not appear that fathers were less likely to be written to where there were domestic violence concerns but it was somewhat more likely that they would be sent a separate letter, different from the one sent to the mother.

Whilst the legal system expects fathers to be parties to the proceedings, at least if they have parental responsibility, and if not, to be notified in all but the most extreme cases (*A Local Authority v M and F* [2009] EWHC 3172), the relational nature of social work may make such an approach appear untenable. Cases of apparently estranged fathers pose a dilemma for social workers, who may be dependent on the mother for information, and want to encourage her engagement and support her care. However, there have long been concerns (see Featherstone 2010 for a discussion) of social workers' failure to engage fathers. There is no easy answer to this but excluding fathers at the pre-proceedings stage may mean that all options for alternative care are not explored. Also, should the pre-proceedings process justify speedier court proceedings, this advantage will be lost if the father has not been included at the earlier stage.

### 6.4 What the letters were like

As noted in the introduction to the chapter, the 'letter part' of the letter usually followed the pro forma in the *Guidance* (DCSF, 2008); and letters of intent usually followed the template in the *Best Practice Guide* (MoJ and DCSF, 2009). (Of the 120 pre-proceedings cases in the file study, 23 had letters of intent, see table 5.2 above.) The difference between the local authorities lay in the way the concerns and actions were expressed in the letter, and the consequent length of the letters. Another difference was

The following is an anonymised example from Local Authority C [case 2291]:

HERE ARE THE MAIN CONCENS THAT WE ARE WORRIED ABOUT:

1. Historical concerns relating to the safety and welfare of A and B aged 4½ and 3½ years

(details of an incident that led to children becoming known to Children's Services in April 2007 and being made subject to Child Protection Plans in August 2008)

2. There are concerns regarding the basic care of the children including ensuring their safety (dates)

Physical neglect

There are concerns about the physical neglect of the children. A and B often appear grubby and their clothes are often grubby...Both the school and the nursery reported that the children are in need of bathing and appear dirty and unkempt. They are often wearing inappropriate clothing such as jumpers coats and wellington boots on hot days and never have any socks....[further detail]

Health needs not being met

[relates to failure to attend appointments for A's severe eczema and having out of date inhalers for A's and B's asthma]

Parents have left children in the unsupervised care of unsuitable inappropriate persons

[details]

Concerns about the children's sleeping places and unhygienic state of the home

[details]

3. Concerns about the parents misusing illegal substances and that this is affecting their ability to meet A and B's physical and emotional needs

[details, including what has been reported by the school and nursery and the social workers' observations]

4. Concerns relating to domestic violence with in the family and that A and B are experiencing emotional harm because of this

[details noting police reports and reports from other agencies]

5. The local authority are extremely concerned about the children's behaviour and social presentation and the long term impact this will have on their development.

[details of aggression and sexualized behaviour by B at nursery]

whether a draft agreement was included, see section 7.4, below. A draft agreement (or contract, or statement of expectations – various terms were used) was included with only 40% of letters.

The mean length of the letters was 4.2 pages. Letters were most commonly 3 pages long (28%) and ranged in length from 2 to 12 pages. The letters of intent were slightly shorter, 55% were 3 pages or less. Given that the basic letter itself was usually two pages, the additional length was taken up by the list of concerns and actions. The mean number of concerns was around 9 with the means for each local authority ranging from 7.5 (Local Authority B) for 11.4 (Local Authority A).

These details took up six and a half pages, and were followed by a one page list of actions taken by the local authority over the previous 12 months to help the family. The parents were given three things to do to prevent a court application:

**WHAT YOU HAVE TO DO SO THAT WE WILL NOT GO TO COURT**

1. Confirm that you will come to the meeting and talk about these concerns. **Please bring a solicitor with you.** In the meantime you should be co-operating with the Child Protection Plans for A and B.
2. Continue to work with your social worker and allow her to see A and B on a regular basis.
3. At the meeting you will be asked to talk about how A and B will be kept safe, with our help and we will like to know the long term plans you have for your children.

This was a comparatively small number of actions required, and focused largely on attending and participating in the meeting. In other cases there were specific actions relating to the children's care:

'Mother and father to ensure that they make an effort to wash and iron the children's clothes and make sure that each child's clothing is kept in the cupboards properly so that children have easy access to their clothes.' [One of 3 specific requirements of 8 set out in case 3311, the others related to working with Children's Services and attending the meeting].

There might also be specific requirements about other aspects of the parents' behaviour, such as consenting to referrals to specific services, or agreeing to a Family Group Conference. The mean number of actions required was 5.5, with a range just under 4 for Local Authorities B and D to over 10 in Local Authority F.

These are differences of style, but they could impact on the parents' reaction to the letter, and longer letters were certainly harder to take in and could appear as a catalogue of the parents' failure, which frequently marked the lives of children at the edge of care proceedings.

## 6.5 Delivering the letter

The letter was often sent by post, and if so the social worker would normally explain to the parents in advance that it would be coming. However, it was not unusual for it to be hand delivered, by the social worker, as recommended in the *Best Practice Guide* (MoJ and DCSF, 2009). This was especially likely if the parents had a learning disability, or were known to have difficulties reading. It also ensured that the social worker knew the parents had received the letter. One social worker described how she had invited the parents to separate office appointments to hand over the letters, in a case where she had concern about their reaction to it.

The following quotations demonstrate two social workers' thinking and practice about delivering the letter, and reveal their uneasiness about its potential impact on the parents:

*'I always go round, I don't like to send the letter to them. The procedure is that you send the letter to them and then they get a solicitor, but in this case I went round with the letter, discussed it with them first, and then I sent the letter to the solicitor because I didn't think that Mum would understand too much, to be honest with you. So I took it round and discussed it with her, because it's really scary isn't it, to receive a letter like that in the post.'* SW17

*'... with anybody that's got any kind of learning disability, we take the letter to them and read it to them. And I would have spoken to her, and said you know we are concerned because of the concerns that are outlined in the letter about this, and this is our way of supporting you. And I mean it is our way of supporting, but it is also a way of showing that we have got a high level of concern.'* SW6

The letter is meant to be clear and impactful, to make sure the parent understands the seriousness of the situation and sees a lawyer. The two quotations show that the social workers both wanted to enhance this *and* soften it, at the same time. They wanted to be sure that the parent really had understood, but also to reduce the scariness and to present the process as a way of supporting the parent. This is a practical example of a standard social work dilemma: to balance care and control, and to keep showing care even when exercising the more controlling parts of the job. The danger is that the message gets watered down, that parents only 'hear' the more encouraging aspects and misunderstand the seriousness. On the other hand, a threatening approach is unlikely to bring understanding, cooperation and lasting change. Balanced against that, by the time a case has got to the edge of care proceedings, the message needs to be unambiguous.

One local authority lawyer, who was generally sceptical about the pre-proceedings process, considered the letter not forceful enough:

*'I don't think it's a terribly good letter to be honest. I think it's good that they list the concerns and I think it's good that they list the help that's been offered – I think that brings it home to the parents. But I don't think it emphasises enough that this is the end of the line, and you have a very short time in which to improve – and not only improve, but sustain that improvement. I*

*don't think it is actually forceful enough. I don't think – maybe it begins to dawn on them that actually we're serious.'* LAS5

This was an unusual view. Most interviewees thought the letter was hard-hitting and unambiguous but were aware that some parents might misunderstand or misinterpret it. A local authority lawyer who was more positive about the process commented:

*'Because you're talking to people about their children, I think they are much, much more likely to unknowingly misinterpret, misunderstand or miss out important pieces of information. And I think we always have to keep that very much to the forefront of our minds when we're trying to communicate important information to parents. So I think there's an argument that even if the letter was a beautifully crafted, grammatically correct piece of writing, that people would still not quite know what to make of it. But I don't think it's ambiguous.'* LAS4

Of course the letter is only a part of the process, intended to get the parents to see a lawyer and attend the meeting. It is the meeting, the agreed plan that comes out of it, and most importantly the subsequent work that determine the eventual outcome.

## **6.6 Parents' views of the letter**

The views of parents who did not respond to the letter are unknown, but those who did found it hard-hitting, and sometimes bewildering or angering. Their reactions suggest why the letter might be counter-productive: for example, Ricky Cooke said it was *'so annoying, I don't want anything else to do with social services'*.

Even if parents had been told about the letter in advance, they were still likely to find it a shock:

*'... once I started reading this letter I started thinking, "Oh my god, you're putting all this in there" and it really shocked me ...'* Shereen Etherington

*'I was expecting it but I wasn't expecting it to come like that ... it's just so formal, it's like "how to avoid court", so when you first see that you're like, "Woah, what's going on?"'* Louise Hankin

Louise Hankin went on to say that the forthrightness of the letter might put some parents off:

*'... it could have been phrased a bit different, I think it could be a bit tactful ... not quite as strong. Get your point across not as strong, because some parents would just be like, "I'm not going to that" ... it scares them ... you get different reactions out of different people, you just don't know what reaction you're going to get ... it could make them nervous, it could make them frustrated or angry. You don't know how a parent's going to react when they first get that letter. It should be a bit more tactful, because you don't know if you're going to get a right response or a wrong response off a parent. Because all they want to do is protect their child.'*

The risk of diluting the message, raised above, did appear to be borne out. Two mothers, from the same authority, said that the social worker had tried to explain the letter by saying it was a *'standard'* or



'normal' letter, which could be taken by parents to mean that the specifics did not really apply to them. Elaine Gooding presented this as the social worker buckling to her complaints that the letter was unfair:

*'I mean it felt really threatening ... it was like, "You can stop court action by attending all your meetings." I have never missed a meeting, ever. You know, "letting your social worker see your children in their bedrooms" – I have never stopped them, not once, never ... so I don't know why they had to put that. And I said to her, "Why is that down there, because I have never done anything like that ...?" And she said, "Yes, it was just a standard letter." And I said, "OK, fair enough, but don't put in things that I haven't done, I have never stopped you seeing the children, I have always cooperated with everybody ... always.'"*

Elaine Gooding was a mother in her 40s with five children and a long history of social work involvement. She held strong opinions about social work intervention in her family, and was not afraid to express them (see also Chapter 7). Following the letter and meeting, the social worker reported some improvement in her parenting and engagement, and the case did not go to court.

The second example shows a different aspect. Louise Hankin, a vulnerable young woman, portrayed the social worker using the phrase 'normal letter' in order to be reassuring:

*'... my social worker was really nice, I quite like her. She obviously explained it all and she was understanding, and she said it's the normal letter that goes out for those sorts of things. I understand it more, she was nice and understanding and explained it all.'*

The letters may expose misunderstandings, possibly because of earlier mis-communication or ambiguity in social work discussions with the parents, or because parents have not been able to accept what has been said, however clearly. Elaine Gooding provides an example. She said that the letter used the term 'non-accidental injury', but that the social worker had 'never, never mentioned this' to her before. In this particular case it does seem likely that the term had been used before, and Elaine's reaction reflects her unhappiness with it, rather than that it never been mentioned. There were long-standing concerns about poor home conditions and her ability to manage her older children's behaviour, and then the younger child (aged 3, with learning disabilities) burned herself on an iron. In the research interview, Elaine said that this was only 'a small line', and had been discussed at a child protection case conference. No-one was suggesting that that she had done it deliberately, but the social work view was the lack of supervision in the home made it 'non-accidental':

*'... when I saw [the LBP refer to] "non accidental injury" I was absolutely fuming, absolutely livid, and I had an argument with [the social worker] over the phone. She said, "You are too emotionally involved; you need to sit down and read the letter again." And I said to her, "How many times you think I have read this letter? How many times do you want me to read this letter? It reads the same." I was just so, so angry ...'* Elaine Gooding

## 6.7 The perspectives of parents' lawyers

The two main issues for parents' lawyers were about the timing of the letter and meeting, and the clarity and detail of the letter.

### *Timing of the letter*

The parents' lawyers tended to complain that the letters gave them too short notice of the meetings. One captured it as follows:

*'One of the problems I'm finding, the local authority will send out the pre proceedings letter days before, not even a week. That client receives the letter, phones up the office, I have to then get them to come in, see the letter, grant them funding and try and make myself available for the meeting. Because my diary gets so full up months ahead, I'm finding it difficult. More time would be great ... I try to go if I can, I move other clients. If I'm in court there's nothing I can do. I feel a parent should have a legal advisor there, I really do.'* S6

This lawyer said he would ideally like 14 days' notice of the meeting, but appreciated that a week might be more realistic from the parents' point of view. Another lawyer, from a different area, said that he rarely saw anybody who had been given more than 3 days' notice of the meeting (S9). Local authority interviewees said that they tried to give adequate notice (in areas A, B and C interviewees spoke of at least two weeks' notice – and one social work team manager in Authority C said 15 working days). Our observation sample did include cases where the lawyers received short notice of the meetings, but this was not necessarily the 'fault' of the local authority; two key factors are outside their control.

First, meetings might have to be arranged at short notice because of the circumstances of the case – for example, if a baby is due soon, and there are concerns about which the authority has only recently been informed. Meetings for unborn babies were usually planned in advance, but in the Morgan case, the mother only told the midwife very late in the pregnancy that her previous child had been taken into care and placed for adoption. The pre-proceedings meeting took place in the maternity hospital. The mother, Jenny Morgan, phoned the solicitor late the previous day, but the firm was able to send a para-legal.

On the other hand, there were examples of meetings arranged at short notice that could, perhaps, have been longer. Shereen Etherington said that she had been given the letter on a Thursday, for a meeting the following Tuesday. This was a case where the local authority had long-term concerns about neglect and intermittent parental engagement. She had advance warning of the letter, and had made some enquiries about who would be a good solicitor to approach; but she did not contact a solicitor until she had received the letter. (Indeed, without the letter, the solicitor would not have been able to grant level 2 legal aid.) She said that she telephoned the solicitor's office that evening, and was offered an appointment the following day.

The second factor is that the *parents* have to take the letter to a solicitor, and this can sometimes cause delay. The authority might allow a good number of days between the letter and the meeting, but there

could still be difficulties if the parents did not contact a lawyer promptly, possibly because of their limited understanding or inability to take the necessary action. A parents' solicitor explained, *'The type of client who gets advice for pre proceedings meetings aren't the type of clients who are organised with this sort of stuff.'* S17 Equally, it could be because the parents find it hard to identify a solicitor to act for them.

The two examples above, Morgan and Etherington, show that some private solicitors were able and willing to respond very quickly and flexibly. Other interviewees complained of having to try several firms before they found one to advise them. Ricky Cooke said he and his girlfriend had been to five solicitors before the one who represented them. Sally Fry said she had to find a new solicitor because her old one was acting for the child's father, and it was hard to find one that did family law. She said she telephoned *'a whole page of them, and I ended up putting the phone down on three, as soon as I heard them, [because] they either seemed rude or unorganised and stuff.'*

It should be noted that it was the policy of the Legal Services Commission to reduce the number of solicitors' firms with a contract to provide legal aid in family law, and that as a consequence there are 'advice deserts' in parts of the country (Law Society 2010; *Law Society v Legal Services Commission* [2010] EWHC 2550; Masson 2011).

If the parents found a solicitor who could not attend the set meeting local authorities were usually willing to reschedule it. A quarter of meeting were rescheduled to a later date, see below, section 8.5.

#### *Content and clarity of the letter*

The comments from parents' lawyers echo those of the local authority interviewees, in appreciating that there is a tricky balance to be struck between making the letter readable – short enough and readily comprehensible for parents – and having sufficient detail to be clear about the concerns and give useful information to the lawyer.

Parents' lawyers tended to make positive comments about the letters: for example, that they were *'... pretty good, setting out in real detail what the concerns are and what the expectations are'* (S11); *'... good in the main ... I find them very clear. They have to follow a pro forma ... but I feel it's very useful'* (S6); *'... all quite good normally, they do spell out the concerns and they are quite succinct'* (S2); and *'... perfectly clear ... very simply laid out'* (S5).

Even so, doubts emerged; for example, the last of those lawyers, S5, went on to question whether the letters actually conveyed the degree of seriousness in a way the parents could understand; and whether they were really clear enough for parents with learning disabilities. Another lawyer was notably sceptical:

*'I don't mean this in any way that sounds demeaning ... I'd apply the same to myself. If I receive a letter that's more than about a page and a half, I sort of glaze over ... If you're dealing with the number of difficulties, the types of difficulties, that many of our clients have ... it is a massive and*

*incorrect assumption to think that someone when faced with a letter that categorizes what – say, 4 or 5 pages of concerns plus a list of expectations [will be able to respond] – it will have absolutely no impact whatsoever, none at all ... I've no doubt that those concerns have been expressed [before] ... but it has no resonance with them whatsoever.' S5*

The dilemma as parents' solicitors portrayed it, is about impact versus full information. Whilst too much detail might detract from the former, it was generally valuable for them. Although one (S2) said that she did not want too much information beforehand because she did not have time to read it all properly anyway, this was an atypical view. Others spoke of contacting the local authority solicitor for more information if there were time to do so.

### Key points

- Letters usually followed the standard guidelines, but there was variation in the attachments – notably, how much detail here was about the causes of concern and previous input from the local authority, and whether or not a draft agreement was enclosed (and if so, how detailed it was).
- There are difficult balances to be struck in writing the letter. It needs to be clear and comprehensible, and also to contain sufficient information to explain the concerns and the proposals. It needs to make an impact, to ensure the parents are aware of the seriousness of the situation, whilst not alienating them further or making them think it is not worth attending the meeting.
- There are also challenges for social work practice in delivering and discussing the letter with the parents. It may be necessary to go over the letter with the parents (even read it out to them), to explain it and encourage them to engage. These are important tasks, but social workers have to be conscious not to dilute the messages in the letter.
- Timing is a crucial issue. It is important to avoid delay between the decision to enter the pre-proceedings process and sending out the letter; and also to give sufficient notice of the meeting. Sometimes short notice was unavoidable, and sometimes parents did not take the letter to the solicitor until very near to the meeting.

## **Chapter 7**

### **Findings 4: The process in practice - the meeting**

#### **7.1 Introduction**

The first section of this chapter gives an overview of the meetings drawing on both the local authority files and researchers' observations of a sample of meetings. The second part explores the different ways of using the meetings on the basis of those observations. The sections following consider the role of the parent's lawyer, and then that of the local authority lawyer. The chapter then addresses the crucial question of how much room there is for negotiation within the pre-proceedings process. It next considers the use of review meetings, and then the participation and representation of children and young people. It concludes by summarising the views of the parents and their lawyers (local authority perspectives were discussed in Chapter 5).

Throughout, the chapter integrates discussion of the cases and what happened in the meetings, with quotations from the interviews with parents, parents' lawyers, social workers, managers, and local authority lawyers. This gives a wide and complex range of views about the meetings, but three key themes emerge. First, the variety of purposes for which meetings are used; second, the tensions between the possibilities for negotiation and compromise, set against histories of limited parental engagement and the local authority's wish to set out clear expectations; and third, the complex role of the parents' lawyers in representing their clients but also, very often, advising them to comply with the local authority's proposals.

#### **7.2 Overview**

Out of 120 cases in the file survey where the pre-proceedings process had been initiated, there were 103 cases (86%) where there was some file information which made it clear that a pre-proceedings meeting had taken place. In 14 cases the local authority started care proceedings without a meeting, 10 of these cases related to new babies. In 7 of the 14 cases a letter had been sent and in 7 the plan to hold a meeting had been overtaken by events; 4 of these cases involved emergency action to remove the child and in another, the mother was sectioned under the Mental Health Act.

In two cases it appeared that a decision was made not to continue the pre-proceedings process following a meeting between the social work team and parents who were not legally represented – the researchers did not regard these as 'pre-proceedings meetings' because there was nothing to suggest that they differed from other meetings the social worker would have had with the parent. The local authority files contained minutes of pre-proceedings meetings in 78 cases; these gave an account of the attendance, what had been discussed, particularly points of agreement or disagreement and arrangements for further meetings or reviews. In other cases there were notes referring to a pre-proceedings meeting but no details of what had taken place were held on the legal file.

As for the observations, the researchers attended 36 meetings on 33 cases across the six authorities, between September 2010 and January 2012. (There were separate meetings with the mother and father in one case, and in two the researcher attended the initial meeting and then a review.) There were 27 initial meetings, and 9 reviews, see table 7.1.

**Table 7.1: Pre-proceedings meetings in the 6 local authorities**

	A	B	C	D	E	F	Total
<b>N PPP</b>	<b>28</b>	<b>21</b>	<b>15</b>	<b>25</b>	<b>18</b>	<b>13</b>	<b>120</b>
<b>N PPM</b>	<b>26</b>	<b>13</b>	<b>14</b>	<b>22</b>	<b>17</b>	<b>13</b>	<b>103</b>
<b>% meeting</b>	<b>92.3%</b>	<b>61.9%</b>	<b>93.3%</b>	<b>88%</b>	<b>94.4%</b>	<b>100%</b>	<b>85.8%</b>
<b>Review PPM</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>6</b>	<b>5</b>	<b>0</b>	<b>19</b>
<b>2<sup>nd</sup> Review PPM</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>5</b>
<b>Total sample</b>	<b>37</b>	<b>34</b>	<b>34</b>	<b>44</b>	<b>40</b>	<b>18</b>	<b>207</b>
<b>Observed PPMs: Initials</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>27</b>
<b>Reviews</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>9</b>
							<b>33 cases</b>

Local authority B appeared to have more difficulty in holding meetings (only 13 in 21 cases that entered the process), but the reasons for this were not clear. It did make substantial use of letters of intent, but not as much as Area A. Parents may have found it more difficult to obtain legal advice there. Reviews of pre-proceedings meetings are not mentioned in the *Guidance* (DCSF 2008) but these were held in 18% of cases in the file sample. Almost half of B's pre-proceedings meetings were followed by a review meeting, although it had none in the observed sample. It did not appear to be the practice to hold reviews in Area C. There were no reviews in the file sample in Area F, but there was one in the observed sample. Review meetings are discussed further in section 7.7.

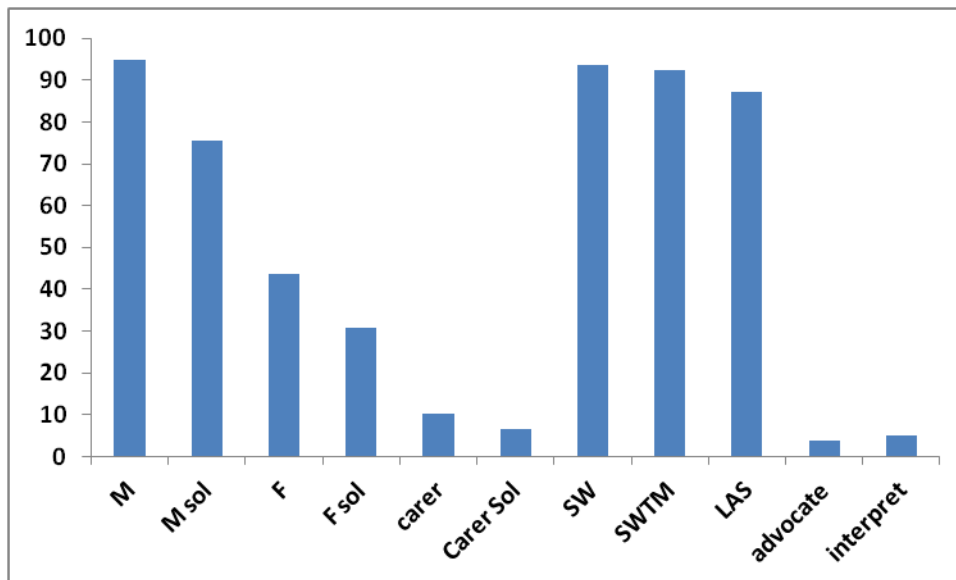
#### *Attendance*

The number of people attending pre-proceedings meetings in the file sample ranged from 3 to 10 with an average of just over 6 and a mode of 7; 40% of meetings had 7 or more people. The size of the

observed meetings was similar, also with a mode of 7. Chart 7.1 shows the attendance for the sample of 78 meetings where this was known.

Mothers were both more likely to be invited to meetings and to attend them; 85% of mothers who were invited attended a meeting compared with only 59% of fathers. (Less involvement by fathers is also reflected in the LSC data, which showed that two-thirds of clients for level 2 funding were mothers and one third were fathers.) Where fathers attended, the mother was usually present as well; both parents attended in 43% of the sample of 78 cases. In 2 cases a separate meeting was held with the father. In the observation sample the mother attended all but 3 of the 36 meetings. Two of these were specifically arranged for the fathers. In the other, Danielle Quirk texted her solicitor (who was already at the meeting) to say she would not be coming because she thought there was no point, the local authority had already decided to take her child into care (which was true, the process was being used to notify her of the authority’s intention to start proceedings). Both parents attended in 10 of the observed meetings. Separate meetings for fathers were offered but not taken up in six cases (Hernandez, Meloy, Neale, Oldfield, Verney and Yardley). There was a separate meeting for Peter, in the Imlach case. Joint meetings could be problematic if they were not carefully managed, as in the cases of Rodgers and Upton.

**Chart 7.1 Attendance at pre-proceedings meetings in file sample (per cent)**



Based on records of 78 meetings

Lawyers were present at the majority of the meetings; the local authority was represented in 84% of cases, the mother in 74% of cases and the father 37%. In the sample of 78 cases there was at least one lawyer present in 94% of cases, lawyers for the mother and the local authority in 73% of cases and for both parents and the local authority in 29% of cases. Parents generally had separate lawyers, or one parent was unrepresented; the Drurys (in the observation sample) were the only parents to be jointly

represented. This fits with the earlier finding (Pearce et al. 2011) that lawyers were concerned about potential conflict of interest between parents in child protection cases and unwilling to represent both parents because of this.

There were 9 (12%) cases where the local authority lawyer was the only lawyer attending. The *Best Practice Guide* (MoJ and DCSF 2009) states, 'If the parents attend with their lawyer, the local authority lawyer should also attend.' (para 2.5.3). It does not suggest that the local authority lawyer should withdraw if the parents are unrepresented, but to remain could appear to take an 'unfair advantage' and, if so, would be contrary to the Solicitors Regulation Authority *Code of Conduct* (SRA 2011; Law Society 2013). Indeed, it was usual for the local authority lawyer to withdraw where parents were not represented. This also occurred in two of the observed cases. In another, Yardley, the local authority lawyer remained despite the parent being unrepresented.

Lawyers for two parents in the file sample attended without their clients; and Danielle Quirk's solicitor attended the meeting alone when she did not arrive. Contrary to concerns expressed elsewhere (Jessiman et al. 2009) most (31 out of 39, almost 80%) of the parents' lawyers attending the observed meetings were qualified solicitors. The others were 6 paralegals, 1 legal executive and 1 trainee solicitor. Local authorities were usually represented by lawyers, but there was one meeting where it was a paralegal and another where it was a legal executive. By the end of the study resource constraints had led one authority to allocate this work to paralegals.

Typically, the local authority outnumbered the parents' side (in only six of the observed cases did parents outnumber the local authority). The local authority was generally represented by a manager, the social worker and the solicitor, but they might have two managers (e.g. a team manager and a more senior manager), and/or two social workers (a departing one and a new one; or one for each parent; or an adult care social worker for the mother and a child care social worker for the child). Additional local authority or health service personnel were present in 28% of the 78 file sample cases, 26 more staff in total. By comparison in 15% of cases there were 18 further friends or relatives at the meetings. In nine of the observed meetings, there was an administrator to take minutes. Five of these were in one local authority, where it was the standard procedure, and four in another (half of the meetings attended in that area). In the other four authorities, where there was never an administrator to take notes, this task was often left to the local authority lawyer. Four grandparents and three interpreters also attended observed meetings.

#### *Location and duration*

Most of the meetings recorded in the file study had taken place in children's services offices, two took place in parents' lawyers' offices and the remainder in community resources, usually children's centres. Local authority staff expressed two major concerns about the location of meetings, the lack of availability of suitable rooms and the lack of security. The father's aggression was a source of tension in three of the observed meetings (Meloy, Rodgers and Upton/Watkins) and the lack of space appeared to make the meeting more difficult for Mr Randle, who became agitated and distressed.



The duration of the observed meetings varied from 15 minutes (a review not attended by lawyers) to 2 hours 25 minutes. The shortest initial meeting was 25 minutes, which was meeting where the local authority had decided that they would definitely be starting care proceedings. Three-quarters of the meetings lasted 45 minutes or less. Only five went over 1.5 hours, four of which were in Authority C, which had a distinctive approach; all allegations or concerns were considered in turn and parents were expected to respond to each one.

### 7.3 Ways of using the meeting

The ways that pre-proceedings meetings were used could be grouped into four main categories: to *agree care arrangements* (notably for care by members of the extended family, but also s.20 accommodation); to *agree assessments* (notably parenting assessments, but also specialist mental health or learning disability assessments, assessments of other relatives, or of the situation more generally); to *reinforce the child protection plan*; and to *inform parents that proceedings would be brought and discuss the plans ahead of the first hearing*. These are broad categories and in practice there might well be overlap between them – for example, a parenting assessment might be a central requirement of the child protection plan, as was the case in four of the five cases from Area C. Also, the purpose of the meetings might change as the circumstances of the case change – for example, the initial meeting might be called to reinforce the child protection plan, but a later (review) meeting might be used to inform the parent(s) of the authority’s intention to start proceedings, as in the Sadler case.

**Table 7.2: Primary purpose of meetings in observed cases by local authority**

	A	B	C	D	E	F	Total
<b>Agree care arrangements</b>	3	1	0	1	1	0	6
<b>Agree assessments</b>	2	2	0	0	0	2	6
<b>Reinforce cp plan</b>	0	2	5	4	3	3	17
<b>Notify of proceedings</b>	1	0	0	1	2	0	4
<b>Total</b>	6	5	5	6	6	5	33

In this section, the cases are categorised according to the primary purpose of the *initial meeting*. Table 7.2 (above) gives an overview of the usage in each local authority, by showing the frequency of the primary purposes. Examples of the different ways of using the meeting, based on the observations and interviews, are given below.

### **1. Agree care arrangements**

There were six cases in the observed sample that fell into this category. These are Adcock, Charlery, Cooke, Fry, Oldfield and Tutt.

In four of the cases, the aim was to make arrangements for the care of an unborn or newly-born baby, and there was one other (Oldfield) involving an 8 month old. Three cases involve the mother and baby staying with the maternal grandmother, with the latter taking on the main caring role for the child (Cooke, Oldfield and Fry). The Cooke case broke down and went into care proceedings, but the other two were still continuing as family placements at our follow-up enquiry.

In the Adcock case, the local authority asked the mother to agree to s.20 accommodation for the baby while fuller assessments were undertaken. In the event, she did not agree and the baby went home to live with her. The case was subsequently taken out of the pre-proceedings process and was closed to Children's Services at our follow-up enquiry. In the case of Ruth Tutt, the local authority insisted that she agree to a mother and baby foster placement, but the baby was still-born.

The sixth case in this category, Charlery, was different from the others in that it involved the mother's agreement to a s.20 foster placement for her 12 year old daughter. The plan was to work towards rehabilitation home, and to assess an aunt as a possible alternative carer; but at our follow-up enquiry, a year later, Belinda was still accommodated in foster care.

#### *Tone of meetings*

The tone of the meetings in this category tended to be positive and encouraging, in particular for the young mothers who were staying with their mothers. The Cookes were reassured that the local authority was not thinking of starting care proceedings. Nikki Oldfield, who was only 14 years old herself, was told that the local authority was not criticising her care of the baby, but wanting to help her, and allow her to have more of an age-appropriate life. The social worker told Sally Fry that she had seen a change in her since the baby was born, that she was cooperating more, and assured her that the staff working with her all wanted her to succeed.

#### *Case examples: Cooke and Fry*

Further details about these two cases reveal some of the tensions beneath the surface in the meetings, which were also noted in observations by Broadhurst et al. (2011). They show how fragile and fraught the relationships can sometimes be between the different parties – Children's Services, parents and other relatives. They show the risks involved in family placements, and how much resentment and confusion can sometimes lie behind apparent agreements.

Holly Cooke was a young mother, just 17, and there were concerns about her mental health, and about the volatility of her relationship with the father of the unborn baby, Ricky, who was also 17. The plan at the initial pre-proceedings meeting, held when Holly was six months pregnant, was that there should be a viability assessment to see if Holly and the baby could go to live with her mother, Tracy. The observed meeting, a review, was held two months later. At that stage things were going well. When interviewed after the review meeting, the social worker said:

*'I guess what we wanted to try and do today, was send a message really that thresholds aren't met to initiate care proceedings from birth: "You are working with us, you are engaging. If you continue to do that and it informs the progress of the plan, the risk of harm to the unborn child is reduced" ... the family home is absolutely immaculate, I've been here four years and I have not seen ... a person of Mum's age prepare for a baby with that level of detail.'* SW19

The social worker was new to the case, and said she was still trying to build a relationship of trust with the family. She did not think that the past concerns were especially serious, and current levels of cooperation were good. She wondered whether the case could have been dealt with without going into the pre-proceedings process, but concluded that *'probably this is the safest way at the moment'*. With the benefit of hindsight the social worker's view seems overly optimistic, but equally it is hard to see what other outcome the meeting could have had – after all, the parents were cooperating at the time and the home was in such good condition.

However, the research interviews with the parents give a rather different picture, showing how much resentment they had about Children's Services' involvement. Ricky was interviewed on his own, and Holly and Tracy together, straight after the meeting. Both parents denied that there was any need for social work intervention. Holly said they had *'no proof'* that she and Ricky were volatile and immature, and in her view Children's Services had not done anything to help – she said the only thing they had given her was *'a headache'*. She was highly critical of the previous social worker, the one who had told her the case would be going into the pre-proceedings process. Ricky said that Children's Services' concerns were *'a load of rubbish'*. Both said that they had been worried about the meeting, but were pleased now they had been told that they would be able to take the baby home.

Tracy complained of being *'targeted'* by social services and expressed confusion about the expectations of her (for example, should she be with baby all the time, or allow Holly to take him/her out at times?). She had asked about this in the meeting, and the team manager (chairing the meeting) said they needed more information before they could say. Tracy portrayed this as not being given a straight answer. She was confused about the different purposes of the different meetings that she had been to, and what had been said when and where. She complained of *'so many meetings'*.

The baby was a boy, Toby. The placement with Tracy broke down after four months. Holly and Toby then went to a supported lodgings placement, which broke down quickly, and then a mother and baby foster placement (s.20), which broke down after two months. They then returned to Tracy. Another pre-proceedings meeting was held at this point. Things broke again down within a few weeks. The local

authority started care proceedings, and got an interim care order almost exactly a year after the initial pre-proceedings meeting. Toby, then aged just over nine months, was placed in foster care and the local authority's plan was for adoption. Care proceedings were still in progress eight months later (i.e. 17 months after the initial pre-proceedings meeting) by which point Tracy had put herself forward to be assessed as a carer for Toby.

The Fry case stayed out of care proceedings, but the research interviews revealed the mother's underlying resentment at the involvement of her own mother and Children's Services. Sally Fry had a long history of drug addiction, and had 'given' her three older children to her mother, who now had special guardianship orders for them. There had never been care proceedings on the older children. Sally had become pregnant again, but was also going through a residential drug treatment programme. The plan was that she would leave the programme to have the baby and care for him/her at her mother's home for the first four weeks, and then go back to finish the drug programme, leaving the baby with her mother. This plan had been agreed in a meeting at the hospital, and according to Sally the pre-proceedings meeting did not do anything more than confirm what had already been agreed. Ten months later, the baby was still with the grandmother, and the local authority was planning to support her in a special guardianship application.

Sally came across in the meeting as compliant with the proposed plan, and the team manager who chaired it described it as a *'positive meeting'*. She thought that Sally

*'... seemed to be quite engaged, quite in tune ... quite reflective ... fully aware of where things were at in the process ... There was acceptance, acknowledgement of the history of concerns from the department, but there was also acknowledgement around what needed to be done.'*

SWM9

In Sally's interview, however, she spoke of her unhappiness at the way that her mother had (in her view) excluded her from the care of her older children, and complained about feeling pressured into 'agreeing' the arrangements for her new baby:

*'... some things I don't agree with but I feel pushed to go along with it, because in the past I have sort of said I don't agree with something and then it has been, "Okay then, we will just go to court", so now I keep my mouth quiet about things I don't agree with ...'* Sally Fry

There was one point in the meeting where Sally asked for a few moments to speak privately with her solicitor. From the interviews it appeared that she had previously spoken to her lawyer about her unhappiness with the requirements for her mother to supervise all her contact with the new baby, and intended to raise her objections in the meeting. The short break was to tell the lawyer that she had changed her mind, and would go along with the plan. (Sally's lawyer did not speak at all during the meeting. She was a qualified solicitor but new to child care work, and this was the first pre-proceedings meeting she had attended.)

## **2. Agree assessments**

There were six cases that fell into this category: Barber, Drury, Hankin, Hernandez, Verney and Yardley. It was also an important feature of many other cases, notably where the primary purpose was to reinforce the child protection plan. It was especially prominent in four of the five cases from Area C: but in those cases assessment was only one part of a wider package of requirements intended to bring about improved parenting, and so they fit better into the 'reinforcement' category.

The mothers in the Barber, Drury and Hankin cases all had learning difficulties and had children living elsewhere, Colette Drury and Louise Hankin following recent care proceedings. Ms Drury and Ms Hankin were both pregnant. Debbie Barber had a one month old baby, who was in s.20 foster care. She had recently moved into the authority, and they had limited knowledge about the background. In these three cases the authority wanted new or updated assessments to see if the mothers could care for their babies.

In the Hernandez case, the local authority wanted a specialist assessment of the implications for the children if the father returned home, in the light of one of the girls' allegations of sexual abuse and the mother's continuing refusal to accept this. In the Verney case, the concern was about possible non-accidental injury to an 18 month old boy. With the mother's agreement he was placed with his maternal grandparents while further investigations and a parenting assessment took place. In the Yardley case, the meeting was about a 12 year old boy who had been accused of sexual assault of a younger girl. The boy lived with his father, and the meeting was with his mother, to inform her of what was happening and ask her permission for access to psychological reports on her son that had been done while he lived with her.

The primary aim of the meetings in these cases was not to improve parental care, but to find out more before making a plan for the child's future care. The parent(s) were either cooperating and doing well so far (Drury, Verney); or there were significant gaps in Children's Services knowledge that needed to be filled before a plan could be made (Barber, Hankin, Yardley); or the resistance was so ingrained that doing 'more of the same' was unlikely to achieve anything new, and a different perspective was needed (Hernandez).

### *Case examples: Verney and Hernandez*

At the time of the pre-proceedings meeting, the Verney family was complying fully but investigations into the child's injuries were still underway. In the research interview, the grandparents said the social worker had reassured them that things were going well and it was likely the boy would soon be able to go back to his mother. The investigations concluded that the injuries had been caused by the father (who was no longer having any contact with the mother or his son), and the mother had not realised the extent and significance of them at the time. The boy went home to her, within four months, with on-going support from the grandparents.

The research interviews with the Verney family reveal notably different attitudes from the Cooke family, discussed earlier. No internal tensions were apparent nor resentment against Children's Services. The mother was a rather vulnerable young woman with limited abilities to understand and retain what was said to her in the meeting, but she appeared to be glad of the support from her parents and did not voice any resentment at them 'taking over'. The grandparents accepted that Children's Services were right to take the action they did, and complied fully with the requirements about supporting their daughter and supervising contact.

In stark contrast, the Hernandez case shows a mother who was engaging only with extreme reluctance, to the minimum degree, and who did not accept the local authority's concerns about the risks her husband might pose to her children. The case had been going for nearly three years, although mostly in another authority. It had been transferred about six months before, because the family moved. There had been a previous pre-proceedings meeting in the other authority, where the mother had been represented by the same solicitor. The lawyer played an active role in the observed meeting, trying to clarify the local authority's requirements. The research interview showed the mother's feelings against Children's Services: she thought there was nothing she could say that would change anything, and said it would be the '*happiest day in [her] life*' when she had nothing more to do with them. A year after the meeting, the assessment had not been done and there had been little progress in the case.

### **3. Reinforce child protection plan**

Although nearly all the cases in the observed sample were on child protection plans, the feature that distinguished the ones in this category is that the local authority entered the pre-proceedings process to 'step up' the seriousness of their concerns to the parents, to try to get them to take the actions required in the plan to improve their parenting and engage more actively and reliably with the social worker and other services.

This is a broad aim, making this the largest category, with 17 cases. Whilst they shared the general aim, there are differences between them depending on the family's circumstances and the particular steps that the local authority wished to reinforce. The differences can be characterised along two key dimensions. The first is whether the primary concern was to bring about a general improvement in parenting (typically, to address a range of issues associated with child neglect, such as poor home conditions, poor diet and hygiene, lack of stimulation for the children, lack of parental control) or whether it was focused more on a specific problem, and the way this impacted on the parent's ability to provide safe and consistent care (notably, domestic violence, and drug or alcohol misuse).

The second dimension is whether the concerns were long-standing and well-known, or more recent and/or still uncertain. Six of the cases in the 'recent/uncertain' group were already well-known to children's services before the pre-proceedings process started, but the reason for putting them in this group is uncertainty about the implications of past concerns for the parenting children *now*.

Locating each of the cases according to these two dimensions gives the following working model for grouping the 17 cases:

	<i>Improve parenting generally</i>	<i>Address specific issue</i>
<i>Recent/uncertain</i>	Kanu, Whitely/Wheldon, Smith	Imlach, Khan, Kowalski, Mahmood, Meloy, Neale
<i>Long-standing</i>	Etherington, Gooding, Sadler, Vaughan	Longhurst, Merritt, Rodgers, Upton

The ‘general improvement’ cases include concerns about identifiable aspects of parental care and underlying causes, but the ‘specific issue’ cases have a much stronger focus on one aspect. In Khan and Kowalski, the issue was non-accidental injury and the parents not accepting the reasons for the authority’s intervention. In Imlach, Mahmood, Meloy, Merritt, Neale and Rodgers, the primary concern was about the impact of domestic violence; in Longhurst, emotional abuse; in Upton, drug misuse.

As for the recent/uncertain cases, there were three where the parents had been in care themselves (Kanu, Whitely/Wheldon, Imlach), but their own parenting abilities were still uncertain. For Meloy, Neale and Smith recent changes in circumstances meant that there was now a new degree of uncertainty, but also an opportunity for things to be different. (In Meloy and Neale, both mothers had separated from their violent partners, and in Smith the young mother had moved to live with her father).

In five cases in the ‘long standing’ group, previous children had been the subjects of concern – Etherington, Gooding, Rodgers, Sadler and Upton. In the latter three, children had been placed elsewhere by agreement or following proceedings.

#### *Difficult meetings: disagreements and parental resistance*

Given that the meetings in this ‘step up’ category were called because (from the local authority’s point of view) the parents had not responded satisfactorily to child protection plans, high levels of disagreement and resistance from parents might be expected. (If parents were likely to cooperate, they would have done so before now). This turns out to be the case. Parents might resist the local authority’s view in a number of ways. They might deny or challenge the local authority’s version of events; argue that the local authority’s concerns are exaggerated, or that the proposed agreement is unrealistic or unclear; or complain that they have not been given sufficient help in the past. Even if the parents sign the agreement, they do so reluctantly, feeling they have no real choice.

The Kowalski case is an example of denying the local authority’s version of events, and trying to downplay them. The local authority’s concern was about non-accidental injury, because of broken teeth, bruising and an adult-sized bite mark. The mother and grandmother denied that the child’s teeth were broken, said the bruising happened when the child played in the park, and that the bite could have been done by a child. The local authority solicitor read out the report of the medical examination recording decay and broken teeth, and a bite mark caused by an adult or older child. The Imlach and

Whitley/Wheldon cases, discussed below, are other examples of the parents challenging the local authority's record of events and interpretation of their significance.

*Case examples: Etherington and Gooding*

These two long-standing cases are examples of parents resisting by questioning the details of the proposed agreement. In Etherington the local authority's concerns included the risks posed by unsuitable visitors to the home, and the parents not being able to deal with noisy disturbances outside their home. The local authority wanted any visitors to be police-checked first, and the mother, Shereen, raised problems – *what if her sister wanted to visit?* The team manager, chairing the meeting, asked if she could discuss it with her sister beforehand, and Shereen raised another objection: *'what if she comes around for a surprise visit?'* As for the disturbances outside her flat, Shereen pointed out that the young people involved were residents in the block, so she could not stop them being on the staircase; and if she did try to move them on, all she would get is insults.

The Gooding case is similar in the way that the mother, Elaine, pushed the local authority to be clearer about what they were asking her to do and what the implications might be if she *could* not (as opposed to *would* not). In her case, one of the proposals was that she should try to get her older son, aged 19, to receive mental health support. Elaine said that she could not force him. The team manager offered to change the wording, that she should have a conversation with him about it. Elaine then asked what would happen if he still refused. The answer was that the local authority would require him to leave the flat, because of the impact his behaviour was having on the younger children. Again, Elaine came back to press for further clarification, on how the local authority would do that. The team manager said they would try to help him find alternative accommodation.

In summary, the two mothers in these cases were 'old hands' at social services meetings and quick to spot loopholes, raise objections and pursue points to the limits. From the social work point of view, this could be seen as uncooperative, although in the research interview the social worker for the Etherington family said that she was glad Shereen had raised her objections; and at least she had agreed in the end. However, six months after the meeting local authority decided that insufficient changes were being made and applied for interim supervision orders on the children.

Of course, the parents are likely to have a different view about who is being 'uncooperative'. As Elaine Gooding said in the research interview *'... social services are more, "You should be doing this and you should be doing that, and you shouldn't be doing this", you know, rather than being helpful'*. She also complained about how long it took them to arrange the services they said they would:

*'... the time it takes for them to do something, that annoys me, that does annoy. I mean that is maybe the way they work – slowly. I don't know, but you go to a meeting and the social worker says, "This is going to be done" and months later it still hasn't been done and you are thinking, "Why has it taken then so long?" I just don't get that.'*



Elaine said that she did not trust social workers and saw them as busybodies – but she recognised that they had the power to remove her children, and therefore she had to do what they said. Her lawyer advised her not to sign the agreement in the meeting, but take time to reflect on it before she did. The approach may have paid off, because a year later the children were still at home, and no proceedings had been started. Elaine's wariness did not overwhelm her so much that she did not cooperate at all, but helped her nail down an agreement that she was able to keep.

#### *Difficult meetings: history and detail*

The local authority's aim to make the parents understand the seriousness of the situation meant that these 'step up' meetings could be rather critical and dogmatic – a 'telling off' to the parents, or prescribing a long list of things to do. Two cases illustrate the tendency, Whitely/Wheldon and Imlach – and show the parents resisting children's services interpretations and plans. These cases were in different local authorities and there are differences in the way the meetings were conducted, but both show how they can become very contentious, with strong disagreements about the significance of past events and the details of the plan.

Both the cases involve young parents with their first child, who was about 1 year old. In Whitely/Wheldon the initial meeting was actually held on the child's first birthday, contrary to the parents' specific request, adding to their resentment. Reflecting on it afterwards, the social worker thought it may have hindered their full engagement.

#### *Case example: Whitely/Wheldon*

In this case, the parents, Stacey and Dan, attended the same meeting, with separate lawyers. It started with them being given the proposed agreement, which was a very long list of requirements. The meeting lasted 30 minutes, all of which was spent going through the list, with the team manager, who was chairing it, explaining and reiterating the requirements. These included working with the social worker, attending a mother and toddler group, the child to be supervised at all times, keeping the house clean and tidy with no food, plates or cutlery on the floor, no plastic bags or rubbish in the living room, the bath to be emptied after use, no smoking in the house, and eating lots of green vegetables. Towards the end, Stacey's lawyer (a trainee solicitor) asked for a private discussion with her client, and the parents and their lawyers went outside, together. On their return, Stacey's lawyer asked for a number of changes, including that the parents be allowed to smoke in their flat as long as they did it in the kitchen with the window open. These were agreed.

In the research interview, the parents said that they did not find children's services helpful, and thought they were determined to take their child. They had appreciated their first social worker, who had helped them move into their flat, but did not like the senior social worker who had taken over their case. Stacey had not been happy about the detail of the proposed agreement and the sort of things in it. She said '*... it was mostly about him [Dan] getting medical appointments and things like that. And I was like "ain't this supposed to be a contract about the baby, not everyone else?"*'. When asked about the meeting, Dan said '*It just felt like they were still just trying to dig their claws in a bit deeper.*'

*Case example: Imlach*

In the Imlach case, the parents (Estelle and Peter) had separate long meetings each lasting over two hours. The chair of the meeting went through a long list of concerns about their history and previous conduct, requiring them to say whether or not they accepted each item on the list. The amount of time spent going through the list of concerns left relatively little time to clarify and explain the requirements.

In Estelle's meeting, her solicitor intervened at the beginning to say that although she had discussed the proposed agreement with Estelle, she had not had the chance to go over the background, and therefore wouldn't be able to speak on Estelle's behalf on those matters. The team manager, chairing the meeting, said that she was more interested in hearing what Estelle had to say than her lawyer. The solicitor suggested concentrating on the agreement rather than the background, but the team manager replied that in order to move forwards there had to be some acceptance from Estelle about the concerns. The team manager offered to delay the meeting for an hour to give Estelle and her lawyer a chance to go through the background, but Estelle said she had to leave on time. Instead, they had a few minutes alone. When the meeting resumed the solicitor argued again that it was not necessary to go through each concern, but the manager said that was how the meetings were done. (The research confirms that meetings are conducted differently from this in other authorities, as Estelle's lawyer said.)

The long list of concerns focused on domestic violence from Peter towards Estelle, on occasions with their child, Colin, present. Estelle's lawyer objected again, but the team manager repeated her reasons and said that it was quite unusual for a lawyer to say so much in a pre-proceedings meeting. The meeting continued to go through the list, with Estelle often disputing what was said to have happened. When it got to the agreement, Estelle asked the lawyer to speak on her behalf. There was discussion about how much contact Peter should have with Colin, where and how it should be supervised, and what Estelle should do if Peter tried to contact her or enter her flat. Estelle accepted a proposal that she should attend a domestic violence support and counselling service, but asked for a different service from the one suggested. This was agreed.

Other proposals that Estelle agreed were about keeping health appointments and attending a 'stay and play' group. Estelle did not agree a proposal that her mother should with Colin should be supervised until a risk assessment was completed. She disagreed with this because she had no-one else to leave Colin with, and (in her view) the local authority ought to offer more support. She was asked to comply with the child protection plan, but refused to agree until she had seen the latest version. She was asked to engage with a family centre outreach worker, but did not accept this at first, arguing that it was her choice if she needed it. Eventually, reluctantly, she agreed.

One of the most contentious proposals was that there should be a parenting assessment. Estelle did not accept this, arguing that there had never been concerns about her parenting, only about the impact of domestic violence, and this was no longer an issue now that she had separated from Peter. By the end of the meeting this had become the major issue, with Estelle and her solicitor asking for reasons why the local authority wanted a parenting assessment when previous case conference reports had made

positive comments about her parenting. The social worker and team manager referred back to the chronology of concerns, and said she had until the following week to decide.

### *Difficult meetings: anger management*

Given that these reinforcement meetings are a 'step up', and involve reiterating concerns and spelling out requirements, they could become very difficult for parents who already had problems with anger management, or a propensity to violence. This was exacerbated sometimes by the meetings being held in very crowded rooms. This happened in the cases of Rodgers and Upton (similar issues arose in the Randle case, where the meeting was used to inform the parents that care proceedings would be started).

### *Case examples: Rodgers and Upton*

Mr and Mrs Rodgers both attended the meeting, but the father, Ian, did not have a lawyer and the mother, Barbara, was represented by an inexperienced solicitor who was standing in for her regular lawyer. Ian quickly became very angry and threatening, and stormed out of the meeting. The meeting continued without him. Barbara's solicitor said nothing at all in the meeting, even after Ian had left.

In the Upton case, the main concerns were about the mother, Tracy's, drug use. Her new partner, Phil, had been seen as good influence, but concerns had begun to emerge about his violence. He was the father of her new baby, Lottie. Phil had a lawyer at the meeting. Tracy's lawyer was not able to attend. Phil struggled to control his temper during the meeting, and he became very agitated when he was told that one of the requirements was that he should not get involved in any violent incidents, including fighting with Tracy and others. His lawyer (a paralegal) took him outside to prevent the situation getting worse, and came back after a few minutes to say that Phil was, reluctantly, prepared to agree that if someone attacked him he would not fight back in front of Lottie (but he would fight back).

In the research interview, held straight after the meeting, he was still unrepentant about his reaction:

*'I won't go and cause fights but if someone comes up to me and hits me, I'm not gonna stand there, I'm gonna fill him in, like, simple ... [And as regards fighting with Tracy] If we have an argument, we have an argument. In the contract it says "tell us if you have any problems in your relationship". Well, I'm not being funny, it's none of your business – it's privacy, innit? ... As long as there's no violence between us in front of the child, it's nobody's business, is it?'*

Two days after the meeting Phil assaulted Tracy. She did not tell the social worker, but the health visitor noticed the bruising and informed Children's Services. Tracy said she wanted to leave Phil, and the social worker arranged a place in a refuge. Tracy returned to Phil after a day. The following week, the local authority started care proceedings and Lottie was placed in foster care.

#### **4. Notify of proceedings**

There are four cases in this category, where the initial meeting was used to inform the parents that the local authority was planning to start care proceedings: Cozens, Morgan, Quirk and Randle. Ms Sadler was told of the plan to start proceedings at a review meeting. The original purpose of the pre-proceedings process in that case had been to reinforce the child protection plan.

In the case of Joanna Cozens, her older children were the subject of care proceedings and she was expecting another baby. The meeting was called to tell her and the father that the local authority would start care proceedings as soon as the baby was born. The parents made it clear that they would oppose this, and they did. The children's guardian supported the authority's application for an interim care order, but the case was transferred to the High Court and the judge made an interim supervision order.

Jenny Morgan's previous child had been adopted because of neglect and she was expecting a new baby. She did not disclose the history to the midwife until she was eight months pregnant, and the meeting took place within two days of learning this. Both parents attended, with legal representatives. The local authority intended to start care proceedings, but the meeting was also used to discuss care arrangements and assessments. It was agreed that the baby would be placed with the father's sister whilst assessments were carried out. It was a friendly and supportive meeting. The eventual outcome was that the child went to live with the parents and paternal grandfather under a supervision order.

The Quirk case is another example of how family difficulties and tensions can undermine placements with relatives. The mother, Danielle, had been living with her mother and grandmother, with her 2 year old daughter, but there were long-standing difficulties in her relationship with her mother. They had recently had fallen out and Danielle had left, leaving her daughter there. The local authority had decided to start care proceedings as a framework for assessments of Danielle and other family members. Danielle did not attend the pre-proceedings meeting, feeling that the local authority had already decided to take her daughter. In her absence, her lawyer (a legal executive) played an active part, asking about contact arrangements and support for Danielle, and suggesting family members who could be assessed as long-term carers. The proceedings ended with a care order and placement order.

In the Randle case, the two girls were living with an aunt. The letter invited the parents to a meeting to discuss how care proceedings could be avoided, but on the day of the meeting the local authority decided it did need to apply for care orders and the meeting was used to inform the parents of that. This was a difficult meeting, in a cramped room with high emotions from the parents, especially the father.

#### **7.4 The role of the parents' lawyers**

The parents' lawyers play a number of crucial roles in the meetings. One is to be a restraint on the parents, to help keep them calm; they also give advice (before, during – in private discussion – and after the meeting); reassure the parents and support them to express their own views; and represent them in negotiations about the causes of concern and the proposals.

It was notable that the lawyers often say very little in the meetings – sometimes nothing at all – and the main part of the meeting is usually a direct exchange between the parent(s) and the manager chairing the meeting. (Holt et al., 2013, found that meetings in Coventry and Warwickshire were routinely chaired by local authority lawyers. That was not the case in our six authorities. Only one meeting was chaired by a local authority lawyer, when the team manager could not be there.) The lawyers (for both sides) tended to listen and intervene occasionally to ask a question, make a point or clarify an issue. In this sense it is a social work led meeting, not a court or tribunal, as the *Best Practice Guide* states (MoJ/DCSF 2009, para. 2.5.2). However, although they did not say much, the presence of the lawyers had a vital impact on the dynamics of the meeting. Several interviewees spoke of it as a ‘legal meeting’, and the fact that lawyers are there makes it different from other meetings, and brings home the gravity of the situation.

As noted earlier, parents and local authorities were sometimes represented by paralegals, legal executives or trainee solicitors. Our in-depth interviewees with parents’ lawyers included 13 qualified solicitors, four paralegals, one legal executive and a trainee. There was a wide range of experience: some qualified solicitors were still very new, and some of those who were not solicitors were very experienced. Contrary to Holt et al.’s (2013) experience, it did not appear from our observations or the interviews that the issue of whether the adviser was a qualified solicitor was a key factor in the quality of legal representation. Rather, the knowledge and skills necessary for this work (clarity in giving advice, empathy, gaining client confidence and enabling the client to speak) do not depend on being a qualified solicitor but on commitment and experience.

### *Restraint*

Parents usually appreciated the lawyers’ calming role: as Estelle Imlach put it:

*‘... I think he handled it really well, and he helped me stay calm and if I was rambling on – you know, when you talk about it more you get angry – he was like “calm down”, and he was really good ...’*

Sometimes, as with Phil Upton and Estelle Imlach, the lawyer might take their client out of the meeting to try to calm them down. Local authority interviewees appreciated this aspect of the lawyer’s role, but in some ways, the parents’ lawyer was also a restraint on *them*. The parent’s lawyer was able to observe how social work staff dealt with their client, and ensure that he or she was listened to and got any necessary services. This was captured by Obike Kanu:

*‘... He never said nothing (laughing), he was just sitting there ... He only said one thing, I think it was about the funding for the nursery, and that was it. No, but he did a good job of just turning up ...’*

Simply being there, ‘turning up’, made all the difference in this father’s eyes. It changed the power balance between him and Children’s Services:

*'I am happy the solicitor is involved now ... because before I was scared, I didn't know what to do with them, I was just getting bullied. Like gangs in school, every day you get bullied, but now your big brother is in school, you got confidence and the bullies ain't going to come next to you no more, because they know you have got your brother there – and that's my solicitor. So I feel that, yeah, I feel all right now, you know.'*

#### *Advice*

The lawyers' ability to give advice to parents may be restricted by the fact that they do not know the case very well, having only heard about it at the last moment, and only having limited information from the letter and the parents' account of events. On the other hand, there were some cases where the lawyers knew the parents very well, having represented them in previous proceedings, for example Louise Hankin (discussed below).

One of our authorities had established a procedure where they would give a copy of the draft agreement to the parent(s) and their solicitor when they came to the office, and give them 15 minutes or so to go over it together, privately, before the meeting started. In contrast, another of the authorities only identified areas of concern in the letter, maintaining that the agreement was the product of the meeting.

Lawyers should not give advice to their clients in front of the other parties, so parents' lawyers sometimes took their clients out of the room during the meeting. This did not happen very often – only in six of the 33 meetings where the parents had a legal representative.

The lawyers were more likely to give their advice before or after the meeting. According to the lawyers, they sought to ensure the parents understood the seriousness of the situation, and encouraged them to make every effort to cooperate with the local authority. As one put it:

*'Generally my advice to the parents is try and find ways to agree. Parents don't want to go to court and they don't want the local authority to issue care proceedings. If they can come to an agreement to stop issuing then that's their position, make agreements with how things can proceed without making admissions ...' S17*

And another:

*'... whenever you get to these meetings, you always give a client exactly the same advice: "this is the last chance saloon. You either row in now or you're going to end up in court, and trying to undo it is going to be a damn sight harder than it is to stick to the contract."' S9*

This lawyer went on to say that she also saw her role as being to check the terms of the proposed agreement with the parent, and ensure that there was nothing on it that was unreasonable or unrealistic. If there were, she would try to get this changed at the meeting.

In three of our local authorities, the standard practice was that any amendments would be made on the day (perhaps hand written on the draft), and the parents would be asked to sign it there and then. Two others made the amendments later, and sent out the revised version. The other authority did not give out a draft, as noted, but wrote up the plan after the meeting. In the first three authorities, lawyers sometimes advised parents not to sign the agreement straight away, but to meet them to go over it first; sometimes, as in the Oldfield case, the local authority suggested this. Inexperienced lawyers or paralegals might insist on having the agreement checked by a colleague first, as happened in the Neale case, but it was a strategy that qualified solicitors used too, to give their client a bit of time for reflection (e.g. for Elaine Gooding).

### *Reassurance and support*

Parents valued the reassurance that their lawyers gave them, in two senses – their encouragement, and the confidence of knowing that there was someone in the meeting who was on their side.

The following comment from Elaine Gooding shows how she had felt encouraged by her solicitor:

*'... she just said that a lot of that letter is scare tactics and I said, "Well in that case it's worked!" And she said, "Providing you stick to what they put down in the agreement when you sign it, then it is not going to go no further."*

Joanna Cozens knew her lawyer well, because she had represented her in care proceedings for her older children. There had been a pre-proceedings meeting then too; the observed meeting was an 'intent to issue' meeting for the baby she was expecting. Joanna said:

*'... it always makes me nervous, so many people. I mean, I know most of them anyway now, but I dunno, it feels really weird – you know everyone's there to talk about me and my baby. It's a lot easier having a solicitor with me actually, because I never used to have one and until the children were in care I never needed one ... you know that everyone in the room is against you, which they are, that's why you're there. And when you've got your solicitor with you, you know they're the only person who's 100 per cent backing you up, so it helps you ...'*

Whilst the lawyer's role with some parents is to be a restraint, for others it is to encourage and support them to speak. The lawyers form a view about how much intervention is necessary, within the usual framework of the meeting being a discussion between the parent and the team manager, and the lawyer having a quiet role. The Etherington and Gooding cases are good examples of meetings where the lawyers spoke occasionally to help their clients raise their questions about the proposed agreement, and assisted in the discussions to find a solution, but left most of the talking to the mothers. As one lawyer said:

*'... it depends on individuals involved ... she [the mother] was very able to talk on her own I didn't feel that she was so vulnerable that she wasn't able to express herself and needed support from me. Had that been the case I would have done much more ...' S13*

### *Representation*

The lawyers attend to represent their clients, although they did not usually do so in an interventionist or adversarial manner. The expectation was that they play a quiet role, a watching brief – and local authority staff were clearly disconcerted if this standard way of operating was broken. The striking example is Estelle Imlach's meeting, where the chair told the lawyer that he was saying too much, and she wanted to hear from the mother, not him. His attempts to change the way the meeting was being conducted were rebuffed. An example of a case where the parent's lawyer successfully played a more active part is the case of Louise Hankin. A crucial difference is that in the Hankin case the local authority and the parent were (at that stage) in broad agreement about what should happen.

### *Case example: Hankin*

This was a pre-birth meeting, to arrange assessments. Louise had a very troubled background. Her first child had died at the age of six months, and there had been concerns about non-accidental injury. The lawyer had acted for Louise in care proceedings about her second child, who was now living with relatives. Louise had gone to see the lawyer for advice as soon as she discovered she was pregnant. In contrast to the Imlach case, the lawyer's input seemed to be welcomed; at least, there was no attempt to limit it, and the researcher judged the atmosphere of the meeting to be amicable. The local authority solicitor also played an active role in this meeting, talking about the plans with the mother's solicitor and the team manager. Later, in the research interview, the team manager expressed reservations about the lawyers' active role:

*'It was a little odd, and I felt a little uncomfortable at times because I think that the discussion between the lawyers felt a little bit excluding for (mum) and so I kept saying, "Do you understand what they are talking about?" It is meant to be for the client and for it not to be too overwhelming ... there was lots of kind of legalese going on, and that's often not helpful I think.'*  
SWM15

Louise and her solicitor had met the day before to go over the letter. At the meeting, the solicitor checked with Louise that she was happy for her to speak on her behalf, and then said how things were now different for Louise, compared with when she had her last child and even with the situation described in the letter. She was now getting on better with the father of the expected baby; she was getting on better with her mother; there was more support from extended family; she was no longer having any contact with the father of her first child, who had been violent towards her. She agreed to the proposed psychological assessment. She would like the baby to come home with her but would cooperate with a residential assessment. The team manager said that this would depend on the result of the assessment.

The assessment recommended a residential placement with therapy for Louise, but a suitable establishment could not be found. The local authority started care proceedings as soon as the child was



born. The cooperative way of working broke down, because Louise still wanted a residential assessment but the local authority did not agree. The baby was placed with the father under an interim care order. A new assessment recommended a community based assessment of Louise, but the local authority did not agree this either. At our follow-up enquiry, ten months after the child's birth, the case was still in proceedings but it seemed likely that the child would remain with the father. One conclusion from this case is that an ostensibly amicable pre-proceedings meeting cannot guarantee straightforward progress or uncontested proceedings.

The level of intervention from Louise Hankin's lawyer was unusual. As a rule the main role of parents' lawyers in the meeting was to clarify points, notably timescales, which other agencies would be involved, and what services would be offered; and to assist the parents in negotiating the terms of the agreement. This focused on avoiding any loopholes that might mean the parents could inadvertently break the agreement, or reducing demands that were unrealistic. An example from the Whitely/Wheldon case, was changing the requirement about not smoking in the flat, so that the parents could smoke as long as it was in the kitchen with an open window. Other examples would be to clarify what was meant by having 'no contact' with a previous partner (what if he comes to her house? what if they meet by accident?); and the examples in the Etherington and Gooding cases, discussed above, about having checks done on visitors to the house, or getting an adult son to comply with requirements.

### **7.5 The role of the local authority lawyer**

Local authority lawyers also tended to be quiet in the meetings, largely taking an observational role, and only stepping in when they felt they needed to. Typically, this would be if they thought the manager or the social worker was not being sufficiently clear, or in response to the parents' lawyer asking questions or taking a more active role than usual. As one put it:

*'Really our role is to support the social worker and the team manager, really they chair the meeting. If there are any particular legal issues that arise, which are normally raised by the legal rep for the parent, the lawyer would normally at that point address those issues ...'* LAS7

Likewise, another lawyer from the same area:

*'I am not there to provide advice at the meeting; I can provide advice outside of the meeting ... I am merely there as an observer, to then have a discussion with social services if they are overstepping any boundaries or to pull them back on track if they need to be ... but primarily as an observer, because this is a meeting to work together with the mother for social services and to come to some agreement to work together. So, I don't see why legal needs to get involved in that; that is really their relationship I think.'* LAS3

This approach led two lawyers to speak of feeling 'a little superfluous' (LAS4) or 'a bit redundant' (LAS6) in the meetings, but there was one observed case, Smith, where there was no team manager present and the lawyer chaired the meeting. In between these extremes, local authority lawyers spoke of trying to be responsive to the circumstances of the meeting, notably to the level of intervention by the

parent's lawyer. There were differences of emphasis between interviewees about their role in fashioning an agreement. Two used the word *'facilitator'* to describe their role (LAS2, LAS15), and one spoke of intervening to help explain the ideas more clearly to the parents:

*'If I can see that the parents are not quite understanding what the social worker is trying to say to them, then I might intervene and try and explain it in a different way to them, and ask them if they understand, and get their solicitor to explain it to them if they're not understanding the way the social worker is putting it.'* LAS6

Other lawyers might portray such intervention rather differently – not so much helping the parents to understand, but strengthening the social worker, and giving a firmer message (e.g. LAS2, LAS14). As one put it:

*'... if you feel the need to impress upon the parents the seriousness of the situation, and you feel that the social worker isn't doing that, then I would step in and say, you know, "we're here for a reason, and we are expecting you to perform ..."'* LAS12

Local authority lawyers also talked about preventing the agreement being *'watered down'* (LAS11) by the parents' lawyers. One argued this very strongly, stressing her sense of playing a leading role in that:

*'... the parents' solicitors will want one or two alterations, but I will only agree them if I think they don't alter the essence of what we're asking them to do ... sometimes I have said "No I'm not prepared to cut that one out – that is what we expect. If you sign it, you sign it, if you don't, you don't – but when we go to court, if we go to court, the evidence is there that that's what we expect of you."'* LAS11

Lawyers also saw the benefits of attending in terms of getting a good knowledge of the case and the people involved. This mainly referred to the parent(s) and their lawyer(s), but one mentioned that it included assessing the likelihood of the social worker performing well in court. Meeting the people involved worked two ways, though:

*'... from a lawyer's point of view, it's a good way of getting to know the characters beforehand, getting to know the lawyers beforehand, getting to know the issues beforehand ... You have a much better feel for a case – who the lawyers are, how the parties are likely to react ... In that sense, for us, it's easier – you've met them beforehand. But for them – I guess, they've met you as well ... It makes it easier I think for them, that they've met you beforehand.'* LAS12

## **7.6 Negotiation**

One of the key challenges for pre-proceedings meetings is how much room there is for negotiation about the proposed agreement. As noted before, the *Best Practice Guidance* states that 'participants can through negotiation agree facts or narrow issues down voluntarily' (MoJ/DCSF 2009: para 2.5.2) but this is not how it always feels to participants, as clearly shown in the cases of Estelle Imlach, Sally Fry and Carmen Hernandez (above, section 7.3). There were different views from our interviewees about

how much negotiation really took place, and more than that, whether there was any room for negotiation. Is the meeting primarily opportunity for discussion and compromise, or more a place for setting out requirements plainly, 'laying down the law'?

Parents' solicitors varied in their experiences of negotiation in the meetings, and their views about it. Despite the difficulties in Estelle Imlach's meeting, her lawyer thought that they had been able to put across their views and had been able to reach an agreement on the majority of the issues. (Estelle herself was not so convinced.) In sharp contrast to the experience of Estelle's lawyer, the lawyer in the Hankin case (a different local authority) was allowed to play a very active role in the meeting. She questioned many of the terms in the proposed agreement, sometimes correcting the information but also raising issues such as the need for a new psychological assessment, and initiating discussions about which residential unit might be best for her client. She described the pre-proceedings process as '*a wonderful thing*'.

The private solicitors in Authority E all thought that there was little room for them to change the local authority's position. This was the authority that spoke of 'statements of expectations' rather than agreements, and the lawyers did not experience the meeting as a forum for negotiation. In contrast, the social work interviewees in Authority E held that there was room for negotiation, but acknowledged this was usually limited to '*a few word changes here and there*' (SWM2).

Parents' lawyers were not naïve; they were fully aware that some of their clients had been to many social work meetings before, and appreciated that negotiation could sometimes be unhelpful. As one put it:

*'... a decision has to be made somewhere along the line. If you remove the impetus, you remove the boot from the backside of the parents ... very often in these neglect cases, these parents have heard it all before for many, many years ...'* S15

This lawyer saw little opportunity for negotiation: '*Once you arrive at these PPMs, it is pretty much for the LA to tell you what it's going to do*', and went on to say:

*'... it's not a forum where we can say "Oh no you don't, over our dead body" and all the rest of it. There's no place for that sort of argument. You might argue, but it's not going to get you anywhere ultimately. Clients might want to hear it, but what they need to know is that it's not going to get them anywhere either.'* S15

Local authority interviewees said that they were, on the whole, prepared to negotiate the minor terms of the agreement, but not to compromise on what they saw as major issues. There were differences of emphasis within this general approach. One local authority lawyer captured the hard-line view:

*'... in my mind it's not the idea of PPMs – it's not for them to have a big discussion about what the expectations would be, because I think it's for us to draw a line in the sand and say "This is not good – this can't go on – this is what we expect you to do." It's not a debating forum ... It's*

*not for them to say, "Actually we don't much like that expectation, we don't want that in there."*  
LAS11

Other local authority lawyers were quick to assert that there really was room for negotiation and changing the details of the plan. Two gave the example of realising that the agreement made too many demands on the parent's time and energy, including attending meetings and taking children places. Identifying this could lead to changes to the requirements.

Social work interviewees usually said that they supported the possibility of negotiation, but within the limits of what was safe for the child:

*'... from the ones I've managed, I would always consider what the parents are saying – it is called a partnership agreement! So we should respect it as that ... Obviously if someone came in and gave a really ridiculous thing ... we wouldn't negotiate ... If the main issue around child safety is addressed, then the other bits can be negotiated.'* SWM16

One social worker gave a more hard-line view:

*'I think we've gone beyond that at that point [negotiation], it's "these are our concerns, this is what we want you to do about it."'* SW1

It is not possible to identify simple messages from these competing experiences and views. The differences are grounded in the details of the cases and the context of the interview, and reflect subtle differences of emphasis. The general picture is that there is room for negotiation in marginal matters, but not the core requirements: but what counts as core requirement may be hotly contested, as it was with Estelle Imlach. Some cases have more room for negotiation than others, and some practitioners may be more open than others to the possibility of negotiation.

## **7.7 Review meetings**

As noted earlier (section 7.2), there is no reference to review meetings in the statutory guidance (DCSF 2008) although the *Frequently Asked Questions* prepared for the training on the PLO stated, 'Local authorities will need to introduce their own procedures and systems for monitoring whether progress is being made...' (MoJ 2008, 7). However, review meetings had become a regular feature of practice in some areas, whilst not being used often, or even at all, in others. There might even be variation within an authority – one team manager said that she did not set review meetings, but she knew some of her colleagues did. Also, there are other ways of reviewing the progress of the cases than in specially convened pre-proceedings meetings, notably child protection case conferences. Given that most of the cases involved children on child protection plans, these were an obvious choice. An important difference is that lawyers do not normally attend child protection conferences, but they could do so. Another setting for case progress and plans to be reviewed are 'looked after children' reviews, so these may be suitable for children in s.20 accommodation. Lawyers do not attend these, but it is expected that parents attend (DCSF 2010b, para 3.17). There are also possibilities for internal review meetings,

perhaps involving the local authority lawyer (one of our authorities reviewed the cases in regular panels of social work and legal staff), or regular social work supervision.

Whichever mechanism is used, one of the strong messages to come across from the interviews was the importance of keeping the cases under active, purposeful review. One team manager said:

*'I think pre-proceedings are good where you have very tight written agreements which you're reviewing within tight timescales.'* SWM11

An important point is that the reviews must not contribute to delay by postponing decisions. As one local authority lawyer put it:

*'... often it will be 4-6 weeks down the line, there will be a review. It [the agreement] does say "And if there is insufficient progress then consideration will be given to starting care proceedings" – it does say that and they are told that – but what happens in practice is ... they have that review meeting and because one or two things may have improved on a temporary basis, perhaps, the social worker will think that's good enough and so they'll say "Well you've done this, this and that – you haven't done this one and that one, so we'll go for another 4 weeks to give you a chance to do that" and six months down the line they're still reviewing the pre-proceedings process. There are one or two where there has been a year of reviews of the pre-proceedings process, and I don't think it was ever designed to do that ... this was meant to be a short assessment period of whether they really could change – and it's becoming a drift.'* LAS11

This lawyer was clearly frustrated by (what she saw as) the over-use of reviews; but against that, the local authority may be concerned that they will face difficulties in court if they start care proceedings even though there has been some progress. Only one of our authorities had a formal procedure for letting parents know that they had met the requirements and were now no longer in the pre-proceedings stage: they sent a letter to tell them. When we told other authorities about this in our seminars, it was generally seen as a good idea, and one authority was certainly planning to introduce it. Otherwise, for cases which did not enter care proceedings, the end of the pre-proceedings stage could sometimes be very unclear, and it seemed to fade into child protection conferences, or child in need meetings.

The timing of the review was a problematic issue. Holding the meeting too soon might not give enough time for a true test of the parents' capacity and determination to sustain change (i.e. it only sees short-lived change); but equally, given that many of the parents had long-standing difficulties, one might expect some setbacks, so holding the review too soon may not give them enough time to overcome these and make meaningful changes. A team manager expressed the need for a realistic approach:

*'We accept that they're not going to be able to achieve everything in the list of expectations immediately or even within the 3 months [up to the review meeting]. In neglect cases, if the expectations are specific enough, we hope they'll achieve enough of them by the review date for us to look at another review beyond that. If they haven't made much progress at all, or only for a*

*short period ... then we would go back to Panel and ask if they think we can issue care proceedings.’ SWM2*

Against that, allowing too many chances and putting review meetings too far away, or routinely organising further reviews, carries the risks of drift, that the impetus of the process will wear off, and things might slip too far before they are addressed. These dangers can be seen in the case of Billy Smith, discussed below.

Another timing issue was how to fit a review pre-proceedings meeting with a child protection conference. Holding them immediately one after the other was something that happened on occasions, and had an advantage in that that the parents’ solicitor could attend them both (and hear a fuller account of the case history and concerns). However, one team manager expressed uncertainty about which should come first:

*‘... we need to think about the timing ... if you’ve got a review conference coming up, you need to think about whether you’re going to have your review meeting before or after that review conference, and I would suggest probably before. But it’s also quite good if you’ve got the initial CPC, just to follow it with that. And that’s been useful – particularly if you have it directly after a conference. I know it’s a bit tiring for the parents, but if the solicitor has been able to sit through the conference and hear the issues – so the two processes should work alongside each other.’*  
SWM11

Review meetings were a problem for the parents’ lawyers because they did not get paid any extra for attending them: but even so, most of the lawyers interviewed said that they would attend them if they could, and parents’ lawyers attended all but one of the nine observed review meetings. Lawyers’ views about their payment for pre-proceedings work are discussed further in section 7.8.

#### *Review meetings: allowing time for change or delaying decisions?*

There were two observed meetings which were second reviews, Mahmood and Smith. The Mahmood case is an example of constructive use of extra time in the pre-proceedings process, whereas the Smith case shows the dangers of drift. Key differences were that in the Mahmood case the mother was able to respond to the requirements of the pre-proceedings process, even though there was some initial resistance and at the time of the second review there were still areas of uncertainty; whereas for the Smith family, the mother was not able to accept her own responsibility to take the required steps, the meetings did not appear to be well-organised and there were long gaps between them, and (with hindsight) we can see that there was an over-optimistic view of the level of cooperation.

#### *Case example: Mahmood*

There had been a long history of domestic violence from the husband, Wasim, towards his wife, Zainab. The children were on child protection plans because of this. Zainab had come from Pakistan to marry Wasim nine years ago, and she did not have any relatives in the UK to support her. She looked to

Wasim's family for support, especially his mother. The case had been known to Children's Services since the birth of their fourth child, five years ago. On two or three occasions in the past, Zainab had left Wasim and gone to a refuge with the children, but he had persuaded her to come back to him. Wasim's mother had told him he ought not to hit his wife, but he had done so again.

The first pre-proceedings was called because of mounting concerns about the domestic violence and its impact on the children. Zainab attended with a solicitor and her mother-in-law. The first review was held two months later, but little progress had been made at that time: for example, Zainab had not attended a domestic violence advice and support programme, as had been required. Wasim had refused to go a domestic violence perpetrator programme. The second review was fixed for five months later. There had been several further incidents of domestic violence after the first review, but after that, some positive changes from Zainab (Wasim had still not engaged with any services). Zainab had seen her solicitor and taken out a non-molestation order with a power of arrest. Wasim had left the family home, and there had been no reports of domestic violence since then. He had stayed away, and had been having contact with the children at weekends, at his mother's house.

As well as the non-molestation order, other changes for Zainab since the first review had been that she had been given indefinite leave to remain in the UK, had started citizenship classes, and had begun taking English lessons. She had not taken Wasim back, and had been managing as a single mother. She had attended some sessions of the domestic violence programme, but had stopped this, apparently because the timing was inconvenient for collecting the children from school but also, as she said at the second review, because she really wanted to do something with Wasim, and wanted counselling or advice that was more relevant to Muslim couples. (Her solicitor offered to find out about this.) She was feeling pressure from Wasim's mother to have him back, but said she felt better able to resist this now. She was uncertain about whether she would have Wasim back or not: he had made some changes, but she wanted more evidence of this. She said if Wasim continued his progress, she was thinking about ending the non-molestation order in six months or so. The social work team manager suggested it should be a year.

In summary, there had been a number of positive changes, but there were still some uncertainties. The decision of the second review was that the pre-proceedings process should end, but the case would still be reviewed (for the time being) in child protection conferences (there was a conference fixed for the next day). If progress continued, it could be stepped down to 'child in need' level. Alternatively, if things changed for the worse, the pre-proceedings process could be reinitiated.

#### *Case example: Smith*

In this case, the mother, Rebecca, had a 2 year old son, Billy (she also had an older child who lived with his father). There were wide-ranging concerns, about domestic violence, drug misuse, poor budgeting, criminal activity and neglect of Billy. Billy had been on a child protection plan since before he was born. He had been the subject of an EPO 18 months ago, because of injuries suffered during an incident of domestic violence from his father to Rebecca. Billy was placed in foster care, but Rebecca and the father

separated, and Billy was returned to her. There had been a recent change in circumstances because Rebecca had moved from an isolated, privately-rented house in the countryside to live with her grandfather in a large town. He was in poor physical health, and not able to look after Billy by himself.

The pre-proceedings process had been started at the time of the EPO, but there had not been a review meeting during the first year (this in itself need not be a problem, as long as the case is being actively reviewed through other processes). The observed meeting was the second review, and there was no social work team manager present. Instead, the local authority solicitor chaired it. Rebecca arrived 20 minutes late, with Billy.

The social worker was relatively new to the case, having taken over in the last three months. She had been expecting the meeting to decide that care proceedings should be started, but at the last moment seemed to have a change of mind, and said that she thought Rebecca had finally realised the seriousness of the situation, and had become more cooperative in recent weeks. She thought that the move of house had helped. With hindsight, and with the benefit of the research interview with Rebecca, we can see this as over-optimistic.

Rebecca's views about the social worker and Children's Services were highly negative. She could not appreciate their point of view, or see why she might need to do anything differently herself. As an example, Rebecca complained that the social worker did not visit her enough to get to know her well: *'really I should be seeing her like twice a week for an hour a week ...'*, but she also complained that when she did have a support worker visiting three times a week, just after Billy was born, the worker was *'breathing down my neck the whole time'*, and she had not liked advice on how to look after him: *'I do it the way I wanna do it ... I don't wanna be taught how to look after my son. I wanna learn it in my own way'*. One of the proposals in the review meeting was that Rebecca should be referred to a specialist parenting support team, but in the research interview she said that she did not need this.

Rebecca was focused on the material things that Children's Services could supply, mentioning a washing machine, a stairgate and beds for Billy and herself. They had supplied a washing machine, but she had left it in her old house. They had given her money to help her get her possessions moved to her new home, but she had not moved everything. In the interview, she said that Children's Services should be helping her by getting a van to move her stuff: *'They don't help at all. I just feel like all they wanna do is just put Billy into care'*.

Another of the requirements from the previous meeting was that Rebecca should attend a domestic violence group, but she had stopped doing so. In the review meeting, the social worker said she would take her to the next one, but Rebecca's comment in the research interview was *'They're making me do something that I don't wanna do, which I'm not gonna cooperate properly with when I'm there ... I'll just be sat there.'*

At the end of the review meeting, the social worker told Rebecca that she had made good progress, and needed to keep on going. A review date was fixed for three months ahead, at which there was similar



limited progress. However, it was not until later again, 2.5 years after the initial pre-proceedings meeting, that care proceedings were eventually started.

## **7.8 Participation and representation of children and young people**

The question of whether young people should attend the pre-proceedings meeting was considered at length in the Best Practice guide (MoJ and DCSF 2009), discussed in Chapter 1.4 above. In fact, the question of direct participation does not arise in most cases, given the young ages of the children concerned – the substantial majority of children who are subjects of the meetings are aged under 10 (80% of index children in the case file study, and 28 of the 33 index children, 85%, in the observed sample) and many were unborn babies or infants. However, pre-proceedings is a process not just a meeting, and so the key questions, which apply to children of all ages, is how their wishes and interests can best be ascertained and represented in it.

There were five cases in the observation sample where the index child was aged over 10 – Belinda Charlery, Imelda Hernandez, Javed Khan, Robert Vaughan and Simon Yardley. For each of them it is hard to see how their attendance at the meeting would have been beneficial, either for them, their parents or the social workers; and more than that, there are reasons to think that it would have been unhelpful, given the nature of the discussions and the focus on the parents' conduct (discussed further below).

Local authority interviewees were cautious about the idea of young people attending the meetings, but a number thought there might be cases where it was appropriate – an example given was if the young person's conduct was causing problems, and they needed to make changes as much as the parents. Young people do attend potentially difficult meetings – they might attend child protection case conferences (Cossar et al. 2011) and if they are looked after by the local authority, would normally be expected to attend their regular review meetings, but the focus of pre-proceedings meetings on inadequacies of parents' care and potential court proceedings was seen to make it particularly unsuitable. A team manager said:

*'I personally and professionally don't think it's appropriate for the child to be there. It's potentially abusive to sit there and talk about "you're going to be taken away from your parents" – in that arena, that's what they would hear.'* SWM6

Three described cases where it had been considered, but had not happened. In one case, the need for the meeting passed, in another the young person was satisfied after the social worker explained the meeting to her and heard her views to take to it, and in the third an independent advocacy organisation attended on the young person's behalf. One of the lawyers also captured the flavour of the concerns:

*'I've never known it happen. I think we might have considered whether it was useful in X case, but my recollection is that the social work team felt there was a tendency by the parents to blame the children rather than take responsibility themselves, and that if the children were invited to the meeting as well, it might just be a very unconstructive message to them, that they*

*were getting their parents into trouble – whereas the view the LA took was that they felt that the parents should take responsibility for their parenting where it was lacking.’ LAS4*

There were also a number of cases in the observation sample where young people attended because they were the parents of the child who was the subject of the meeting. In these cases, the young people were entitled to their own legal representative. They were usually rather vulnerable young people in their own right, and some were ‘looked after’ by the local authority themselves. One social work team manager spoke about spending a lot of time to amend the standard pre-proceedings letter to make it suitable for a young parent. The cases here are Cooke (Holly and Ricky, who attended the same meeting with separate representation. Ricky was looked after); Imlach (Estelle and Peter, separate meetings and separate lawyers. Estelle was in care and Peter accommodated under s.20); Oldfield (Nikki and Ben. The initial pre-proceedings meeting had been joint, but the observed review was separate. They had separate representatives. Ben was in foster care. He did not attend his review meeting but his lawyer attended Nikki’s meeting); and Whitely/Wheldon (Stacey and Dan, joint meeting, separate lawyers).

Estelle Imlach, as a young person in care, had her own independent advocate, and this person had helped her contact the lawyer who acted for her in the pre-proceedings meeting. The social worker thought that Estelle’s previous experience of meetings affected her behaviour in the pre-proceedings meeting:

*‘... because she is a looked after child and she knows her rights as well, I bet she is used to taking over the meetings, because they usually have looked after child reviews which are about her. So I think she took it from that angle as well, but it kind of took away the powers from the manager – but on the other hand it was positive for her, because at the beginning she didn’t feel relaxed and she was kind of felt threatened by the meeting and everybody that was there. But eventually, when she took over, it kind of made her confidence come back and make ... her say what she wanted and what she wasn’t happy with.’ SW20*

Children and young people might attend in other ways. Very young children might be brought to the meeting because their parent(s) could not arrange alternative care, as happened when Rebecca Smith brought Billy to the meeting. There was also one case in the observed sample where the mother came without a lawyer, but her 15 year old daughter, who was not the subject of the meeting, attended as a supporter for her.

Linked with that, it is worth bearing in mind that even if children are not invited to the meeting, they may well get to know about it. If the social worker is not involved in explaining the process to the children, then this may be done by parents or siblings, and it is possible that mistaken or unhelpful messages are given to the child. An example is the Neale family. The local authority’s plan was to require the mother, Gemma, to move house with her children to keep away from her violent ex-partner. Gemma was very unhappy about this, and it was clear that she had been talking about it with her 10 year old son, Jake (not the index child). Gemma’s solicitor brought a letter to the meeting from Jake, and read it out, in which he complained about the move. The team manager advised Gemma that Jake did

not need to know everything, but should be helped to understand the situation (there was a member of staff working with Jake to try to do that).

Turning to the older children who were the subjects of the pre-proceedings process, the observations of the meetings and the interviews with practitioners and the parents show some of the reasons why young people's attendance may not be helpful. The cases involve vulnerable young people (two of them with learning disabilities), complex legal situations (e.g. two involved in on-going criminal investigations) and difficult family dynamics (e.g. parents with learning disabilities, mental health or drug problems, or highly resistant to Children's Services). Instead, the onus is on the social workers to know the child's needs, wishes and feelings, and to represent their interests appropriately; and to reach agreement with the parents about the way forward if possible, or take further legal action if not.

The case of Belinda Charlery, aged 12, is instructive because it shows the local authority adopting a non-confrontational approach with her mother by not being explicit about Belinda's wishes and feelings. Belinda had told her social worker that she no longer wanted to live with her mother. The home conditions were poor, her behaviour was becoming increasingly worrying and risky to herself, and her mother, Abi (who had learning disabilities), was struggling to cope despite her best efforts and cooperation with Children's Services. The meeting was chaired in a sensitive way that enabled Abi to agree to Belinda going into foster care without being told directly, in a meeting, that her daughter did not want to live with her. It could be argued that Belinda did participate in the *process*, in that her views were ascertained and taken into consideration, and in fact satisfied, even though she was not at the *meeting* – and conceivably her presence in the meeting, or an independent advocate to put views, might have been less kind to Abi and more damaging to future chances of restoring their relationship.

Two cases involved young people with learning disabilities for whom attendance would have been inappropriate, Javed Khan (aged 10) and Robert Vaughan (aged 14). Robert's school was very concerned about him because he was still soiling and his mother was not following medical advice or giving him his medication. There was a long history of concern, and by the time of our follow-up enquiry, the case had entered care proceedings and Robert was in foster care. Javed had been physically abused and there were on-going criminal proceedings against his parents at the time of the pre-proceedings meeting. There were also concerns about his mother's mental health. The social worker said that she had spoken with Javed about how things were for him at home, and was satisfied he wasn't being further abused. Her own self-assessment was that she did not put Javed's views across well in the meeting itself, but they were recorded and had been conveyed in the letter.

Simon Yardley (14 years old) had ADHD and Asperger's Syndrome and was the subject of on-going police inquiries because of an alleged sexual assault on a young girl. He lived with his father and the meeting was called to inform his mother about the situation. It would not have been appropriate for him to attend it. A separate meeting was planned with Mr Yardley but he refused to attend.

Imelda Hernandez (aged 13) had made allegations more than two years before of sexual abuse by her step-father. These had been considered credible and a prosecution had been started. She had then

formally withdrawn them, but continued to say they were true. The step-father had been living away from the family since the allegations, but her mother, Carmen, did not believe them and wanted him to be allowed back into the home. The mother was highly resistant to Children's Services, as described above (section 7.3). This left Imelda in a very difficult situation, living at home with her mother and brothers, not wanting to be held responsible for keeping the family apart but still anxious about what might happen if her step-father returned. In the research interview, the social worker said:

*'I spoke with her at school this week, and she said "I just wish he could move back in, I don't think he'll do it again, if he did I would send him to jail this time". So she's very torn ... and she has asked, "Am I going to be removed, are my siblings going to be removed?" ... No, I don't think it's possible [to allow him back] ... But she's a really bright kid, and her older brother, I have talked to him really candidly – they understand their interest, their safety is our concern. I don't think she likes it, but it is.'* SW7

Whatever the focus of the pre-proceedings meeting (alternative care arrangements, improved parental care and so on), it requires a skilful discussion with the parents. It may need to be very directive (as with Robert Vaughan's mother) or more sensitive (as with Abi Charlery), but either way, local authority interviewees saw it as an adults' meeting, not one for the young people. In keeping with the requirements of the Children Act 1989, it was seen as the social worker's job to ascertain the wishes and feelings of the children and young people, and give them due consideration; and beyond that, the wider responsibility of the local authority to 'safeguard and promote' their welfare. For the local authority interviewees, the main way of doing this was to set out clear requirements and hold firm to the proposed agreement, only allowing marginal changes:

*'I was very clear my role in that meeting was to look at the best interests of the child, and whether the child was safeguarded or not, so I wasn't going to be digressed from my original position, looking at the child.'* SWM13

## **7.9 Parents' and parents' lawyers' views**

The chapter has included the views of parents, parents' lawyers, social workers and their managers, and local authority lawyers. This section summarises the key themes for parents and parents' lawyers. For the local authority perspective, see Chapter 5.4, above.

### *Parents*

In general, parents did see the pre-proceedings meeting as something distinctive and a step up in seriousness, although some struggled to make sense of the all the different meetings they were expected to attend. The key features for them were the letter, with its mention of the possibility of care proceedings, and the involvement of the lawyers. As Ricky Cooke put it:

*'The core group meetings are just like family member and midwife and that, and they're all right, they're not very intimidating – but this one, I was worried about this one.'*

Parents experienced the meeting differently according to the circumstances of the case, and the way it was conducted, whether it was encouraging or accusatory. In some cases, the meetings were positive and the parents could be congratulated on the good progress they had made (Drury is a notable example). In others, the meeting was more critical, focusing on the parents' shortcomings and imposing a list of requirements, or telling them that the local authority would be going to court.

Parents appreciated it if they felt they had been listened to and their point of view taken seriously. Although Obike Kanu's meeting had been a long one, with many difficult matters raised about his past behaviour and current conduct, he still valued the chance to put his point of view:

*'[The meeting] went all right, pretty good like ... lots of positives ... The lady [Team Manager] said that this is my opportunity to say things as well, that I don't think might be accurate ... and I have never been asked that before ... well, I think they did listen to me.'*

Estelle Imlach did not feel she had been listened to, but even so saw something positive in the meeting:

*'I felt like I wasn't being heard at all, to be honest. There was no point to the meeting, because I don't think I gained anything from it ... The one thing that was positive was that they changed one of the agreements ... and they were actually helping me [there].'*

Even if parents did not feel that they could do anything to change the outcome, some could still see the potential benefits of the meeting for their lawyer. As Joanne Cozens said:

*'I don't really think there's a lot we could do, to be honest – it doesn't seem to matter what we do, it doesn't count for anything anyway. [But] ... I think [having the meeting] is good because now our solicitors know where social services are coming from. It will help them out more than it will help us, I think, because they know what they're up against ...'*

#### *Parents' lawyers*

Parents' lawyers tended to appreciate the meeting as the right thing to do, but (as with local authority interviewees) had misgivings about the utility of the meeting for some of the more needy parents, and the risks of further agreements only adding to delay. They knew that some of the parents had received many warnings before, and some had had children removed before.

Even so, the meeting could be a new opportunity for some parents, and the lawyers saw their job as being to make sure that the parent fully understood what the local authority was asking of them, and what the consequences of not complying would be, so they could use the opportunity provided. They also saw it as their job to ensure that the expectations were clear and reasonable, and that any necessary support was in place.

The majority of private lawyers expressed unhappiness about the level of funding they received for the pre-proceedings work. At the time of the interviews, the fixed fee was £405 (it was cut back by 10%, to £365, in October 2011). Most of the parents' representatives at the observed meetings were qualified

solicitors, and some were very experienced; but this meant that the fixed fee did not cover their costs (reading any documents, advising the parent, attending the meeting, travel time, follow-up notes and any correspondence). One lawyer described the amount they were paid for this work as ‘a pittance’ (S11), and another said:

*‘... you look at the volume of work on your file and think “£405 – that’s just a joke, an absolute joke.”’ (S5).*

However, not all agreed: one said ‘... this is hardly any work and it’s £400 straight off fixed fee’ (S9), and another

*‘£405, as a lawyer that is sufficient for me to meet with the client, to go to the meeting, advise the client, correspond with other parties, that’s sufficient ...’ S6*

S9 was a trainee solicitor, so may not have appreciated all the costs of running a law firm, but S6 was an experienced lawyer, a partner of their firm and a member of the Children Panel.

One lawyer spoke at length about the financial constraints and having to be realistic about how much work they should do on a pre-proceedings case. She concluded:

*‘...it doesn’t mean we are offering a bad service, but you can’t offer an all bells and whistles service when you are paid a ridiculously low amount.’ S2*

There was the possibility of ‘escaping’ to hourly rates if the solicitor had done three times the amount of work covered by the fixed fee; Legal Services Commission data indicate that only 1% of bills are paid at hourly rates. One lawyer noted that this ‘very difficult’ to achieve (S2), so the fixed fee meant that she would not attend a review pre-proceedings meeting, but send a paralegal instead. (Other lawyers said that they would try to attend review meetings, and qualified solicitors attended all but two of the nine review meetings in the observation sample – in one of the others, there was no lawyer and in the other, two trainees, one for each parent.) The limited payment meant the work was only economic if it could be completed swiftly, with minimum input – or, alternatively, if case went into care proceedings, when different rates and rules apply.

That links with another difficulty that the lawyers spoke about, that they are limited to a certain number of new cases (‘matter starts’) per year. Firms will then ‘budget’ how many cases they can take per month, in order to keep to this figure. Two lawyers, from different areas, said that this meant they might have to turn families away, telling them to find another lawyer, or asking them to come back the following month (which may not be any use), or to come back when the local authority had actually issued proceedings. On that, another lawyer said:

*‘First of all that is a crap thing to say to somebody, but secondly they are not going to come back to you, they are going to go to another firm who will go with them for the pre-proceedings meeting – so you are potentially losing out on care work, and the danger of that would be great,*

*even for firms that are incredibly concerned about the financial viability of this work – they would still take it because it would be a loss leader not to.’ S19*

The idea that the pre-proceedings work was a ‘loss leader’ was voiced by three other lawyers, all in different areas. One of them used the actual words:

*‘It’s a loss leader. It costs much more to do it than we get ... there’s usually one or two meetings and if you try and keep the cases out of court, then for the money you get for it, it’s not worthwhile.’ S17*

The lawyer stressed that this did not mean she would not do her best to prevent the case going to court:

*‘... the reason people do this work isn’t primarily financially motivated ... you represent the best interest of your client.’ S17*

Despite the financial implications, this lawyer said that she would try not to send paralegals to the meetings, and tried not to turn people away: ‘*you can always make space in your diary for it*’, and if necessary could ask the local authority to rearrange the date of the meeting. Indeed, a quarter of the meetings in the file study had been rearranged to secure attendance of parents and their lawyer.

### **Key points**

- **The meetings are used for a variety of purposes, notably to *agree care arrangements; to agree assessments; to reinforce the child protection plan; and to inform parents that proceedings would be brought.***
- **Parents were usually expected to speak for themselves in the meetings, and their lawyers usually played a background role. Meetings were very often a discussion mainly between the chair (usually the social work team manager) and the parent.**
- **The conduct and tone of the meeting varied according to the purposes and the circumstances of the case, the style of the team manager and the approach of the authority. Some meetings could be positive and encouraging, others were more of a ‘telling off’ for parents and laying down of expectations.**
- **There were different views about how much room there was, or should be, for negotiation. There was recognition that many of the parents had been to many meetings before, and been asked to comply with many agreements before.**

- Most meetings were relatively short (two-thirds of the observed meetings lasted 45 minutes or less). Longer meetings did not necessarily mean there was more time for negotiation; one area had longer meetings than the others, but this was to go through the list of concerns.
- Lawyers often said very little in the meetings, sometimes nothing at all, but their presence was crucial to the dynamics of the meeting. Most parents appreciated the support of their lawyers. Experience and commitment was observed to be more important than whether the lawyer was a qualified solicitor.
- Children and young people did not attend the meetings, except as parents themselves. Social workers saw it as their role to represent the child's wishes, feelings and interests, in an appropriate way for the particular meeting. Being clear in the expectations of the parents was seen as the main way of doing this.
- Local authority staff looked to the parents' lawyer to reinforce their messages to the parents, about complying with the terms of the agreement. Parents' lawyers said that this was one of the first things they said to their clients, but they were concerned to clarify the terms of the agreement, iron out any potential loopholes and ensure services were in place to support their client.
- Some meetings could be very difficult, and parents could get distressed and angry. Practical matters such as the size of the room, seating arrangements and the timing of the meeting could make a difference.
- Review meetings had become a regular feature of practice in some areas, but raise challenging questions about how much progress should be expected between meetings, how far apart meetings should be, and how they integrate with other review processes such as child protection case conferences.
- Parent's lawyers were generally unhappy about the rate of payment for the pre-proceedings work, but even so most of the observed meetings were attended by qualified solicitors, including review meetings.
- The legal aid arrangements, both in terms of lawyers with contracts for this work and available 'matter starts', could make it hard for parents to find a lawyer to act for them.



## Chapter 8

### Findings 5: The impact of the pre-proceedings process

#### 8.1 Introduction

Two main aims were identified for the pre-proceedings process (see above, section 1.3). First, the process was intended to reduce the use of care proceedings, diverting suitable cases from the courts and resolving them in other ways (Judicial Review Team 2005; DfeS et al. 2006; TACT 2007). Secondly (but no less importantly), it aimed to enable cases that went to court to be decided more quickly; using the pre-proceedings process would allow local authorities to prepare cases better, particularly assessments could be completed and alternative placements with family members explored before the application was made. As a consequence, courts would be able to make decisions within the 40 week timescale set in the PLO (Judiciary 2008). Reduction of delay for children was the main goal of the reforms to care proceedings (MoJ 2008: 2).

This chapter uses data from the study to explore the impact of the pre-proceedings process. It goes beyond the final research question (see section 1.2, above), examining the effects of the process as a whole, not simply the meetings, and its impact on the proceedings generally, not only on the issue of contest but also on duration and outcome. The focus is on the measurable impact on cases, and on explanations for these, not on what the parents felt about the letter and meeting, which are discussed in chapters 6 and 7 above. The chapter examines impact in terms of the aims of diversion from court and more timely completion of court proceedings, and considers delay for the child through the length of the whole process from the decision at the legal planning meeting to the final order in care proceedings.

#### 8.2 Diversion

Diversion from care proceedings can be achieved in a number of ways: improvement in parental care; alternative care in the family by agreement or following private law proceedings; or parental agreement to children being looked after under s.20. Cases that are diverted continue to require children's services involvement, at least in the short term, providing support services, financial support or alternative care. Although avoiding care proceedings undoubtedly saves local authorities money (court fees and the cost of legal representation provided by external lawyers) and staff resources (local authority lawyers and social workers attending court and preparing statements), most diverted cases remain open to children's services, managed under child protection or children in need plans. The effect of diversion on the courts and on Cafcass is more marked; care proceedings applications are not made, and only a small minority of cases, 3 out of 34 cases in the file sample, become subject to private law proceedings. Without diversion resulting from use of the pre-proceedings process, the number of care applications would be higher still.

Diversion may simply mean the avoidance of care proceedings as a result of improvements to parental care achieved through improved skills and understanding developed at parenting programmes, domestic violence intervention projects and by engaging with the social worker etc. There were 16 out

of 34 cases in the file sample where care proceedings were avoided through improvements in parental care or engagement with children's services (see below section 8.3 for further details and a discussion of diversion rates). There were 17 cases in the observed sample where the primary aim was improved parental care, and of these 12 had not entered care proceedings at our follow-up point (see above, section 7.3). The Gooding, Kowalski, Mahmood and Merritt families are examples of this working well. Better parenting was not the only feature which contributed to the decision not to bring care proceedings; difficulties in proving the threshold for care proceedings, sometimes as a result of passage of time made a court application unattractive. For example, in case 2331 the fact that the toddler had multiple carers would have made it difficult to establish who had caused the injuries and whether the father, who subsequently obtained a residence order, had any responsibility for this.

In other circumstances, diversion *from* proceedings also means diversion *to* another care arrangement. This raises issues about the legal basis for the arrangement, whether it is intended to endure and the sources of support available to carers. Alternative care may be informal, subject to a residence or special guardianship order or, in the case of care by the local authority with parental agreement under s.20; carers may be parents, relatives or foster carers. It is common for arrangements between separated parents to be made informally (HM Government 2004) and this is also the case for most care by relatives (Hunt et al 2009; Hunt and Waterhouse 2012). Arrangements may be positively agreed or merely accepted / unchallenged because they are considered to be right or there appears to be no alternative. Residence and special guardianship orders give carers parental responsibility, clarifying their role and supporting feelings of security. Poverty is a major problem for relative carers (Farmer et al. 2013). Local authorities have power to provide financial support to relative carers with residence or special guardianship orders on a means-tested basis but rarely do so unless they have been directly involved in making the arrangement. Children may be cared for long term under s.20, providing their parents continue to accept the arrangement. Children in s.20 care are 'looked after' children, their care is subject to the same reviews as children on care orders but the local authority does not have parental responsibility and cannot make plans without parental agreement. For this reason s.20 care can seem to be impermanent. Most children in s.20 care are placed with unrelated foster carers but relatives may be (and be supported as) foster carers.

There were 10 cases in the file study where alternative care removed the need for care proceedings. Three cases were based on informal family arrangements, three cases on court orders and four cases s.20 accommodation. Two of the informal arrangements involved children moving to live with their father and one care by a relative, which appeared to be only a temporary arrangement while the mother completed drug treatment. The court-ordered arrangements in the file study all involved residence orders in favour of fathers. In two of these cases the fathers appeared to have taken the initiative to bring proceedings, in the context of relationship breakdown and alleged injuries to the children. In the third case (4221), the local authority insisted the father obtain private law orders and agreed to pay his legal costs, although the local authority lawyer advised that care proceedings should be started. Four cases in the file study were diverted to s.20 foster care, including one placement with the child's grandparent. In the observation sample, four cases were diverted from care proceedings through other

care arrangements – two cases with informal arrangements involving a change in a child’s carer and two where children became looked after under s.20. Denise Oldfield took over the care of their daughter’s child, but they remained as a family unit. Mr and Mrs Verney looked after their grandson for a short period while their daughter undertook a parenting assessment, and he went back to live with her after this was successfully completed. Belinda Charlery, aged 12, and Baby Fry both remained in s.20 nearly a year after the pre-proceedings meeting. In the Fry case, the baby’s grandmother (the current carer) was being assessed by the local authority for special guardianship. Agreement to s.20 accommodation both secured care for children and undermined the basis for care proceedings which necessitates proving the child is suffering significant harm. Where parents were co-operating with a plan that was in the child’s best interests it is not possible to satisfy this test.

There was a third group of cases which were not clearly diverted from care proceedings but where no application was made by a local authority in the study. There were four cases in the file sample where parents moved away (2 abroad), partly at least with the hope of avoiding proceedings. In another four cases, the social worker made no further reference to the local authority lawyer so it was not possible to know how care proceedings had been avoided. In the observation sample, the Hernandez case appeared stuck; the plan made at the meeting had failed because the assessment agency was no longer undertaking such work, leaving the social worker without information to establish how the family could be helped.

### 8.3 Rates of diversion

Two distinct ways have been used to examine the rate of diverting cases from care proceedings to accommodate the different data in the file and observation sample and allow comparisons. For the file study, it was possible to calculate the proportion of cases that did not progress beyond the pre-proceedings stage (PPP only cases) in the total sample of cases where the pre-proceedings process was used, taking account of the sampling percentage and excluding cases where the letter sent was a letter of intent. This is the file study diversion rate.

**Table 8.1: Diversion rate for the file study**

Local Authority	A	B	C	D	E	F	Total/ave
N PPP only*	7 (6)	4	4	10	4 (2)	5 (4)	34 (30)
Estimate of total use of PPP excluding letters of intent	33	21	15	30	16	12	127
Net PPP diverted %	21% (18%)	19%	27%	33%	25% (12.5%)	42% (33%)	28% (24%)

\*Figures in brackets exclude cases where parents moved out of the study local authority

Table 8.1 shows the diversion rate for each local authority; the diversion rate for the sample as a whole was 24%, with a range from 12.5% for E to 33% for D and F. It should be noted that this figure is not based on the total number of care proceedings but only those (54%) where the pre-proceedings process was at least started. However, given earlier findings that care proceedings are not brought unnecessarily (Brophy 2006; Masson et al. 2008) it is remarkable that local authorities were able to avoid proceedings in almost a quarter of cases where they used the pre-proceedings process.

An alternative way of calculating the diversion rate considers only the cases which actually had a pre-proceedings meeting where there was a chance of diversion – in other words, excluding those where the meeting was used to inform the parents of the intended proceedings. To avoid confusion with the overall diversion rate this is called the ‘meetings diversion’ rate. Using this measure it is possible to compare the file and observation samples.

### ***‘Meetings diversion’ rate – overview***

There were 99 cases in the file sample where, as far as we can tell from the data, a pre-proceedings meeting was held. Of them, there were 84 with a chance of the case not entering proceedings (i.e. excluding the letter of intent cases). (In a few cases absence of meeting minutes made it difficult to determine whether a pre-proceedings meeting had actually taken place.) At the follow-up stage, normally six months after the initial meeting, 32 of these 84 cases were still outside care proceedings. (Table 8.1, above, shows a total of 34 diverted cases but there was no pre-proceedings meeting in 2 of these.) Of the 32, four further cases are excluded because the families had moved out of the local authority area. This leaves 28 cases that did not go into care proceedings in the home authority out of 84 meetings where this was a possibility, a ‘meetings diversion’ rate of 33%.

There were 33 cases in the observation sample, but in four the local authority intended to launch care proceedings leaving 29 where there was a possibility of diversion. In one of them, the baby was still-born, so the case cannot be included in the analysis, leaving 28. The timing of our follow-up enquiry varied according to when we had done the fieldwork: in the authorities where we did our fieldwork first, it was up to a year after the meeting. It was at least six months in all but two cases. At the time of the follow-up enquiry, 19 of the 28 had not gone into care proceedings. That is a ‘meetings diversion’ rate of 68%, double that in the case file sample. Seven of the 19 cases were still unresolved. The progress of those cases up to the follow-up point makes it unlikely that all seven would enter care proceedings, but it seemed probable that some would, so the final rate is likely to be lower.

Even so, there is still a marked difference between the samples: this is explored in terms of the differences between the authorities as well as between the time periods. Cases in the file sample were in pre-proceedings in 2009; those in the observation study in 2010 and/ or 2011. It should also be recognized that the numbers involved in this part of the analysis are small, and that the observation sample may be more likely to have included cases where there was better chance of diversion. One reason for this is that the file sample includes a number of cases where parents did not attend the meetings, or did so without lawyers, which might indicate a lack of engagement. In the observation

sample, at least one parent attended all the meetings where diversion was a possibility. There were two cases where parents attended initial meetings without a legal adviser, but neither of them went into care proceedings (Yardley and Charlery).

#### 8.4 Differences in the diversion rates – analysis and explanation

Table 8.2 gives an overview of the differences between the two samples. The analysis of the reasons for diversion examines: 1) whether satisfactory alternative care arrangements were made, or 2) the parent’s care and/or cooperation improved sufficiently. These categories may overlap, for example if parents separate, or children spend some time in alternative care and then return to their parents, or if there are different outcomes for different children. In these cases, an assessment of where the case best fits has been made from all the available information.

There were three cases in the file sample where a meeting was held but the legal file contained insufficient information for us to say for sure what the situation was after six months. We know that they had not entered care proceedings, but not whether or when matters were resolved.

**Table 8.2 ‘Meetings diversion’ cases in the two samples**

	<b>File sample</b>	<b>Observed sample</b>
Meetings where there was a possibility of not entering care proceedings	84	28*
Not in care proceedings at follow-up point	32	19
Parents had moved away with children	4	0
Valid cases not in care procs at follow-up point	28	19
<b>Reasons for not entering care proceedings</b>		
Alternative care arrangements	9 32%	4 21%
Parental care improved substantially	6 21%	7 37%
Parental care improved somewhat	10 36%	8 42%
Insufficient information	3 11%	0 0%

\*excludes case where child was still-born.

### *Alternative care arrangements*

There were 9 cases involving alternative care arrangements in the file sample, about a third of the cases that did not go into care proceedings. These cases plus another case where the child was in s.20 care were discussed in section 8.2 above.

In the observation sample, only 4 of the 'meetings diversion' cases concerned children in alternative care arrangements at the follow-up point. Two involved care by grandmothers: Mrs Fry and Mrs Oldfield; Belinda Charlery remained in s.20 foster care and Simon Yardley was in custody.

### *Improved care and/or cooperation*

In the file sample, there were 16 of the 28 (57%) 'meetings diversion' cases where the children remained with their original parental carer(s) at the six-month point, and standards of care and/or cooperation with the local authority had improved sufficiently for the case not to go into care proceedings. The researchers independently scored the diverted cases as 'positive', 'neutral' or 'negative'. Whilst there were limitations in this exercise (notably, that it is based only on the information in the legal case file), it gives an indication of the way that the case had been dealt with and the likelihood of a positive outcome for the child. Reasons for caution about the outcomes included a lack of information or information which pointed to on-going, unresolved concerns.

Six of the 16 (38%) were assessed as having strongly positive outcomes (i.e. the three researchers involved in the exercise all scored them positively). There were 10 cases where plans appeared not to be addressing sufficiently the identified issues or were not being implemented; and 3 cases that were closed very quickly after the pre-proceedings meeting with reports from the social worker that everything was going very well now, but no other evidence for this. This is not to deny the possibility of transformative change, or that adequate evidence was available to the social work team; but these were cases where a legal planning meeting had decided that the threshold for care proceedings had been met, and without clearer evidence on the legal file it seemed unlikely that all the necessary changes had been made, or would be sustained.

In the observation sample, there were 15 of the 19 (79%) 'meetings diversion' cases where the child(ren) were with their parent(s) at the follow-up point, and standards of care and/or cooperation had improved sufficiently to avoid proceedings. As before, the researchers independently scored the cases, assessing both process and outcome. There was agreement that 7 of the 15 cases (47%) had positive scores on outcome. The reasons for caution echo those discussed above for the file sample.

### *Local authority differences*

Another way of comparing the two samples is to examine the differences between the six authorities. Key features are summarized in Table 8.3.

**Table 8.3 Proportions of ‘meetings diversion’ cases in each authority**

	File sample			Observed sample		
	No. of PPMs	Possibles: i.e. PPMs excluding letter of intent cases (N. and % of PPMs)	Cases with no care procs at follow up* (N. and % of possibles)	No. of cases	Possibles: i.e. PPMs excluding letter of intent cases (N. and % of cases)	Cases with no care procs at follow up (N. and % of possibles)
A	25	19 (76%)	6 (32%)	6	5 (84%)	3 (60%)
B	13	12 (92%)	4 (33%)	5	5 (100%)	3 (60%)
C	13	12 (92%)	4 (33%)	5	5 (100%)	5 (100%)
D	22	19 (86%)	8 (42%)	6	5 (84%)	4 (80%)
E	14	11 (79%)	2 (18%)	5	3 (60%)	1 (33%)
F	12	11 (92%)	**4 (36%)	5	5 (100%)	3 (60%)
Totals	99	84 (85%)	28 (33%)	32#	28 (88%)	19 (68%)

\*excludes 4 cases where families moved away

# excludes 1 case where child still-born

\*\*includes 3 cases with insufficient info to give reason

Table 8.3 shows the proportion of cases in each authority where there was a possibility of not going into care proceedings, and those which did not. Overall, the proportion of ‘possibles’ in each sample is about the same, 85% and 88%, but as noted earlier, the rate of cases not going into proceedings varies greatly between the two samples: (33% compared with 68%). The small numbers in each authority in both samples mean that no firm conclusions can be drawn, but suggests differences to be considered. The table shows that the ‘meetings diversion’ rate varies considerably *between the different authorities* within each sample. Also, it suggests that practice in each authority may have *changed over time* given that the observation sample relates to a later period. However, the ranking of the authorities stays broadly similar; D has a high rate of cases which did not enter care proceedings in both samples, and E the lowest rate in both.

Two particular factors help make sense of these findings: the importance of the *length of time* in the pre-proceedings process, illustrated by looking at the duration of cases in authority D; and the *purposes* for which the meeting is called, shown by looking at the way the process was used in authority C.

*i. Length of time in the pre-proceedings process*

Tables 8.4 and 8.5 show the length of time that cases spent in the pre-proceedings process, either before they entered care proceedings, or they were signed off from the pre-proceedings process for the file and observation samples. If there was no formal ‘sign off’, the end date is where information on the legal file indicated that matters were resolved sufficiently to preclude care proceedings without further incidents. This is not the same as closing the social work case; cases could remain open under a child protection plan, or a child in need plan but no longer be subject to the pre-proceedings process and thus at the edge of care proceedings. Table 8.5 also shows the unresolved cases in the observation sample. Overall, three-quarters of the possible cases in the file sample were resolved one way or the other within six months (61 of the 84), but that was the case for just under half of observed cases (13 of the 27).

**Table 8.4 File sample, duration of cases where there was a PPM and diversion was a possibility**

	Possibles N	Entering care proceedings		Closed to PPP/ matters resolved	
		At/within 6 months of PPM1	Over 6 months	At/within 6 months of PPM1	Over 6 months
A	19	8	5	5	1
B	12	7	1	3	1
C	12	7	1	0	4
D	19	10	1	7	1
E	11	7	2	0	2
F	11	7	0	*0	*1
Total	84	46	10	15	10

\*there were 3 cases with insufficient info: the total number of cases not entering care proceedings is 28.

**Table 8.5 Observed sample, duration of cases where there was a PPM and diversion was a possibility**

	Possibles N	Entering care proceedings		Closed to PPP/ matters resolved		Still in PPP/ matters unresolved	
		At/within 6 months of PPM1	Over 6 months	At/within 6 months of PPM1	Over 6 months	At/within 6 months of PPM1	Over 6 months
A	5	1	1	3	-	-	-
B	5	1	1	2	-	-	1
C	5	-	-	1	1	-	3
D	5	1	-	2	2	-	-
E	3	1	1	-	-	1	-
F	5	1	1	1	-	1	1
Total	28	4	4	9	3	2	5

Looking in more detail at the 2009 file sample (see table 8.4), D had the largest number of possible cases that did not go into care proceedings. One explanation could be that the threshold for the pre-proceedings process was too low in D. However, the nature and duration of the difficulties that these families were facing makes it hard to argue that D used the pre-proceedings process inappropriately: these were like pre-proceedings cases elsewhere and typical ‘edge of care’ cases. It is very unlikely for a case with only few difficulties, or low level concerns, to get this far in terms of local authority action; but some other authorities may be more likely to manage cases with similar levels of concern *outside* the pre-proceedings process, despite the expectations in the *Guidance* (DCSF 2008). Indeed, the lower levels of use of the process in local authorities outside the study suggest that this is so.

An alternative explanation is that authority D is using the process really well, to extract maximum benefit from it – giving families an opportunity to make the required changes, but not leaving it too long



before taking legal action or ending the pre-proceedings process. There is a risk in closing cases too quickly; there is the well-known tendency for parents in child protection cases to make changes in response to an ultimatum but to return to previous behaviour so that improvements are not sustained over time. A practice of signing off cases swiftly may lead to a higher diversion rate in the short term, but with cases returning later.

The contrast with authority C is notable, where all four cases in the 2009 sample that did not go into care proceedings took more than six months to be resolved, and three of its 2010-11 observed cases remained unresolved more than six months after the initial pre-proceedings meeting. This may be linked with the way that the process is used in authority C, as a gateway to a specialist assessment, as discussed below. Prolonged periods in the pre-proceedings process also raise issues of delayed decision-making, discussed in section 8.5 below.

*ii. Purposes of the pre-proceedings process*

None of the observed cases in authority C had entered care proceedings at our follow-up point, although two were still causing considerable concern. The process of referring cases for a specialist assessment, allowing time for it to be undertaken and then deciding how to respond, appeared to prolong the time in pre-proceedings. Also, use of the pre-proceedings process as a referral mechanism for a specialist parenting assessment may mean that cases are brought into the process that need not be if referrals could be made differently.

All the children in the observed sample from C were already on child protection plans; the agreement at the end of the pre-proceedings meeting was for the parent to comply with the terms of that plan. In three of the cases, the plan also included a specialist parenting assessment. Two of the cases illustrate some of the benefits and risks: that use of the process delays decision-making, or cases become stuck in the process, without sufficient change to allow sign off, or a plan for use of care proceedings. In one, a case of suspected physical abuse, the assessment went well and at our follow-up enquiry, nine months after the meeting, the case was out of the pre-proceedings process. The social work team manager thought that the process had been effective in getting the adults to understand the authority's concerns. Another of the specialist assessment cases was still causing considerable concern at the follow-up point, seven months after the initial pre-proceedings meeting. There was an on-going pattern of the parents saying that they would do the things the local authority required, but not fulfilling them. It appeared that little progress had been made despite the time in the pre-proceedings process.

So, it is possible that if the authority's procedures allowed specialist assessments to be arranged outside the pre-proceedings process, some cases may not need to go into it. Also, if the focus were not on accessing assessment, more consideration might be given to what else the local authority wanted to achieve, particularly what had to change if proceedings were to be avoided.

## ***Changing use of the process?***

### *Purpose and timing*

Another possible explanation for the different diversion rates is that the use of the pre-proceedings process has changed over time, and rather than being used as a late-in-day alternative to care proceedings, it is now being used earlier on, more as a step up for child protection cases. If it is used earlier, then (in theory) there is more chance that parents will be able to make the required changes. There were mixed views about this from the interviewees, and the evidence does not suggest that there has been a widespread, consistent change in this direction.

Given the widespread disillusionment from local authorities about the way that the courts routinely ignored or devalued their pre-proceedings assessments, one would expect there to have been some re-thinking of the way that the process is used. However, views differed about what this re-thinking has led to, or should lead to. It could mean simply using the process *less*, or using it *more selectively*, with a clearer idea of what type of assessments are most appropriate under the process. For example, legal staff in one of our authorities expressly talked about not doing residential assessments under the pre-proceedings process, because of their experience of being told to re-do them.

Alternatively, it could mean using the process *earlier*, as a step up from child protection conferences, with a tight written agreement. This need not involve a referral for any extra or specialist assessments, just 'more of the same', in the sense of parental engagement with social work visits, health visitor appointments, domestic violence support programmes, nursery school attendance, and so on. The difference from a child protection conference is that now lawyers are involved. So entering pre-proceedings focuses on the benefits the process can bring in terms of engaging parents, not creating a framework for, or access to, assessments. One team manager, in response to being asked whether the process had changed or evolved in her area since its inception, said that it had become '*another tool in our box for trying to work with families in order to achieve some change*' (SWM7). She thought that a benefit of the pre-proceedings process was that it allowed the authority to have meetings with the families and solicitors before things get to an 'adversarial crisis', and to come up with a plan. This suggests willingness for earlier, more flexible use of the process. Other interviewees were less convinced about that, conscious of duplicating the child protection process. A team manager in a different authority was adamant that the pre-proceedings process should not be used as an early warning, but kept as a real alternative to care proceedings:

*... it's about getting a serious message across to people, and if we're not serious and we're just trying to play a game or use it as a lever, then people will pick up on that and it will become another child protection conference. SWM6*

As noted earlier, there has been an overall decline in use over time (see above section 2.6). Also, there is a trend for authorities that are already high users of the process to continue or even increase their use, whilst use in low-use areas has declined.

### *Confidence and skill*

A related aspect is that confidence in using or not using the pre-proceedings process may have increased between 2009 and 2010, with local authorities becoming clearer in their expectations of the process (and how the courts are likely to respond to it), and more experienced in using the meetings to achieve the desired changes. This could mean that they were less likely to use the process for cases with a low likelihood of change, or those which needed expensive and time-consuming assessments (because they anticipated that the court would only require these to be repeated). This was certainly something that local authority social work and legal interviewees spoke about, but again it was hard to detect a widespread and consistent pattern. Furthermore, whilst there were certainly examples of skillfully chaired meetings in the observation sample, there were also meetings which did not go at all well.

Finally, it is worth noting that there were different experiences of the process within as well as between local authorities. So, in one area a private solicitor perceived that all the pre-proceedings cases eventually went to court, whilst another held that there were successful diversion cases. Both may be true! The point is that experiences vary.

### **8.5 Delay**

The timing of care proceedings applications is a matter of judgment. Local authority managers, lawyers and social workers have to balance the benefits for and against intervention with the demands of the legal process and prioritize cases in the face of finite resources. One consequence of this is that applications for court orders are frequently made in response to a child protection crisis (Brophy 2006; Masson et al. 2007). Without an incident, cases of neglect or emotional abuse may remain at the edge of care proceedings for long periods. The pre-proceedings process provides a framework which could help avoid delay in such cases, or, alternatively, allow it to continue. This section examines the extent and causes of delay in cases where the pre-proceedings process was used.

The pre-proceedings process has the potential to delay the protection of children; indeed, by inserting processes between the decision that the threshold for care proceedings has been reached and the application, delay appears inevitable (McKeigue and Beckett 2009). There is no point in adding stages before a court application unless sufficient time is given for parents to begin to address the local authority's concerns. The time a case spends subject to the pre-proceedings process does not matter for children if the time is used to work with parents and this succeeds in improving their care. However, the duration of the pre-proceedings is important for children where the application to court is delayed, particularly if the time spent with poor care or unsettled arrangements is also extended. Cafcass guardians noted 'late' applications in 43.9% of a sample of 2008 care cases; the figure had reduced to 28.9% for a comparable 2011 sample but more than half the 'late' cases involved use of the pre-proceedings process (Cafcass 2009: 13, 2012a: 8). Pre-court delay would be of less concern if the process led to more timely completion of court proceedings, but this had not happened in the courts in the study areas, see section 8.7, below.

This section focuses on the length of the pre-proceedings process for cases that resulted in care proceedings. It compares the mean length between the legal planning meeting and the application to court for 'pre-proceedings and s.31' and 'court only' cases i.e. cases with and without the pre-proceedings process. In this analysis 'letter of intent' cases are included with 'court only' cases.

The average time between the legal planning meeting and the application for care proceedings was 96.1 days; it was 10 days shorter where proceedings took place shortly after birth, reflecting the relative urgency with which applications were made for new babies. Excluding the cases relating to new babies where the date of the application is linked to the date of birth, there were notable differences between 'pre-proceedings and s.31' and 'court only' cases, and across the 6 authorities. Where the pre-proceedings process was used, the mean duration almost doubled to 171.9 days; correspondingly, cases going direct to court did so in an average of 57.3 days (just over 7 weeks), see table 8.6. The averages for the 6 local authorities varied; D and F progressed pre-proceedings cases more quickly and E took longer on average, and far longer for some cases. There were also marked differences for 'court only' cases; the average time taken to apply for court by A and D was twice that in B, E and F.

**Table 8.6 Mean period between legal planning meeting and care application (days)\***

Case Type	Local Authority	Mean	N	Std. Deviation
PPP and s.31	A	189.67	9	144.754
	B	176.50	8	142.944
	C	164.33	6	140.459
	D	131.71	7	31.373
	E	221.25	8	153.505
	F	118.60	5	57.344
	Total	171.86	43	123.602
Court only	A	92.25	12	97.116
	B	37.30	10	65.977
	C	60.24	17	170.840
	D	71.33	21	112.507
	E	35.33	21	45.925
	F	22.67	3	15.011
	Total	57.29	84	106.554

\* excludes pre-birth cases, that is cases where the legal planning meeting occurred before birth and the care application was made at birth or shortly thereafter.

There are three specific points in the pre-proceedings process where cases got delayed: 1) between the decision to use the process and sending the letter; 2) between sending the letter and holding the meeting; and 3) subsequently, before taking action in response to lack of improvement in children's care.

### *1) Sending the letter*

It should make little difference to the time between legal planning meeting and sending the letter before proceedings that the child has not been born, so all 99 where the date of the letter was known have been included. It took on average 19.4 days for the pre-proceedings letter to be sent; letters of intent were treated with less urgency, taking 24.7 days. This is a substantial time, particularly given that a standard form of letter was almost always used and the social worker only had to draft a list of concerns, and in some authorities a statement of expectations or draft contract, all of which should have been considered when the case was referred to the legal planning meeting. However, many of the letters were sent far more quickly; half were dated within 8 days of the meeting.

Closer examination of the 21 cases where letters were not sent within 3 weeks of the legal planning meeting identified a number of factors linked to delay. There were cases where the social worker clearly had other priorities in the case such as obtaining further evidence or completing the core assessment. Other letters appeared to be delayed because they were not seen as important; there were 6 cases in Area A where a month elapsed between the meeting and the letter for no apparent reason. The letter in case 1301 appeared to have been prompted after the mother sought legal advice having been informed orally, weeks earlier, that the local authority was planning proceedings. In other cases, sending a letter was an alternative plan, if parents did not agree to s.20 accommodation; whilst parents co-operated, the letter was unnecessary, and might also unsettle matters. In case 2121, the father was gravely ill and the plan was to hold the meeting only when he recovered, meanwhile the social worker was advised not to discuss plans to bring proceedings lest the parents cease to agree to s.20 accommodation for their children.

Area C had a higher proportion of cases where the letter was not sent within three weeks of the legal planning meeting, many of these delays occurred during the summer holiday period. Also, the focus on using the pre-proceedings process to get agreement to an externally provided assessment may have made the sending the letter seem less urgent.

In their interviews social workers and managers acknowledged that letters were not always prepared promptly, as discussed in section 6.2, above.

### *2) Holding the meeting*

The date of both letter and meeting were known in 83 cases and the time between the legal planning meeting and the meeting in 101. The average time between the legal planning meeting and the pre-proceedings meeting was 39.3 days, and 17.8 days between the letter and meeting. There was almost

no difference in the time it took between the letter and the pre-proceedings meeting for letter of intent and other cases; all the additional delay in these cases occurred before the letter was sent.

The comparison in the time taken between the letter and meeting excludes the letter of intent cases. On average 18 days elapsed between the letter and the meeting but there was a wide range within all local authorities with the exception of D, see table 8.7. Meetings took place more quickly in D, E and F, on average within 12 or 13 days of the letter. In A, it took more than twice as long to hold a meeting, on average 29.8 days.

**Table 8.7 Number of days between the letter and the meeting in pre-proceedings (not letter of intent) cases\***

Local Authority	Mean	N	Std. Deviation
A	29.83	12	44.354
B	16.33	12	13.473
C	20.69	13	11.146
D	13.15	13	5.398
E	12.00	9	11.203
F	13.37	8	14.111
<b>Total</b>	18.04	67	21.491

\*includes cases without care proceedings and excludes cases where either the date of the letter or of the meeting were unknown.

Much of the delay in holding meetings resulted from meetings being postponed, either because parents were unable to find a lawyer who could attend on the date set, or they simply failed to attend. Local authorities tried to re-arrange failed meetings, a reflection of their commitment to the process. Meetings were postponed in 17 of the 67 cases; where meetings were not postponed, they took place on average within 10.7 days of the letter. Attempting to hold a meeting quickly could be counter-productive; parents were simply not able to arrange for a lawyer to attend at short notice. The much longer periods in table 8.7 reflect very substantial delays in cases where meetings were postponed, and the high number of cases where this happened in Areas A and B. Only Area D avoided postponements, but it still had cases where parents failed to attend.

### 3) *Deciding to end the pre-proceedings process and bring care proceedings*

Delayed application to court is easier to identify with hindsight. Both the 'rule of optimism' (Dingwall et al. 1983) and the bias against the use of proceedings can combine to produce a perception of engagement and progress so that the pre-proceedings process is allowed to continue for too long. A view that the pre-proceedings process is *another step* rather than *a step up* in protecting children, or that the original threshold was weak, appeared to inhibit further action. In addition, where the concerns are of neglect, the passage of time without an application to court weakens the case for a court order because lawyers and courts find it difficult to accept that harm which has been allowed to continue for

months can suddenly become so significant as to justify intervention. Consequently, only an incident or substantial deterioration in care may be enough for the ineffectiveness of the pre-proceedings process to be recognized.

The file sample included 99 cases where it was known that a pre-proceedings meeting took place. In 70 of these cases care proceedings were subsequently initiated, including 16 (23%) where proceedings were planned at the date of the pre-proceedings meeting (*i.e.* letter of intent cases). In the remaining 54 cases, the pre-proceedings process was intended to provide a period for the parents to engage with children's services, for assessment and improvement of care. The mean duration between the legal planning meeting and the care application was 157 days for the cases with only one pre-proceedings meeting, with half the cases that entered care proceedings doing so within 110 days, just under 4 months. If more than one pre-proceedings meeting was held the period was longer, an average of 211 days with half the cases entering proceedings in under 170 days, around 6 months. These periods do not support the view expressed by lawyers that the pre-proceedings process is only used very late in the day, giving parents no time to address the concerns (Jessiman et al. 2009, 20; De Haas 2008).

There were 14 'pre-proceedings and s.31' cases where more than 180 days elapsed between the legal planning meeting and the application to court in care proceedings. In 9 of these cases there was only one pre-proceedings meeting, 4 had two meetings and one case had three meetings. Most, but not all, involved some delay, that is, a more timely application to court could have been made. For example, in case 5121 the mother appeared to be engaging well with children's services, addressing her substance misuse and caring for her children while her former partner was in prison. On his release, she started misusing drugs, joined in his offences and was arrested; the children were taken into police protection and care proceedings were started. A few involved delays at all stages of the pre-proceedings process.

These cases were marked by indecisiveness. Sometimes there were long periods of social work concern with little parental engagement before the pre-proceedings process was started. In some, lawyers were doubtful that the threshold was met, refusing initially to authorize the use of the process. In others, there were long periods without apparent parental engagement but no further referral was made to the local authority lawyer. Most children remained at home throughout but nearly a third were in foster care or living with relatives, so taking legal action may have appeared less urgent. In half of these cases the application to court was finally provoked by a specific event, an incident where the child was injured or left without care, an expert assessment recommending removal, or the parents' withdrawing consent to s.20. Case 5201 provides an example of delayed decision-making:

Case 5201: The parents were separated. The father was in prison as a result of his violence to the mother, who had spent time with the children in a refuge. The mother was a long-term heroin user, currently on a methadone programme. There was a long history of neglect of two boys, aged 2 and 4 years; the older child was insecurely attached and there were concerns about the younger child's attachment. The children had lived in two counties and been on child protection plans in each; the current child protection plan had been in existence for 18 months when the pre-proceedings process was started.

In September 2009, a legal planning meeting authorized the use of the pre-proceedings process because of a '*need to escalate the level of seriousness*' following failure of the mother to improve her care of the children. At the first pre-proceedings meeting, the social work team manager told the mother that '*the local authority was drawing a line in the sand to give [her] an opportunity to make a new start*'. The written agreement required the mother: to co-operate with the community substance abuse team and a parenting assessment; attend a parenting course; ensure the children were registered with a GP; allow access to a family support worker; and take/collect the children to nursery/school on time. It was made clear to mother that if the terms of the written agreement were not met the local authority would take legal advice '*with a view to starting care proceedings*.' A review pre-proceedings meeting was set for a month hence; the mother turned up too late for this meeting to go ahead and it was rescheduled. The rescheduled meeting had to be cancelled because the social work team manager was required at court. The review finally took place at the end of November. The mother had made some progress.

At the end of January 2010, the social worker contacted the local authority solicitor because the mother was not adhering to the written agreement and had still not attended the parenting course. A further pre-proceedings meeting was arranged and a new written agreement drawn up but this merely repeated the original one. The social worker had not completed the parenting assessment. The mother complied for a time. In June 2010, the social worker noted that the older child was not attending school regularly and the family support worker had been denied access to the home. The local authority lawyer advised a further pre-proceedings meeting and urgent completion of the parenting assessment. There was no further pre-proceeding meeting at this point.

In September 2010, the case was referred back to a legal planning meeting; there was a longer list of concerns including the mother's repeated lying to professionals, allowing the father contact with the children and failure to comply with the written agreements or engage with the services offered. Care proceedings were authorized with a further pre-proceedings meeting arranged to discuss the local authority's plans for the children's care. At the meeting in October the mother was very contrite, stating that she was '*really frightened*' by the threat of care proceedings and would attend the parenting course and enter rehab. The local authority solicitor prepared the care application but before it could be filed the mother moved away to another area with the children. A transfer child protection conference was held; the new local authority started care proceedings at the end of November 2010.

#### *The length of pre-proceedings in cases where care proceedings were not initiated*

The pre-proceedings process was only formally closed in 24 of the 34 cases that did not enter care proceedings. Only one of the six local authorities had a formal process so that parents were routinely informed in writing that they were no longer subject to the pre-proceedings process. Elsewhere this may have happened informally but was not recorded on the legal file, thus the position may have been



unclear to the legal department. Where the end was known, the pre-proceedings process lasted on average 279 days (almost 40 weeks) longer than for the cases entering care proceedings. Whilst the practice of keeping cases on the process for a long time may be positive, encouraging continued parental co-operation, it may have negative effects, allowing the acceptance of very limited change for a substantial period in the belief that the parents are working towards adequate care. Avoiding delay in the pre-proceedings process necessitates repeated appraisal of parenting, the care children are receiving and parents' co-operation with children's services, health and other agencies.

### **8.6 Impact on court proceedings: local authority, private lawyers' and judges' perspectives**

The pre-proceedings process was intended to shorten care proceedings. It could do this by ensuring cases were better prepared by the local authority so that there was less need for assessments during proceedings and by facilitating agreements between the parents and the local authority, which narrowed the issues requiring a court decision. Care proceedings are known to take longer where there is heavy reliance on expert assessments, and also where matters are disputed; cases requiring longer hearings, generally those where the court must hear substantial evidence, also take longer because it is difficult to find space in court timetables (Masson et al. 2008; Family Justice Review 2011a, b). However, for the pre-proceedings process to have these effects the courts had to change the way they considered care applications. Judges would have to use their case management powers: to maintain the focus of the case; to refuse applications for assessments where there was sufficient information to establish the threshold for care proceedings and/ or the order to be made. At the time the research began in April 2010 there were indications that court practice had not changed (Forrester-Brown 2009; Jessiman et al. 2009), and the view that the course of proceedings was largely determined by the parties' lawyers and the guardian, not the judge, was confirmed through observations of care proceedings (Pearce et al. 2011).

Our interviews with local authority staff and private lawyers, and the focus group with judges, reveal a strong and shared perception that the introduction of the pre-proceedings process did not change court practice. The disillusionment of local authority social work and legal staff has already been discussed in Chapter 5.5. This section adds to that, by giving more detail on local authority views, showing how they were still wrestling with questions of how to get the pre-proceedings work noticed and what sort of pre-proceedings work might have enduring effect in court. It then adds the views of private lawyers, which convey their expectation that the court will, almost inevitably, want to make a fresh start with assessments in care proceedings – they see this as a feature of the ethos of care proceedings. The final part of this section gives the views of the judges.

#### *Local authority perspectives*

The view from local authority lawyers and social work staff was that the courts did not generally seem interested in their use of the pre-proceedings process. This cut both ways – local authorities were rarely criticized for not doing so, but little attention was paid to the work done under it. There were some exceptions to this; SWM6 described a case where *'we went to proceedings, and at the first directions*

hearing it was acknowledged by magistrates and the children's guardian that we [had] actually completed the assessment for court really'. She thought it 'really did' make a difference in that case 'because the children's guardian said "as far as I am concerned the assessment is complete, the work is done."' This manager noted that this was unusual, but it was something she hoped to build on. Despite disappointment with the court's reaction, the local authorities in our study were still trying to work with the pre-proceedings process (as discussed in Chapter 5, it had become a routine part of their decision-making processes) and to ensure it was taken into consideration at court.

One of the lawyers said that she thought the pre-proceedings work was respected, but

*'... that doesn't stop the challenge of the rights aspect, the severity of the decision, the fact that auntie so and so has come up, or the grandmother has come up. So I think the court is still wrestling with that. I don't think it makes a difference. There may be one or two cases that it has, and that would be in a case with accepting the social work assessment and a really dire history.'* LAS9

So, the view here is that there might be some circumstances where pre-proceedings assessments and the record of work undertaken to engage the family and promote change could stand up in court. These might be if it was a notably extreme case, if it was uncontested, if no other relatives put themselves forward, if the pre-court assessment was backed by guardian. It could be argued that these examples underline how little regard was paid to the pre-proceedings work: only in the most straightforward cases was it thought to carry any weight. Another lawyer mentioned that some sorts of assessments might be more enduring than others – the example she gave was a cognitive assessment, which was seen as 'pretty fixed and unchangeable' (LAS14). However, even this was not certain; a social work manager from a different authority commented that they had had cases where the court had ordered them to do new assessments 'particularly in the area of learning disability. I think the courts want an expert, so they tend to want us to go to a specific agency because the parents argue it is not a fair assessment' (SWM8).

Staff in authority C had mixed views about whether their parenting assessments, commissioned from an external agency, were accepted by the courts. These were usually accepted, and the authority had been praised for some of them (SW11, SWM8, LAS7) but in other cases, further assessments had been ordered. One lawyer said:

*'... some of the cases that we've taken into court, ... the court has been very complementary of the work that we have done in pre-proceedings ... unfortunately to our dismay the tendency has been for the court to allow the parent further assessment, sometimes even a further parenting assessment ... I wouldn't say things start again completely; the court will try to describe things in a different way. They won't just say "oh another parenting assessment", they will say that this time the parents are presenting as a couple, or the father's now come on the scene, "we need to do a different assessment to address that aspect that the LA didn't address; things have moved*

*on now ...We need to do a fresh assessment to look at issues as they stand now". That's how they'll say it. Maybe that is true to some extent.'* LAS7

The issue identified in the quotation is about the difference between repeat assessments and new assessments, and the rather blurred distinction between them in practice, which parents' lawyers sought to exploit (S2, quoted below). One strategy that local authorities had developed to try to reduce the chances of the pre-proceedings assessment being challenged in court, was to show the letter of instructions for it to the parents' solicitors, to get it mutually agreed (SWM8, LAS14) – even so, LAS14 said that the court might ask them to *'re-do certain things'* (see Chapter 5.4 above).

Such differences in the way the courts reacted to the pre-proceedings work are reflected in the following comment from a social work team manager:

*'... you can't predict how the court is going to react to a case, and you can get certain combinations of guardians and judges and benches which work in certain ways. It almost looks like you can take the same case in front of three different judges and different guardians and come out with three different outcomes. That is an atrocious thing to say, but that's how it feels to us, I think.'* SWM5

#### *Private lawyers' views*

The solicitors in private practice were well aware which cases had been in pre-proceedings, even when they were acting for the child rather than a parent because the copy of the *'PPM stuff'* (S9), the letter and signed written agreements were *'in the bundle'* (S18: also S1, S4, S7 and S17), and often the social work statement referred to breach of the agreement in their initial statement (S4, S11, S17). These solicitors' general experience was that local authorities complied with the requirement to use the pre-proceedings process (they were practising in areas with high use of the process), and if the meeting had not happened there was a reason for it (S2, S17). One solicitor recounted how they had (unsuccessfully) raised the failure of the authority to use pre-proceedings:

*'... I have done a lot of position statements saying that they never sent that letter before pre-proceedings, we didn't have a pre-proceedings meeting. I've even gone as far as saying there is an Article 6 issue. But the court doesn't care; the court has got an application before it, that what it is dealing and it doesn't really care what went on before ...'* S19

Whilst this solicitor appeared unusual in challenging applications to court without pre-proceedings, the experience that the court took no notice of pre-proceedings was almost universal:

*'The court's response? What's that then? Well there is none! There is no response to pre-proceedings ... by the time we get to court, the judge isn't interested in what happened pre-proceedings really ... It's "why have you brought the case and let's get on with it then."'* S5

Another lawyer said *'The court doesn't even look at it. It doesn't even ask'* (S14), and another

*'... when the matter goes to court [the LA] have to file an assessment on the findings that they are looking for etc., so the pre-proceedings meeting in some respects doesn't have a lot to do with it ... at the end of the day the local authority will be going on the facts that they say they want to prove, do you see what I mean? Regardless of whether there's been a pre-proceedings meeting or not.'* S10

The point is that care proceedings are forward-looking; the court is focused on *'the issues rather than taking procedural points'* (S17) and court time was limited. The task for the court was completing the care proceedings – examining the local authority case, considering the need for further assessments and deciding what orders to make:

*'... everything then focuses on [the local authority's] evidence, which is totally aimed at persuading the court to make an order and there isn't really much looking back at that point. [It's] what do we do from here? What assessments do we need? How are we going to timetable it?'* S6

The fact that the case had gone to court meant that the pre-proceedings process had been unsuccessful for parents. So the court's disregard of it was rather useful for solicitors representing them. The court was *'starting from scratch again ... giving parents another chance'* (S4). It meant that the court would not rely on work, including assessments, done by the local authority before the application. Pre-proceedings work was not a limiting factor in seeking further assessments:

*'... when you act for a client in care proceedings, you have got to bat for the client, you have got to think of the client; you have got to do the best for the client, and if there was a positive assessment then we wouldn't be in court. If there was an adverse assessment you are going to be in court, but you are going to argue as hard as you can for your client that the assessment had holes in it and that is why we need a further assessment. That's what you do as a solicitor ... you act in that client's best interests, so you will ask: what is the best thing that you can do to try and get the client to have the child reunited with him or her?'* S2

### *Judicial perspectives*

Attendees at the policy seminars arranged to discuss preliminary findings and their implications for policy encouraged the researchers to obtain judicial perspectives, particularly to hear judges' explanations for the lack of difference in the way courts dealt with cases that had been subject to the pre-proceedings process. In response to this, a focus group was arranged with 7 judges (3 district judges and 4 circuit judges) who heard care cases. The main reason given for the court not taking account of the work done under the pre-proceedings process was that the court was unaware what this was, or even that the pre-proceedings process had been used:

*'My experience is that it's generally not formally drawn to our attention as part of the proceedings. There's probably somewhere in the large number of bundles a letter and if we*

*rummage through it, we come across it, and it may be that it's referred to because it may become something relevant to an issue that arises. But it doesn't really figure in my mind generally speaking – it doesn't feature very much.'* Judge 6

*'Presumably the aim behind this whole procedure was to provide a watershed in the proceedings which would enable the parents to buy into the LA planning and to agree the sort of assessments that ought to be made ... so that the LA would have more confidence in doing more work before proceedings began, ... so that when they come to court, they wouldn't be faced with the Human Rights argument "we'll start all over again with independent assessments" ... The fact that we don't really notice it signals to me that it's just failed that purpose entirely.'* Judge 1

Additionally judges expressed scepticism about the value of the process because letters were not written in the recipients' language or the process was invoked too late in the day, giving the parent too little time to make the required changes. They preferred cases to come direct to court so that they could control what was done, and felt that the pre-proceedings process would only serve to delay cases which would inevitably need to come to court.

These judges were aware that local authorities were discouraged from undertaking assessments in advance of proceedings by court decisions to order further assessments and, particularly, to expect the local authority to contribute, financially, towards these. However, they felt constrained to allow parents to obtain further assessments, so the local authority's assessment could be tested in a fair hearing; because they felt that local authority social workers' assessments were not of the required quality and often merely reflected what their managers wanted; and to prevent their decisions being overturned by the Court of Appeal:

*'[The process] would work much better if there was a mechanism in court for us to say more robustly than we have in the past: you don't need another assessment.'* Judge 6

*'[I]t's so much easier to, say, spend £5,000 doing another assessment and the appeal won't occur.'* Judge 7

These judges were not unique in mentioning the spectre of the Court of Appeal (Pearce et al. 2011). Indeed, the former President of the Family Division sent a letter to judges on case management in response to concerns he had heard about the need to order further reports to avoid criticism of their decisions (Wall 2010).

### **8.7 Impact on court proceedings: statistical data**

The following analysis tests the hypothesis that courts did not change the way they dealt with cases which had been subject to the pre-proceedings process, by comparing key aspects of care proceedings for cases in the file sample with and without the process. In this analysis cases where a letter of intent (LoI) was sent were grouped with 'court only' cases.

There was nothing to suggest from the files that the cases had not been adequately prepared. Almost all applications included key documents: - a schedule of findings; an initial social work statement and a care plan for each child. These documents were present in a higher proportion of cases which had been subject to pre-proceedings but the difference did not reach statistical significance.

#### *Duration*

At the end of the research 5 of the 173 cases where care applications had been made were still incomplete, and there were another 7 cases where dates of application or completion were missing, leaving 161 where the length of the care proceedings was known. The average duration for these cases was 51.9 weeks, see table 8.8. This is substantially longer than the 40 week target originally set in the PLO (Judiciary 2008); only 19 cases, 11.8%, were completed in the Family Justice Review's suggested target time of 26 weeks (FJR 2011a, b). There was no statistically significant difference between 'pre-proceedings and s.31' and 'court only' cases; on average 'pre-proceedings and s.31' cases took 51 weeks and 'court only' cases, slightly longer, 52.5 weeks.

**Table 8.8: A comparison of the mean duration of care proceedings (weeks) for cases with and without pre-proceedings in the 6 local authorities**

Local Authority	Case Type*	Mean	N
A	PPP and s.31	37.25	12
	Court only	35.59	17
	Total	36.28	29
B	PPP and s.31	57.83	12
	Court only	59.76	17
	Total	58.97	29
C	PPP and s.31	56.78	9
	Court only	64.29	17
	Total	61.69	26
D	PPP and s.31	48.40	10
	Court only	46.91	22
	Total	47.37	32
E	PPP and s.31	50.70	10
	Court only	54.42	24
	Total	53.32	34
F	PPP and s.31	59.43	7
	Court only	62.50	4
	Total	60.55	11
Total	PPP and s.31	50.98	60
	Court only	52.50	101
	Total	51.93	161

\* 'Court only' includes cases where the pre-proceedings process was used simply to notify the intention to bring proceedings i.e. letter of intent cases.

There were differences between the 6 areas, see table 8.8. In Areas A and D, cases where the 'pre-proceedings and s.31' cases took longer than 'court only' cases but the differences were small, less than two weeks. In the other 4 Areas, 'pre-proceedings and s.31' cases were shorter, with the largest difference, 7 weeks in Area C, where cases without pre-proceedings took longest, over 64 weeks. Grouping cases into under 30 weeks, 30-50 weeks, 50-80 weeks and over 80 weeks the differences between Areas were statistically significant ( $p < 0.001$ ). In Area A, more than a third of cases were completed in 30 weeks or less, compared with 18% for the sample as a whole. Conversely, more than 30% of cases in Area C lasted longer than 80 weeks, compared with 12% for the sample as a whole.

In contrast with the findings of the *Care Profiling Study* (Masson et al. 2008), there was almost no difference in length between cases heard in the FPC and in the county court. Whilst the mean duration of FPC cases for that 2004 sample was 41.9 weeks, it was 52.1 weeks for the current 2009 sample. The length of the county court cases had not increased to such an extent, 51.5 weeks compared with 50.3 weeks in 2004. However, these figures must be viewed with caution – variations between court areas are substantial, and the current sample was mostly drawn from areas not included in the earlier study.

Examining cases with and without pre-proceedings revealed similarities and differences between cases in the FPC and those in the county court. With the exception of Area C, where only one 'pre-proceedings and s.31' case was heard in the county court, there was almost no difference between courts in the length of this type of case in any area. It appeared that the approach to 'pre-proceedings and s.31 cases' was similar in the different levels of court. In contrast, there were major differences between courts for 'court only' cases in 4 of the 6 Areas, A, B, C and D. In E there was no difference with these cases, and in F the numbers of cases was too small for a sensible comparison. In Areas B and D, 'court only' cases in the FPC were shorter by 7 and 4 weeks, respectively, than such cases heard in the county court. One possible explanation is that cases in the FPC may have been somewhat less complex than those in the county court; alternatively, it may have been easier to timetable final hearings in the FPC. In contrast, in Areas A and C, these cases took longer in the FPC, 8 and 19 weeks respectively. It is unlikely that cases which remained in the FPC were *more* complex than those that were transferred to the county court, so it seems likely that case management was weaker in the FPC than in the county court in these areas. This fits with observations of FPCs in a study of care proceedings under the PLO (Pearce et al. 2011). The analysis also identified greater disparity in the treatment of cases with and without the pre-proceedings process in the county court in A, where 'pre-proceedings and s.31' cases took nearly 6 weeks (20%) longer than 'court only' cases .

Table 8.9, below, compares the duration of the sample cases with the length of cases in the same courts, using published Ministry of Justice statistics for the last quarter of 2011. The average for the study sample overall was approximately 3 weeks shorter than the national figures. The Ministry of Justice figures for the FPCs used by B and C include cases from neighbouring local authorities that also used these courts; this is also the case for all the county courts, with the exception of those serving A and E. The length of cases in the two samples for the FPCs in A and D is remarkably similar, which suggests that the study sample fully reflects cases and practice in those FPCs. In relation to most other courts, the cases in the study sample were only a small proportion of those dealt with by these courts, and were

substantially quicker to complete. This reflects the exclusion of 5 incomplete cases from the study figures and the impact of very long cases, which would have started before study cases, on the Ministry of Justice averages. There may be other factors such as cases from the neighbouring local authorities being less well prepared, taking longer and raising the average length. The only information available to the researchers about pre-proceedings practices in the neighbouring local authorities was the Legal Services Commission data giving the number of legal aid bills paid for pre-proceedings work. The picture of use this provides is both limited and unclear, except that use of the pre-proceedings process was above the national average (but not quite as high as D) in most of D's neighbours. Overall, the table serves to illustrate how long care cases were taking at the time of the research.

**Table 8.9 Length of care cases (weeks), sample and MoJ statistics compared\***

Local Authority		Mean	N	MoJ 10-12/11	N
A	FPC	38.60	15	36	20
	CC	33.79	14	44	40
	Total	36.28	29		
B**	FPC	57.35	20	64	30
	CC	62.56	9	72	60
	Total	58.97	29		
C**	FPC	64.07	15	60	40
	CC	58.45	11	64	30
	Total	61.69	26		
D	FPC	46.73	22	46	30
	CC	48.80	10	75	70
	Total	47.37	32		
E	FPC	53.55	20		
	CC	53.00	14	88	10
	Total	53.32	34		
F	FPC	53.17	6	64	30
	CC	69.40	5	83	20
	Total	60.55	11		
Total	FPC	52.09	98		
	CC	51.68	63		
	Total	51.93	161	55	5K

\*Source <http://open.justice.gov.uk/courts/care-proceedings/>

\*\* The duration given for these courts is correct but the number of cases given in published statistics has been changed.



*The length of proceedings from legal planning meeting to the end of the final hearing*

If the focus is on delay for children, the whole period from the legal planning meeting to the end of the proceedings must be considered because this is the time the child’s future remains uncertain. The combination of substantial periods in pre-proceedings and no shortening of care proceedings meant that many children spent long periods before a final decision was made about their care. Furthermore, for those children where the plan was adoption, this was not the end of the process, adoptive parents had to be found and the adoption process completed.

The combined length of the pre-proceedings process and the care proceedings resulted in a mean length for ‘pre-proceedings and s.31’ cases of 70.2 weeks. The lowest mean length was, 59.4 weeks in Area A where the comparative speed of care proceedings was offset by delays in sending letters and holding meetings. The highest mean length was 82.3 weeks in Area E, where both the pre-proceedings process and care proceedings were lengthy. By comparison, ‘court only’ cases were comparatively speedy with a mean of 59.2 weeks, more than 10 weeks quicker, and ranging from a mean of 47.5 weeks in A to 68.8 weeks in F, where there were also 2 unfinished cases. Using the total length of cases, the difference between ‘pre-proceedings and s.31’ and ‘court only’ cases was statistically significant,  $p = 0.018$ .

*Disputed matters and hearing length*

Disputes during proceedings tend to lengthen proceedings because of the need to timetable additional or longer hearings to allow the court to consider disputed matters. The analysis examined whether there were contests in relation to the following matters: interim care orders, additional assessments, contact, placement, threshold and causation of harm. Again ‘letter of intent’ cases are included with ‘court only’ cases. These findings are summarized in table 8.10.

**Table 8.10: Disputed matters, cases with and without pre-proceedings compared**

<b>issue</b>	<b>‘Pre-proceedings and s.31’</b>	<b>‘Court only’</b>	<b>Overall disputed</b>	<b>N disputed</b>	<b>Significance (p =)</b>
<b>ICO</b>	39.0%	27.5%	31.7%	51	NS
<b>Assessments</b>	22.4%	22.5%	22.5%	36	NS
<b>Contact</b>	27.1%	16.3%	20.4%	32	NS
<b>Placement</b>	32.7%	20.9%	25.0%	35	NS
<b>Threshold</b>	21.3%	35.3%	30.1%	49	NS (0.06)
<b>Causation</b>	0%	11.8%	7.4%	12	0.005

There was no difference in the proportion of assessment contests for the two types of case. Where the pre-proceedings process had been used, parents were more likely to contest other issues, with the exception of the threshold and causation, but these differences were not statistically significant. The substantial proportion of contested issues where the pre-proceedings process had been used did not suggest that parents were more willing to accept the local authority's plan to remove children or place them outside the family. In contrast with Tyler's theory (Tyler 1990) treating parents fairly by operating the pre-proceedings process did not appear to make adverse decisions more acceptable in this very emotive area. Indeed, parents' inability to meet the demands of the local authority before the court application was made may have encouraged them to fight subsequently.

Issues relating to the threshold and causation are different. Whereas most of the cases following the pre-proceedings process involved long-term or repeated failure to provide adequate care, 'court only' cases, which went direct to care proceedings were more often based on specific incidents. In such cases, who has caused the harm, and whether what has happened is the result of failure to provide adequate care may be at issue. Thus there are more 'court only' cases where causation is contestable and so different rates of contest are to be expected in the different types of case.

The fact that a matter is disputed does not indicate how strongly it was contested, or whether the party contesting had an arguable case. The length of the final hearing provides some indication of these matters, at least to the extent that the final hearing was managed by the judge. In 73% of the 'pre-proceedings and s.31' cases the final hearing lasted a day or less, compared with 64% of the 'court only' cases. Conversely, 30% of court only cases took three or more days, compared with only 13% of 'pre-proceedings and s.31' cases. The mean length of the final hearing in these cases was 1.75 days compared with 2.475 days for 'court only' cases but this difference does not reach statistical significance.

Overall, it appeared that the pre-proceedings process made no difference to the way care cases were handled by the courts. This reflects the experience of local authorities in the study and elsewhere, and of lawyers representing parents.

### **8.8 The outcome of care proceedings**

The use of the pre-proceedings process made no difference to the orders made at final hearing, see table 8.11. The outcome of these proceedings were comparable with those in the *Care Profiling Study*, if allowance is made for the greater emphasis currently given to adoption, and the fact that special guardianship was only available for cases concluded after December 31<sup>st</sup> 2004. Care orders, with or without Freeing/Placement orders were made in 59.4% of the 2004 sample and 58.9% of the 2009 sample, and residence or special guardianship orders were made in 23.5% and 25.1% respectively.

Although the numbers are small, the use of the pre-proceedings process appeared to have some impact on case outcome; all but one of the 11 cases which did not result in an order, because they were withdrawn, dismissed or an order of no order was made, were 'court only' cases, started without use of the pre-proceedings process. In the only withdrawn 'pre-proceedings and s.31' case (4181), proceedings

had been started after the mother failed to turn up for a review pre-proceedings meeting. The proceedings were subsequently withdrawn following the mother's return to her home country, a move supported by both the local authority and the children's guardian. Had greater co-operation been established between the local authority and the mother in this case, care proceedings could have been avoided.

**Table 8.11 Orders made at final hearing**

<b>order</b>	<b>CPS (2004) %</b>	<b>Edge of care (2009) %</b>	<b>'PPP + s.31' %</b>	<b>'Court only' %</b>	<b>Edge of care N</b>
<b>Dismissed</b>	<b>0.3</b>	<b>1.2</b>	<b>-</b>	<b>1.9</b>	<b>2</b>
<b>Care order</b>	<b>47.9</b>	<b>25.8</b>	<b>26.7</b>	<b>25.2</b>	<b>42</b>
<b>Care +FO/PO</b>	<b>11.5</b>	<b>33.1</b>	<b>30.0</b>	<b>35.0</b>	<b>54</b>
<b>SO</b>	<b>14.2</b>	<b>12.3</b>	<b>11.7</b>	<b>12.6</b>	<b>20</b>
<b>RO/ RO+SO</b>	<b>23.0</b>	<b>11.0</b>	<b>11.7</b>	<b>10.7</b>	<b>18</b>
<b>SGO</b>	<b>0.5</b>	<b>14.7</b>	<b>20.0</b>	<b>11.7</b>	<b>24</b>
<b>No order/ wdn</b>	<b>2.5</b>	<b>2.9</b>	<b>-</b>	<b>1.8</b>	<b>3</b>
<b>Total</b>	<b>365</b>	<b>163</b>	<b>60</b>	<b>103</b>	<b>163*</b>
<b>Wdn before FH/</b>	<b>20</b>	<b>5</b>	<b>1</b>	<b>4</b>	<b>5</b>

\*Excludes 5 cases incomplete at the end of the Study.

### **Key points**

- **The pre-proceedings process was successful in diverting cases from care proceedings both through improvements to parental care and by securing agreement to care by other family members. Around a quarter of cases that entered the pre-proceedings process in the sample local authorities were diverted from proceedings.**
- **A higher rate of no care proceedings was found in the observation sample. Care proceedings were avoided in approximately two-thirds of observed cases where this was possible.**

- The use of the pre-proceedings process was prone to delay. Delays occurred at all points of the process: sending of letters before proceedings, arranging meetings and taking action where parents did not address the local authority's concerns adequately.
- Interviewees from all professional backgrounds agreed that the courts generally disregarded the pre-proceedings work and ordered further assessments. Local authority interviewees were disillusioned but trying to find ways forward, such as agreed letters of instruction for pre-proceedings assessments. Private lawyers saw it as an inevitable feature of the forward-looking logic of care proceedings and their role to 'bat for their clients'. Judges' explanations were the need for fairness to the parents, scepticism about the quality of local authority work, and to prevent their decisions being overturned on appeal.
- There was no statistically significant difference between the length of care proceedings for 'pre-proceedings and s.31' and 'court only' cases, although some interviewees did claim that in a few cases the pre-proceedings process had led to shorter proceedings. The average length of proceedings for the whole sample was 52 weeks.
- With the exception of the issue of causation, there was no statistical difference between 'pre-proceedings and s.31' and 'court only' cases in relation to contested matters.
- 'Pre-proceedings and s.31' cases took longer from the legal planning meeting to the end of the final hearing than 'court only' cases - those that went straight to care proceedings. The mean difference was 10 weeks and was statistically significant.
- Overall, the use of the pre-proceedings process made no difference to the orders made at final hearing. However all but one of the cases which did not result in any order had reached court without use of the pre-proceedings process.

## **Chapter 9: Reflecting on the pre-proceedings process**

This chapter offers commentary and reflections on the empirical findings, in the light of the goals of the pre-proceedings process, its background and the context of its subsequent implementation (as described in Chapter 1); the theoretical perspectives and policy debates outlined in Chapter 3; and the implications of the impending introduction of the 26 week limit for (most) care cases. Underlying all the debates are the key challenges of having to manage the tensions between vitally important imperatives: to protect children from harm and also families from injustice, to provide effective support to families under pressure but avoid undue delay.

There are five main sections in the chapter. The first reflects on the findings and the theoretical perspectives; the second highlights the main ‘positives and negatives’ of the pre-proceedings process; the third considers whether and what added value it has brought; the fourth assesses the future prospects for the process, and the final section debates the implications of the 26 week limit.

### **9.1 Reflections: the findings and the theoretical perspectives**

Three aspects of the theoretical perspectives are discussed in this section: the naturalistic approach to decision-making, the role of the law and lawyers, and the nature of partnership between social workers and parents in a child protection context.

#### *Naturalistic decision-making*

A naturalistic approach reveals the complexity of decision-making about whether or not to take cases to court, or into the pre-proceedings process. It is not a simple matter of ‘does the case meet the threshold?’, because there are different thresholds for different purposes, different interpretations of what evidence is required, and many other pressures apart from the features of the case itself. The concepts of ‘surround’, ‘field’ and ‘frame’ (Hawkins 1992, 2002), and the ‘decision-makers’ horizons’ (Emerson and Paley 1992), as discussed in Chapter 3, suggest a range of factors that come to bear: for example, the pressure of public opinion and fear of scandal, agency policies and culture, resources, individual skills and values, previous experience, and expectations about what will happen if the case does (or does not) go to court.

A way of looking at the process that emerged from the interviews is to see it in terms of the balancing of three imperatives: rights, utility and procedures. There was a strong view that the letter and meeting were the right thing to do, and could uphold parents’ rights to participate. There was also a strong view, or hope, from the local authority side in the utility of the process, that the lawyers’ advice and the meeting could bring about improved parental engagement. Against this, there were also strong views that the process could lead to drift and delay, thus undermining utility and the child’s rights. These negative views were magnified by the court’s approach to the pre-proceedings process, largely to ignore it, causing great disillusionment in the local authorities. This rights-utility dimension is discussed further in section 9.4, on the future of the process.

There was a third view that it was something that had to be done, another procedure, but this was sometimes used by parents' lawyers to de-value the process, or even by social workers to take the sting out of the process when discussing it with parents. There is nothing necessarily wrong in something being a 'procedure' if it is grounded in good evidence, is understood by those using it and allows appropriate room for professional judgment about how to apply it. Also, the notion of procedural justice adds another dimension, that following due process is the heart of a fair approach. In our six authorities, although the pre-proceedings process was not used in every case, it did appear to have become a routinely-considered part of the social work and legal decision-making about care proceedings, and interviewees valued it as a way of being fair to parents. The interweaving of these three perspectives, with positive and negative sides to each, underscores the complexities of the decisions and subsequent action.

As for the decisions about 'threshold', the word gives the impression of a single clearly defined standard for intervention, but as noted in Chapter 3, there are many different thresholds operating at different points in the child protection system, and the interviews revealed some disagreement about what level of threshold had to be crossed to justify the pre-proceedings process and which warrant going straight to court – see Chapter 5. Given that all the cases in the pre-proceedings process should, according to the Guidance, be ones where the local authority has decided that it intends to start care proceedings, they should all have been considered to meet the s.31 threshold criteria for a care order; but the threshold *in practice* for actually taking a case to court is higher than that (e.g. Cafcass 2012a, Education Committee 2012, 57-78). The threshold(s) for the pre-proceedings process are likely to fall between the two. The consequence of operating a lower threshold for the pre-proceedings process than the 'real' threshold for care proceedings means it could be used where proceedings would not be initiated, perhaps because the case is not seen as justifying compulsory action or the currently available evidence is quite weak. A dispute between a local authority lawyer and a team manager, about whether such a 'weak' case should go into the pre-proceedings process was described in Chapter 5. Practitioners may decide to allow such cases into the pre-proceedings system on the basis that the court horizon is more distant, the case will be given further consideration before any proceedings are authorised, and by that time more will be known about the child's care. However, this brings the risk of 'net widening', drawing more individuals into the system than would have been before.

Operating against this risk, there is the 'last resort' ethos and the pragmatic barriers of keeping down workload and use of resources. Also, there was an awareness of the importance of not starting the pre-proceedings process without the evidence, or the resolve, to go to court if the agreement were breached, which should have kept cases out of the system. Nevertheless, there were cases which drifted on in the pre-proceedings even though the agreement had not been kept.

#### *The lawyers' role and influence*

The observations of the meetings showed that neither local authority nor private lawyers were taking over the running or conduct of the meetings. All but one of the observed meetings was chaired by a social work manager, and lawyers on both sides were, for the main part, quiet or even silent. This

observation is in partial contrast to Holt et al.'s (2013) findings from their study of 57 cases in Coventry and Warwickshire, where local authority lawyers chaired the meetings; but like us, they found that parents' lawyers were usually quiet in the meetings. Further, they found a higher proportion of paralegals representing parents than we did – approximately half the cases in their study, whereas only 20% of the parents in our observed sample did not have a qualified solicitor.

This is not to say that the lawyers, on both sides, did not influence what happened, both by their presence in the meeting itself and by their advice in other meetings with their clients (i.e. children's services staff or parents). Nor is it the case that paralegals could not undertake the work in the meeting as well as a qualified solicitor, contrary to Holt et al.'s general misgivings about the quality of legal representation from paralegals (2013, 8). Our findings and analysis are that whatever the qualifications, the lawyer's role was constrained by the ethos of the meeting, that it was meant to be 'social work led' (MoJ and DCSF 2009, para 2.5.2), and actively to involve the parent, as well as pragmatic considerations about how well they knew the case, and funding. The priority was to help the parents to speak for themselves, if at all possible, as a first step towards greater engagement.

The local authority lawyers are key participants in the legal planning meetings that make the decision whether or not to enter the pre-proceedings process, and may be involved in the review processes. They may be asked to give advice about the letter, or other aspects of the case as the work progresses. We also observed them taking part in pre- and post-meeting discussions with social workers and team managers. Their advice about whether or not the threshold for the pre-proceedings process was met, was crucial to the whole operation. As discussed above, this was not at all a simple decision, a 'rational choice', but could be a slippery concept, sometimes with limited information about anxiety-provoking cases, and the way that some legal planning meetings were organised could compound this. Difficulties could arise if information was not available to participants beforehand, if tight scheduling meant there was not enough opportunity to discuss the issues, or if the discussion was not suitably focused.

The parents' lawyers influenced the conduct of the pre-proceedings meeting by their status and credibility as independent client-focused professionals, even if they said little. Parents found their advice and presence supportive, and this could change their behaviour, helping them to engage better. Also, the lawyer was a witness to the conduct of the local authority, and this could have a longer-term impact on the relationship between the children's services department and their client.

The lawyers influenced the process by what they said to their clients before and after the meeting, and here our findings echo those of previous research into independent advice and advocacy in child protection meetings, that their main advice is to cooperate with the local authority. This is a way in which the utility of the process appealed to the social work side, and fits with the naturalistic approach that highlights the multiple factors that influence the progress of cases. The lawyers tend to encourage participation and compliance, rather than challenge.

A distinctive finding from our study concerns the impact of what happens (or not) at court – notably, that the pre-proceedings process had very little impact whatsoever. New or repeat assessments were

still ordered, and the average duration of court proceedings was near enough the same whether or not cases had been through the pre-proceedings stage. So, paradoxically, the lawyers did not need to worry too much about protecting their client's interests in future court action (because they will get another chance then anyway), but could focus on ensuring that their client had the best opportunity of avoiding proceedings, by understanding the authority's concerns and engaging with the social worker. They were working 'in the shadow of the law' (Mnookin and Kornhauser 1979), the possibility of a court application, but (excluding the letter of intent cases) the shadow was not as dark as one might suppose.

### *Partnership and delay*

The pre-proceedings process may be a way of trying to work in partnership with parents, but in the context of child protection work this is an unequal pairing. The local authority has statutory duties to protect children and the power to start court proceedings to remove them from their parents. Studies of parental participation in child protection cases show that parents are usually intensely aware of this imbalance and the pressure on them to comply, in general and especially in case conferences and other formal meetings (for useful summaries see Healy and Darlington, 2009; Darlington et al., 2010; Buckley et al. 2011). Corby et al.'s (1996) research into case conferences in the 1990s concluded that parental attendance was not meant to bring different decisions or different outcomes, but to enforce their compliance with the pre-determined views of the professionals. The observations and interviews in our study certainly showed this tendency. The literature on legal representation (Masson et al. 2007; Pearce et al. 2011; Masson 2012) illuminates how parents' own lawyers may become part of this process. They act in their client's interests, but for the main part this is to be achieved by encouraging them to take part in the meeting, and stick to the agreement proposed by the local authority. The lawyers are prepared to question the details of the proposed agreement, but any changes tend to be about relatively peripheral matters. The local authority will hold to its core requirements. Parental participation and 'partnership' in the pre-proceedings process is constrained by these limits.

Set against the local authority's hope for new or improved engagement from the parents, there is the risk of drift and delay. This is of course a long standing difficulty, as the theoretical and policy perspectives showed. The pre-proceedings process was intended to reduce delay in care proceedings, but this study shows that it has not achieved that.

## **9.2 Positives and negatives of the pre-proceedings process**

The pre-proceedings process has strengths and weaknesses, and brings opportunities and threats. The theoretical and policy perspectives shed light on the potential benefits and pitfalls found in the empirical study.

First, the process brings opportunities and threats for both social workers and parents. For social workers, there is the prospect that the parent's lawyer will reinforce their message, and the process will lead to better engagement – an example of the attraction of the least overtly coercive route identified by Dingwall et al. (1983), and the subtle aspects of social and legal control identified by the juridification literature. Social workers also appreciated the process as a framework for making clear plans about the



case. There were threats, though, of having their work exposed to scrutiny by the parents' lawyer, and of the meeting becoming conflictual. The previous research on independent advocacy in child protection cases shows that social workers become more confident about the involvement of parents' representatives the more experience they have of it, which may be another factor behind the national trend that high-using authorities have increased their use of the pre-proceedings process, whilst low-users have decreased it.

For parents there were the benefits of independent legal advice, but the reality is that this advice is usually *to comply*. The other drawback for the parents is that they are (ostensibly) entering a period of very close scrutiny, with profound consequences if they do not keep the agreement. Many of the parents felt the pressure and were anxious about the meeting and what would be required of them. Clarity about tasks and timescales is required, but people do not, on the whole, co-operate best when they feel angry or frightened – angry that they are not being listened to or assisted, frightened about what might happen. This dilemma makes the process a complex and challenging affair, requiring skilful intervention by the social work and legal professionals involved.

A second positive/negative dimension is the opportunity of diversion versus the risk of delay – compounded by the risk that diversion may not always be in the best interests of the child, and what appears now to be diversion may in time come to be seen as extra delay. It is not possible to predict accurately cases where diversion will happen (some very unpromising cases did stay out of proceedings, such as the Drury family, where the social worker said that her colleagues were '*outraged*' that the case was not taken straight into care proceedings), or to say that diversion would not have happened anyhow. Nor is it possible to be sure that diversion will last throughout childhood – the families have high levels of need, often lack resources and are subject to great pressures (economic, social and personal) which could push them over the edge.

The theoretical perspectives in Chapter 3 suggest that it is important to guard against over-optimism and over-pessimism. The former might lead to prolonged use of the pre-proceedings process, the latter to too punitive a response to setbacks. The empirical material suggests that long periods in the pre-proceedings stage are not simply because of over-optimism, but arise because of lack of regular review, failure to provide services on time, and pressure of other work that takes attention away from the case. There were also some cases that spent very little time in the pre-proceedings process before returning to general social work. Again, this might be because of over-optimism, but may also be a sign of giving up in the face of on-going difficulties to engage when there is no immediate crisis to warrant more forceful intervention, and agency policies and practice about closing cases when there is no active work going on.

A third positive/negative dilemma concerns the national increase in the number of care applications, and in the number of children looked after, since the launch of the pre-proceedings process. As the theoretical and policy discussion showed, this may be regarded as either a good thing or a bad thing. It is not clear what the 'right' number of children in care should be. The answer that any individual gives

depends on their own values, beliefs and social attitudes and political convictions, rather than indisputable facts.

Is the increase linked to the introduction of the pre-proceedings process? We have to conclude that it is impossible to say. There is the possibility that the pre-proceedings process has widened the net, as discussed above, but the file survey shows a diversion rate of about 25%, which suggests that it has actually helped to keep numbers down. The increase in care proceedings is not driven by the pre-proceedings process itself, but by the greater number of cases being referred to legal planning meetings, and the naturalistic approach highlights the multiplicity of factors behind the referrals and the decisions that these panels make.

Finally, there are potential advantages and disadvantages in terms of social work resources. The process has the potential to shift resources from court-focused activities such as preparing evidence and attending hearings to work with family; but practice in the courts during the study means it added to the demands on local authorities and on social workers' time because there was no 'trade off' for the extra pre-court work in terms of a reduction in the length of proceedings, or the tasks that were required during proceedings.

### **9.3 Adding process or adding value?**

Alongside the Munro (2012) progress review, a number of case studies were published on the DfE 'Munro review website', to illustrate the progress that different authorities were making towards the recommendations of building a child-centred system. In the case studies from Walsall, a golden rule is offered for removing processes and reducing bureaucracy – 'if it doesn't help, don't do it' (Walsall Council 2012). In considering whether the pre-proceedings process is something that is helpful, or just another procedure in the pejorative sense of the term, it is important to distinguish between the two main uses, the letter of intent cases and the more frequent ones where diversion from court is still a possibility.

Letters of intent should be considered proper and normal operating procedure in any case where the local authority has decided to start care proceedings, except where the volatility of the parties and the need to protect the child demands that action is taken without notification. This is based on rights and utility; fairness for the parents and the opportunity for them to get legal advice, and more time to plan arrangements for the child and on-going case work.

As for the full pre-proceedings process, the motto 'if it doesn't help, don't do it', raises questions about what is meant by 'help', for whom, how, and could it help better. The perceived benefits are the opportunity for parents to understand the strength of the local authority's concerns, receive independent advice and engage better with children's services. The local authority's goal might be for them to agree to alternative care for their children with relatives or friends, or in s.20 accommodation, or agree an assessment, but most often the main aim was improved parenting. The parents' lawyer was seen to have a positive role to play in this, helping their client and children's services to establish a more

effective working relationship. They did this by advising the client to cooperate, by influencing the conduct and tone of the meeting, and by helping to clarify the details of the plan.

For all that, the key issue is what can realistically be expected of a relatively simple and short process, given that most of the families are well-known to the local authority, possibly over many years (and some had other children in care or even adopted), and most would have been to many meetings before and been asked to keep many previous agreements. It is important to resist 'magical thinking' about one more meeting, or the involvement of one more type of professional. It is not the meeting, or the lawyers, that produce and sustain the necessary changes, but the work that is done with and by the parents afterwards. The lawyer and the meeting can be catalysts, but it is social work support and parental willingness and ability to change that makes the difference – and these changes have to be achieved within the child's timescale.

Avoiding magical thinking about the impact of one more professional is a warning for schemes to involve children's guardians in the pre-proceedings process, discussed in Chapter 1. The interim report on the pilot scheme in Coventry and Warwickshire was published in spring 2012 (Broadhurst et al. 2012a) and the full report is due soon. We await the report with interest, and obviously cannot comment fully on the scheme without it. However, in the light of the interim report and other papers published by the research team (Holt and Kelly 2012a, b, Holt et al. 2013), we do have reservations about the feasibility and benefits of extending the pilot, as explained in Chapter 1. In particular, as the interim report notes, there are major challenges for expanding the scheme in the context of tightly stretched staff resources in Cafcass, and involving staff who may not be as committed and experienced as the small group of guardians in the pilot (Broadhurst et al. 2012a, 5-6).

The impact of the Cafcass Plus scheme on the duration of any subsequent care proceedings was not known at the time of the interim report, and clearly this will be a key finding factor in assessing the value of the project. There are many parallels between the role of the Cafcass officer in pre-proceedings and what parents' lawyers try to do – explaining the processes and re-iterating the seriousness of the situation (Broadhurst et al. 2012a, 19-22). Independent advocacy in child protection has been found to play a similar role (e.g., Lindley et al. 2001a; Featherstone and Fraser 2012 – see Chapter 3). So the issue is less about the *need* for parents to have such support, and more about who can provide it, and how to ensure that parents can get a service.

Although lawyers and Cafcass officers play similar roles in pre-proceedings work, these should not obscure the considerable differences which need to be considered in developing national provision. What advantages and disadvantages do the separate disciplinary perspectives bring? Is a pre-proceedings service best located in the public, private or third sector? Given that the majority of cases will end in care proceedings, how is this transition best managed for parents and the court? Furthermore, adding a Cafcass worker at an early stage risks blurring the boundaries between providing services to children and families (LA) and reporting to the court and representing children in proceedings (Cafcass).

If the 26 week target for care proceedings is to be achieved, local authorities will need to maintain or improve their standards of practice, cases will need swift and independent assessment by guardians, and the courts will need to be confident in both of these. Workforce pressures suggest it will be hard for Cafcass to respond to the court demands *and* do pre-proceedings work; but beyond those pragmatic considerations, there is a rights issue, for the parents and the children – the importance of having a new professional to look at the case once the proceedings have started, independently and swiftly. The important counterweight to this is that parents have the benefit of a relationship with a lawyer who already knows them and their case.

#### **9.4 The future of the pre proceedings process**

##### *Rights or utility?*

Interviews with professionals and those on the receiving end of the pre-proceedings process revealed two major perspectives on the process, *rights or utility*. These were not simple alternatives, and some interviewees saw it in both ways, *rights and utility*. Using the pre-proceedings process was the right way to treat parents, it was fairer, it showed respect for them and recognized the power imbalance by enabling the parents to have someone at the meeting who was '*on their side*'. The process was useful to the local authority, because parents heard messages from their lawyer which they had rejected from social workers, and this could encourage co-operation, and to parents because they felt supported in '*beating*' the local authority. More objectively, the process was useful to both sides in keeping some cases out of the courts, even though it had no apparent effect on what happened to the cases that got to court. So the rights aspect applied to all cases, but the process only resulted in a positive outcome for a minority, and where cases were not diverted from court there were negative effects of delay.

Whilst these views were also shared by most of the lawyers in private practice interviewed in the study, more negative views have been expressed elsewhere (Welbourne 2008, Jockelson 2013; *Re N-F (children)* [2009] EWCA Civ 274, Thorpe LJ). This different perspective sees court involvement as essential. Parents' and children's rights are only adequately protected by the court, so keeping cases out of court merely prolongs the period when local authority action is not scrutinized. From this perspective, opportunities to provide effective help are overlooked, and even lost, to the detriment of parents and children. Time spent in pre-proceedings can weaken relationships where parents and children are separated and erode rights to family life. Also, courts have developed systems to monitor delay and progress cases but within local authorities, it is argued, there is no such timetabling, and Independent Reviewing Officers provide no real safeguards. Diversion from court is considered unlikely, and not sufficient to make the pre-proceedings process useful. This research challenges those beliefs whilst identifying that drift and delay occur in pre-proceedings as it does in court.

The *Guidance* (DCSF 2008) and the requirement to file the letter and minutes with the court gave the clear impression that the use of the process was a requirement unless the 'scale, nature and urgency' of concerns meant that this was not in the child's interests (DCSF 2008, para 3.30). The six study local authorities treated the process as a requirement, using it in almost every case where there was time to

do so (see Chapter 5), but used 'letters of intent' where they saw no prospect of diversion and sent fewer letters to fathers than to mothers. The Legal Services Commission data (see below, Chart 9.2) suggests that some other local authorities took a more limited approach, and that fewer fathers than mothers obtained pre-proceedings legal advice (see chapter 6).

The universal approach to using the pre-proceedings process reflects a rights orientation, whilst selective use suggests a focus on utility. Use of the process depends on some prospect of achieving a positive outcome. In this respect, the failure of the courts to take account of local authority action reduces utility for local authorities. Both the disillusionment of local authorities in the study and the decline in use (discussed below) indicate that local authorities found the process less useful than they had expected it would be. The challenge for the courts is how to respond to the pre-proceedings process and ensure that the care proceedings are fair. This raises a further issue about utility, it depends on how others – the parents, their lawyers and the courts – responded to the process. Of course, it could be useful in facilitating partnership working and avoiding court proceedings but these cannot be achieved by the local authority independently, whereas seeing the process as the right way to act did make social workers and managers feel more positive about their practice.

Part of the intention in introducing the pre-proceedings process was to ensure that cases were better prepared, that local authorities had completed the assessments they considered necessary and based their care plan on them. This use of the process also had clear utility for the courts. These pre-proceedings assessments, core assessments and any additional specialist assessments were for the local authority, but were undertaken in partnership and, if a court application was made, they would be disclosed as a matter of parents' rights. One of the study local authorities made substantial use of the pre-proceedings process to arrange specialist assessments; the others had become far more reluctant to do this because their courts routinely ordered expert assessments, which local authorities saw as merely duplicating this work. As a consequence, this potential benefit to courts and local authorities was lost. Proceedings were not completed more quickly; court and local authority resources were not saved. Many children and families also waited far too long for court decisions to be made.

This raises question about why the courts acted as they did. A naturalist approach suggests the interaction of a range of issues, identified in the study and elsewhere. Traditionally care proceedings are treated as an opportunity for 'welfare investigation, assessment, and the promotion and management of change' (Hunt 1998) continuing the approach in wardship, not as a process for testing the local authority's case against the Children Act 1989's provisions. Attempts to reduce the length and breadth of proceedings have failed because these features are seen as inherent in the cases and necessary for justice (Pearce et al. 2011). So taking more account of work before proceedings required change of practice and mindset. Societal beliefs about the family and state intervention (Dingwall et al. 1983), lack of trust in local authorities (Family Justice Review 2011a) and strong views about fairness to parents combined to discourage changes which appeared to favour local authorities. Furthermore, the new process was not seen as benefitting children if it undermined the possibility of parental care.

A rights-based approach which accepts limitations reflects the local authority's duty, set out in the Children Act 1989, s.22(4) to ascertain parents' views before making any decision about looking after their child 'so far as reasonably practicable'. This in turn is based on the state's obligation in the European Convention on Human Rights, article 8 to respect family life. Article 8 is a qualified right, limited by the need to protect the rights and freedoms of others. It has both substantive and procedural aspects, and requires positive action to respect rights, rather than merely restricting interference. Thus parents have to be involved in decisions about their children's care but cannot be said to have an absolute right to notification of the intention to bring care proceedings where this would place their child at risk (*Johansen v Norway* 1996; *K and T v Finland* 2001; *P, C and S v UK* 2002).

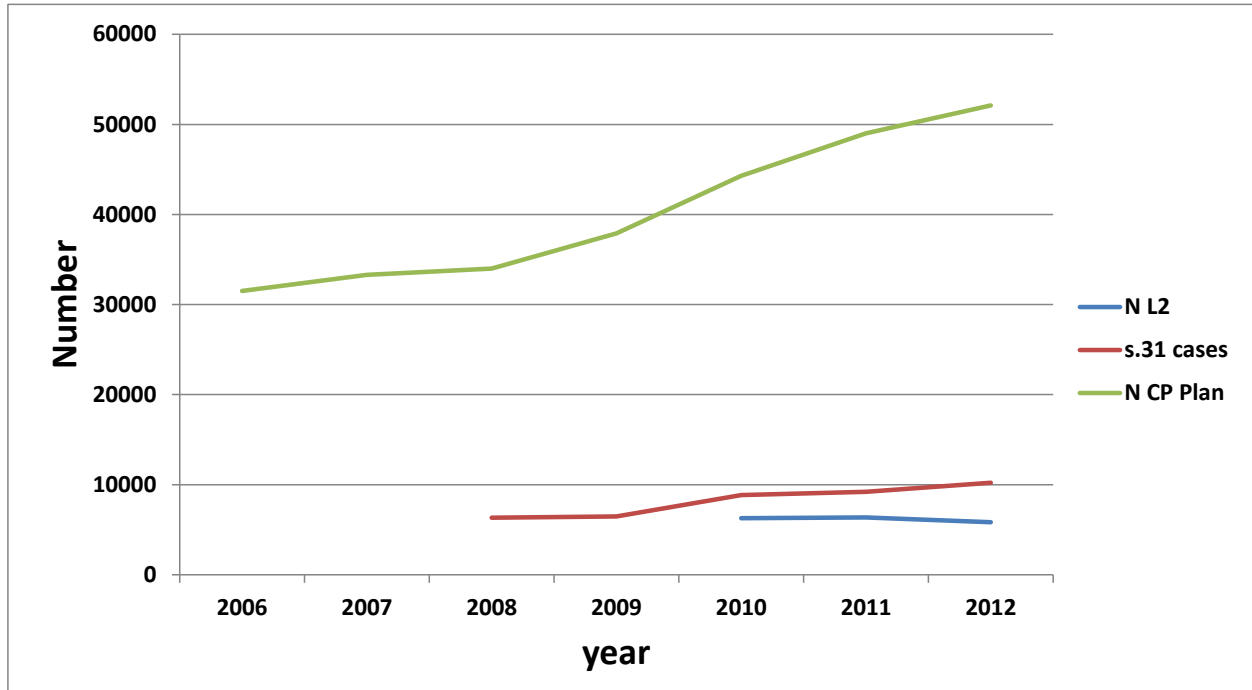
Following the Human Rights Act 1998, the courts have repeatedly criticized local authorities for their failure to involve parents in decisions about their children's care (*Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam); *Re C* [2007] EWCA Civ 2; *G v NCC* [2009] 1 FLR 774). Whether or not the criticisms in any particular case reflect widespread practice is a separate matter, but they raise the question of whether the Convention, statute or Guidance could be interpreted as creating an *enforceable right* to the pre-proceedings process, so that failure by a local authority to use it could be actionable. Neither the Convention nor the Children Act 1989 states how parents should be involved, so a spoken discussion, which would not trigger legal advice might be sufficient. However, the creation, in statutory guidance, of a system for free legal advice suggests government acceptance that advice is required for parents to be sufficiently involved in these edge of care decisions. There would be no basis for challenge where children's interests justified direct application to court; and it seems unlikely that lawyers who consider that the court protects parents' interests better would advise a claim. However, there would be more interest in examining how parents' rights had been respected, if use of the process started to make a difference to care proceedings. This would make the process more legalistic, and negate its positive impact on parent/ social worker interaction.

#### *Decline in use of the pre-proceedings process*

There was a decline in the use of the pre-proceedings process over the three years 2009-10 to 2011-12, shown by the reduction in the number of bills for pre-proceedings legal advice (level 2 bills). Within the study, this decline was seen in all of the local authorities, with the exception of D, where there was a slight increase, (see above Chapter 2, chart 2.1). The decline was most noticeable in F where there had been very substantial use of the process initially; the use of the process halved in 2010-11 and was further reduced the following year. E's use of the process, already below the average declined substantially in 2010-11; it increased the following year but remained lower than it had been initially. These changes did not merely reflect changes in the number of care proceedings being brought by the local authority. Cafcass figures indicate that the number of care proceedings brought by authorities B, C and E increased substantially, particularly in the third year. In contrast, in A, D and F they rose in 2009-10 but dropped back subsequently (Cafcass 2012, App B).

This national decline in use of the pre-proceedings process occurred despite the increase in child protection plans and the number of care proceedings, see chart 9.1. In light of the failure of the courts to respond as expected by completing care cases more quickly, and the pressure of increased caseloads and reduced resources, this is a rational response. For some local authority managers and lawyers, the process does not appear to have enough value to justify promoting its use or committing resources to it.

**Chart 9.1 Numbers of child protection plans, s.31 cases and provision of pre-proceedings advice (level 2 bills)**

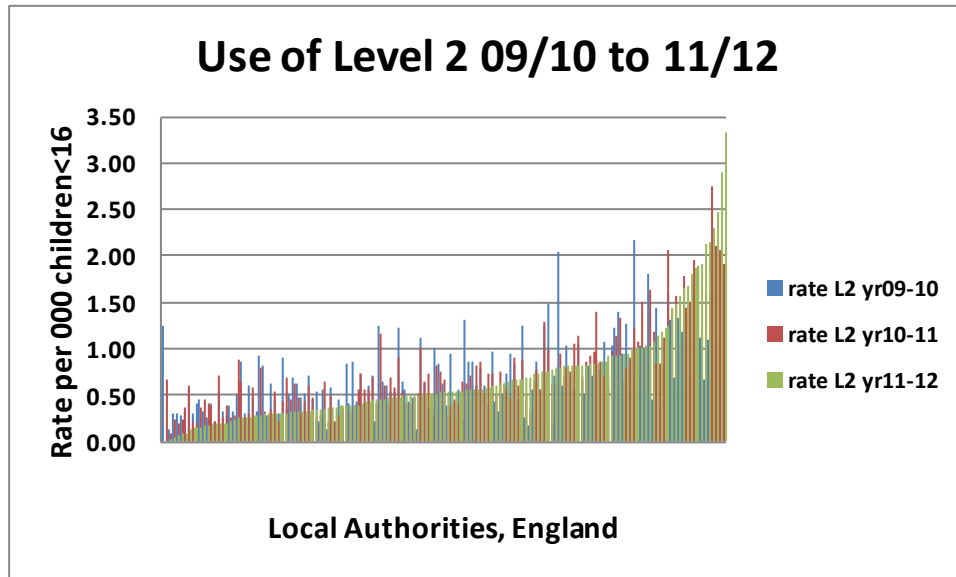


Legal Services Commission data on bills for pre-proceedings legal advice suggests a wide variation in use of the pre-proceedings process in different local authority areas, and over the three years for which data is available. Whilst the number of care applications increased substantially between 2009-10 and 2011-12 (Cafcass 2012b), the number of bills for pre-proceedings work (referred to as Level 2 by the Legal Services Commission) declined by approximately 7%, from 6282 in 2009-10 to 5842 in 2011-12. When compared with their child populations, there is a wide range across local authorities in England and considerable change from year to year. The average in 2011-12 was 0.6 per 1000 children under the age of 16, with a range from 0.17-2.14.

Chart 9.2 displays the rate of use of the pre-proceedings process per 1000 children under the age of 16 years, ordering local authorities by their rate for 2011-12. Darker spikes that appear above the graded shaded area identify local authorities with higher rates in earlier years. Similarly pale sections below the graded area identify local authorities whose rate has increased in 2011-12. Between 2009-10 and 2011-12, LSC data indicates that 33 local authorities in England (22%) increased their rate of use; two-thirds of these were already above average users. Use declined in 71 local authorities (47%); four-fifths of these

were already below average users. There is a similar pattern of use compared with the number of care proceedings but the substantial increase in cases noted in the Introduction (section 1.5) is not reflected in all local authorities.

**Chart 9.2: Variation in the rate of use in local authorities in England 2009-10 – 2011-12**



The decline in use, particularly in already low-using local authorities, suggests that it has been even harder to maintain an interest in, or commitment to, using the process in these authorities. In contrast, where the process is already well established, use tends to be maintained, or increased. This reflects impressions gained from the research. In local authority D, where the views of managers and local authority lawyers were largely positive there was no decline in use. In contrast in E, where the researchers came across the most sceptical attitudes, use declined, albeit with a slight increase in the third year, but it remained below the national average.

Making use of the pre-proceedings process a general practice, that is, using it for almost all non-emergency, non-immediate cases, requires change by low-using local authorities, and will make greater demands on law firms. Whilst the arguments for doing so on the basis of parents' rights, procedural justice or partnership practice are strong, the utility of the process currently rests on its capacity to encourage a minority of parents to engage with social workers to improve their care or to accept alternative care arrangements. Managers and lawyers interviewed in the study expected more; they had understood that the courts would take account of the work done in pre-proceedings, and as a consequence, be more prepared to accept that the local authority had made its case for the order it sought. The judges we spoke to said that they were unaware that the local authority had used the pre-proceedings process, but this should not occur in future if local authorities follow the recommendation to draw attention to such action in social work statements and when opening the case in court. The



failure to take the process into account is more deeply rooted, in court attitudes and practices, and in the legal system's resistance to change. These are all issues which have to be addressed if Ryder J's 'modernisation of family justice' is to succeed, and for the Family Justice Board to create a family justice *system*.

### **9.5 Role of the pre-proceedings process with time limited care proceedings**

Legislation has been prepared to introduce a 26 week time limit for care proceedings; extensions will be allowed only where this 'is necessary to enable the court to resolve the proceedings justly' (Children and Families Bill 2013, cl. 14(5)). This is a controversial proposal, which does not have general acceptance in the legal profession. The 'emphasis on speed carries real dangers' (Chair of The Family Law Bar Association 2012) and is 'impracticable' according to the (former) joint chair of the Association of Lawyers for Children. The Law Society has raised anxieties that it could lead to additional (satellite) litigation. Views also differ about the proportion of cases that could be dealt with so quickly, with a range from as low as 30% to over 70% (Justice Committee 2012, para 33). Other evidence to the Justice Committee raised concerns about children being placed with strangers rather than remaining with parents or being cared for by relatives, in the rush to complete cases within the timetable (Justice Committee 2012a).

Reducing the length of case to 26 weeks will clearly be a challenge for the courts, as cases have taken longer since the early years of the Children Act 1989. Shortening case duration is not simply a matter of being more efficient, working harder or faster, it requires a different approach to proceedings. The court has to decide the case on the basis of the available evidence, rather than using the proceedings to supervise a complete re-assessment of the child's circumstances by experts. It also requires active case management of the proceedings by the judge, rather than awaiting agreed directions from the parties, the common practice observed by Pearce et al. (2011), and the restriction of expert evidence to what is necessary for the decision (Family Proceedings Rules 2013; Children and Families Bill 2013, cl. 13).

Within this context, local authority pre-proceedings work serves two distinct roles. First, by providing an early 'wake up' call to parents, it can help to allay fears that there has been a rush to judgment. Parents have been given an early warning of the seriousness of the concerns, some time to begin to address them, and access to legal advice. Adding the pre-proceedings process will mean the end to end length will be far closer to 40 weeks than to 26 (see Chapter 8). Second, the preparation of the local authority's case has not been done without notice to the parents, who have the opportunity to suggest changes to the written agreement or identify alternative carers. Weighed against these are concerns that local authority pre-proceedings work is not good enough, so that it will not be fair or even possible to reach a decision about a child's separation from the family without further assessment by experts. There are suggestions of this latter view in the evidence to the Justice Committee, and in its conclusions: 'Accurate, comprehensive and detailed pre-proceedings work was vital to reducing delay within the care proceedings process' and 'there is a need for high quality and comprehensive pre-proceedings work by local authorities' (Justice Committee 2012, paras 6 and 7). At one level these are obvious comments; it is the quality of the work, not the fact that the process has been used that matters. However, they should

be understood within the history of the relationship between social work and law, where law has tried to remain on top by assessing social work according to its rules of procedural formality – did the parents get a clear letter, detailing all the concerns, with sufficient notice to find a lawyer etc. – and the ability of social workers to present well from the witness box.

If *most* care proceedings are to be decided within 26 weeks, invoking the pre-proceedings process cannot result in quicker decisions for the cases where it is used. Using it will therefore bring no advantage in terms of avoiding delay in cases that reach court. This reflects the current position. However, it is more likely that some cases where the pre-proceedings process is not used will need longer proceedings, and also that pre-proceedings work will influence the ‘pathway’ on which the case is put. This raises questions about what is ‘good enough’ pre-proceedings work to impact on the case, and how the courts should assess what has happened when allocating cases to pathways. Like all questions about the quality of professional work, there is no simple answer but there are some ways this should *not* be done. Checklists or detailed guidance should not be imposed, nor should quality be determined following an adversarial contest by lawyers. The initial analysis by the children’s guardian provides a better solution, particularly if there can be a professional dialogue about this work.

If the main value of the pre-proceedings process lies in its capacity to improve relationships between parents and social workers, and so to divert cases from the court, it is crucial that this is not undermined. The courts must therefore take care not to create advantages for avoiding the process, for example by excluding cases from the 26 week limit because the parents have not attended a pre-proceedings meeting to which they were invited. If such an advantage is perceived to exist, lawyers will advise their clients accordingly (Mnookin and Kornauer 1979); instead of encouraging parents to participate there is a risk that some lawyers might seek to strengthen their clients’ position in court by advising against participation. If this starts to happen, the process will become unworkable.

### Key points

- **Three aspects of the theoretical perspectives are discussed in this section: the naturalistic approach to decision-making, the role of the law and lawyers, and the nature of partnership between social workers and parents in a child protection context.**
- **The pre-proceedings process has strengths and weaknesses, and brings opportunities and threats. The theoretical and policy perspectives shed light on the potential benefits and pitfalls found in the empirical study.**
- **Procedural justice, treating parents fairly, was important to social workers and parents. Lawyers had a supportive role, encouraging parents’ co-operation, but the court’s approach of disregarding pre-proceedings work meant lawyers did not have to protect parents’ position.**

- It is unrealistic to expect a simple process to bring substantial changes in many families where there have long been concerns about adequate care of children. The process, particularly the provision of legal advice, can encourage engagement with services, which may assist some parents to improve their parenting.
- Use of the pre-proceedings process in England has not kept pace with the increase in care proceedings, reflecting disillusion in local authorities in the face of the court's disregard of this work. Use has declined in local authorities which are low users.
- The pre-proceedings process cannot realistically reduce proceedings below 26 weeks but recognition of the work done under it to avoid / prepare for proceedings should make it possible for more cases to be decided within 26 weeks by allaying fears of a rush to judgment.

## Chapter 10 Key messages from the research

The pre-proceedings process is a process, not an event. It rests on ideas of procedural justice and social work principles of working in partnership, providing an opportunity to create a better working relationship between the parents and social worker with legal advice acting as a catalyst for this. The improvements to the process suggested here seek to clarify how the process fits with other local authority procedures, identify the advantages and disadvantages of using the process in specific cases and remove barriers to parents accessing legal aid. Other recommendations relate to local authorities enhancing their ability to learn from their own practices and lessons for the family justice system as a whole about developing new procedures, making use of research and implementing change.

### 10.1 Links with child protection and looked after children processes

Despite the absence of references to the pre-proceedings process in *Working Together* (HM Government 2010) or to child protection plans in the relevant section of the *Children Act Volume 1 Guidance* (DCSF 2008), there are close links between the child protection system and the use of pre-proceedings in practice (see Chapter 5). Most children whose cases are brought into the pre-proceedings system are subject to child protection plans (but child protection plans are made for many other children who are not at the edge of care proceedings). The link between the formal child protection system and pre-proceedings work should be explicitly recognised in national and local authority policy documents. This is particularly important because of the interagency nature of child protection work; those who participate in child protection conferences from outside the local authority need to understand holistically how the local authority is managing cases.

The child protection planning process, with its administrative structure and system of regular reviews provides a means of ensuring that cases in the pre-proceedings process are reviewed. Building review pre-proceedings meetings into the formal child protection planning system would avoid duplication and the proliferation of meetings. This is important for parents, who find themselves called to '*so many meetings*' and may also help professionals. Fixing the date of reviews of pre-proceedings meeting with (or in line with) other meetings about the child should help to ensure that cases are not left to drift in pre-proceedings.

- **There should be explicit reference to the pre-proceedings process in national and local policy and guidance documents on the child protection system.**
- **Local authorities should consider integrating reviews for cases in pre-proceedings with child protection review conferences.**

Where children subject to pre-proceedings are cared for by foster carers or relatives they are likely to be looked after children and if so will have their cases reviewed under the *Care Planning, Placement and Case Review (England) Regulations 2010* (2010 SI 959). Local authorities have a duty to consider whether there should be a change of the child's legal status, and must therefore consider whether the child's case should be referred for consideration of care proceedings (Schedule 7, para 2). It is therefore

important for IROs to know whether the child is, or has been subject to, the pre-proceedings process. Drift for children and unfairness to parents may result if children spend a long time in pre-proceedings away from home, without any determination of whether or not care proceedings will be initiated. IROs should be alert to this issue. (The use of s.20 accommodation as an alternative to care proceedings is discussed further in section 10.3 below.)

- **IROs need to be aware of the use of the pre-proceedings process for looked after children so that children do not drift in s.20 care when alternative legal arrangements (e.g. care order or special guardianship order) would be more appropriate.**

It is also important to consider the role of members of the extended family, or other friends (the umbrella term used in the 2010 care planning regulations is ‘connected persons’), who may be able to provide support for the parents and/or a placement for the child. There is evidence that placements with such people can work well, and they are the first option after parental care (Children Act 1989 s.22C); but research also shows that some may have considerable difficulties themselves (Hunt et al. 2009; Farmer et al. 2013), and that there can be complex dynamics between the carers, parents, child and agency (Farmer and Moyers 2008, Hunt et al. 2009; Ward et al. 2012). The observed meetings and follow-up interviews revealed some of these patterns. There is potential benefit in inviting connected persons to pre-proceedings meetings, to help promote parental understanding and engagement, or to agree to sharing or taking care of the child themselves. Another option is to use family group conferences (Morris et al. 2009; FRG 2012a, b). The possibility of conflict between parents and other relatives should not be discounted, and it is important to appreciate that at the pre-proceedings stage parental responsibility usually remains entirely with the parent(s), so their wishes cannot be overruled without legal action. There can be difficult questions for practice about the right time and the authorisation to engage with extended family members and others.

- **Local authorities should always consider the potential help of connected persons, and facilitate their involvement in pre-proceedings meetings, family group conferences and other meetings, as far as practicable and consistent with the child’s interests and the parents’ wishes.**

## **10.2 Using social work skills**

There are a number of lessons from the study for social work practice, notably about planning, communication, provision of services and follow-through. Starting with the legal planning meeting, it is important that sufficient and relevant information is provided by social workers to the local authority lawyer and the social work managers in advance, that there is a clear focus on the decisions to be made, and sufficient time for the discussion. If the decision is to enter the pre-proceedings process, managers must be mindful of the need to avoid delay in sending out the letter. As regards the letter, there are templates to follow (for the standard letter and the letter of intent) but in practice it is far from being a straightforward matter of filling them in. There are dilemmas about what is included and what left out

of the list of concerns and expectations, bearing in mind the requirements of impact, clarity and brevity, and the limited literacy of some of the parents. It is not a question of simply posting a letter, and there were examples of skilled and sensitive social work practice in talking about the letter with parents, in some cases reading it out to them. The danger is that the caring impulse to soften the (admittedly hard) message could sometimes detract from parents' understanding of the seriousness of the situation.

The meeting is the pivotal stage of the process. Good planning and skilful chairing is essential. The risks of aggressive reactions from stressed and distressed parents should be anticipated, and rooms and seating arrangements planned accordingly. Possible conflicts of interest between parents, or parents and other relatives, should be considered, with (as relevant) separate representation, separate meetings, separate social workers, or separate opportunities to talk. We witnessed some well conducted meetings, where parents were enabled to speak and their views were heard respectfully (even if they did not change the outcome); we also observed some that seemed ill-prepared (e.g. the chair got the parent's name wrong, or came across as rushed) or very hectoring. A forward looking approach, as far as possible, seemed to work best. Social workers and their managers usually appreciated the input of the parents' lawyer, and the message for practice is to adopt a positive approach to this, based on utility and rights.

- **Within local authorities, there should be clear arrangements and expectations for legal planning meetings, and for ensuring that letters are prepared and sent without undue delay.**
- **Explaining the letter to parents is a vital part of the process, requiring high levels of social work skill to keep parents engaged but not undermine the serious message.**
- **Meetings need to be well planned to enable maximum participation, in practical terms (e.g. venue, room size, seating, time of day, interpreters, child care assistance), and tone/style.**

Skilled, persistent and well-supported social work is essential to reduce the risks of delay, as is the availability and reliability of support and assessment services. If the agreement at the meeting is to undertake certain assessments and/or provide particular services to the family, then these should, ideally, already be set up and ready to go; if not, every effort must be made to secure them straight away. It is not acceptable for the local authority to delay things at this stage by not keeping to the agreement it has required the parent to accept. Broadhurst et al.'s (2012a) interim report on the Cafcass Plus pilot found that the local authorities experienced difficulties in securing timely assessments from other agencies, because of eligibility criteria and funding constraints. We agree that the effectiveness of the pre-proceedings process depends on prompt and high quality assessments and services, whether delivered in-house or by external agencies. In so far as these are threatened by current funding cuts, the effectiveness of the pre-proceedings process is also jeopardised. Another factor that can add to delay is changing the social worker, which can cause a loss of information and focus at a critical time. Effective supervision and support for all workers is essential. Timely review of the progress of the plan and the parents' engagement is also vital, and arranged, where appropriate, to fit in with other processes (child protection, looked after children).

The finding that the courts often ignore the pre-proceedings stage, and some judges said they did not know anything about it, makes it essential that if the case does go to court, the social worker refers to the pre-proceedings stage in their statement and (if relevant) live evidence, with details of what was agreed and what happened. It is also crucial that the local authority's advocate refers to it.

- **It is essential for local authorities to follow through plans and not allow the cases to drift. Continuity of social worker and effective supervision can help with this.**
- **It is vital for local authorities explicitly to draw the court's attention to the pre-proceedings work.**

### **10.3 The use of the pre-proceedings process in specific circumstances**

#### *Universal or selective use?*

The statutory guidance effectively requires use in all cases, excluding only those where acting in the child's interests precludes this. The local authorities in this research generally followed that approach but excluded a few cases where they thought the process had no point. In such cases they either sent a letter of intent or started care proceedings directly. It appears from the LSC figures for Level 2 bills that some local authorities are far more selective than others in their use of the process.

The response of the courts to local authority pre-proceedings work was such that resources spent on this work were not recouped through simpler or shorter care proceedings. From the local authority perspective the utility of the work lay in the ability of social workers to use it as an opportunity to encourage engagement. The research does not make it possible to identify factors which accurately predict successful partnership in these edge of care cases. Indeed, the sample of cases diverted, including those judged by the researchers to be doing best, included some where a positive outcome looked unlikely when the pre-proceedings process was begun. Selective use of the process narrows the pool from which cases will be drawn and so reduces the number likely to be diverted. However, local authorities also need to be alert to the potential disadvantages of using the process, the risk of drift and delay, particularly for children experiencing neglect.

Universal use fits with the idea that it is both a matter of parents' rights and the right way to treat parents. But parents' rights are never absolute where they impinge on the rights and welfare of their children (*Johansen v Norway* 1997). Universal use, or at least being able to justify non-use will be important if there are consequences beyond simply bringing care proceedings; for example, if the courts start to treat cases differently when the process has been used. Without recognition by the courts of the work done during the pre-proceedings process, local authorities may be increasingly selective in their use of the process.

#### *Pre-birth assessment*

The pre-proceedings process provides a useful framework for conducting pre-birth assessments; 30 per cent of the cases in both the file and the observation samples were pre-birth cases, see chapters 4 and

5. Parents need legal advice so that they understand the possible consequences of failing to co-operate with the assessment or rejecting offers of support when a local authority is considering assessing their ability to care for, and retain the care of, a new baby. Legal advice is particularly important for parents who have previously been involved in care proceedings and where, for other reasons, there is a heightened risk that the assessment may indicate that the mother cannot care for her child independently after leaving hospital. In such cases, the parents may be asked whether they agree to a supervised placement (a mother and baby foster home or other residential placement) or can identify members of their family, who will care for the child or supervise their care. Failure to agree to such a placement or a change of mind may result in emergency action to remove the child and precipitate the case into care proceedings (Masson et al. 2007) but, regardless of what the social worker says, this may not be clear to parents. Advice and explanations from parents' lawyers were 'heard' and acted on by parents, resulting in agreements which supported the parent, protected the baby and avoided the need for emergency intervention.

Not all cases where local authorities want to undertake pre-birth assessments necessitate use of the pre-proceedings process. There will be cases of young parents, parents who are care leavers and parents with disabilities where the only issues relate to assistance that should be offered to parents. It is not suggested that the pre-proceedings process should be extended to include these cases. Advocacy may be useful to encourage parents to ask for the support that will help them, but imposing the formality of the pre-proceedings process is unnecessary, stressful and could be counterproductive. However, if the assessment results in concerns which could lead to proceedings, parents need independent legal advice and this can be triggered by sending a pre-proceedings letter.

On the other hand, the non-response of the courts to pre-proceedings work had made authorities wary about undertaking expensive assessments outside care proceedings. The emphasis on speedy decision-making, particularly for the youngest children, necessitates early preparation of these cases. Standards for pre-birth assessment, developed through research would provide a basis for early assessment which makes best use of assessment resources, satisfies the court and avoids delay for babies. Care proceedings cannot be started before a baby is born but the pre-proceedings process could be useful. A letter of intent should be used to initiate the process in such cases.

There are advantages to the local authority of, wherever possible, taking action only after the parent has had legal advice. The courts are concerned to protect the mother's and baby's human rights, and expect local authorities to take great care not to pressure mothers around the time of birth. The standards of action expected of local authorities by the courts and other professionals (*R (G) v Nottingham City Council and Nottingham University Hospital* [2008] EWHC 400 (admin); *Coventry CC v C* [2012] EWHC 2190 (Fam)) will be more easily satisfied where the mother has received independent legal advice before agreeing to a birth plan for temporary separation from her baby or the baby's placement in foster care, and courts and lawyers should be more confident of local authorities who take such an approach.



The use of the pre-proceedings process in pre-birth cases did not carry the same risks of drift and delay it had in some other cases, although it could not prevent this occurring later. The point when a decision was required, when the mother left hospital, was clear, even if the exact date was not known. Providing that local authorities had sufficient notice they were able to assess and plan effectively before the baby was born. And, with advice, parents were able to take part in this planning and understand that alternative arrangements might be necessary if babies were born early, before assessments were completed, or required special care. Although these decisions are very difficult for all concerned, access to advice for parents helps the child protection process to be more respectful and produce good decisions.

- **The pre-proceedings process is particularly useful in enabling parents to have access to legal advice where pre-birth assessments are being undertaken which could result in plans for compulsory intervention.**

#### *Long-term neglect*

Where there are long-term concerns about child neglect the case for using the pre-proceedings process is weak. A history of failure to achieve or sustain an effective partnership between parents and children's services so as to improve and maintain adequate standards of child care is unlikely to be overcome by the simple device of a letter and a meeting with independent legal advice. In addition, the risk of further drift and delay through using the process is substantial, as cases in the study showed (see chapter 8).

Some children were neglected at home for far too long before cases were referred to a legal planning meeting. Local authority lawyers recognised that drift could result in the factual basis for a care order evaporating because it was not possible to argue that a state of affairs, which had apparently been accepted by social workers for a long time, amounted to significant harm. Moreover, the lack of timely action by local authorities was compounded by the court's approach that there was no case for removing children during proceedings despite a long history of neglect if nothing had changed (*Re GR* [2010] EWCA Civ 871; *Re LA (Care Chronic neglect)* [2009] EWCA Civ 822). Unless there was a serious incident, which increased the risk of significant harm, local authority lawyers were reluctant to file court applications in such cases. As a consequence, children could spend years being neglected (Farmer and Lutman 2009; Davies and Ward 2012), with very adverse consequences for their intellectual and social development, and their future well-being (Brown and Ward 2012). The use of the pre-proceedings process often merely served to delay court applications in these neglect cases. Treating the pre-proceedings process as *another step*, an extra process before proceedings, without all involved recognising that it was a *step up*, also encouraged drift.

- **Legal planning meetings should be very clear why the pre-proceedings process should be used in long-term neglect cases. A letter of intent may be a more appropriate way to ensure parents have access to advice whilst avoiding drift.**

- **If the pre-proceedings process is used where there is a substantial history of neglect clear timescales for monitoring and review are essential.**

#### *Involving children in the pre-proceedings process*

Although children over the age of 10 years outnumber younger children in the care system and a high proportion of those who enter public care each year are teenagers (Sinclair et al. 2007; DfE 2012), comparatively few such children are the subject of care proceedings. Both increased parental willingness for older children to become looked after and the length of time care proceedings take militate against court action for teenage children. Consequently, it is relatively unusual for the parental care of teenage children to be the subject of the pre-proceedings process.

Lawyers and children's guardians have expressed concern that children are not represented during the pre-proceedings process (Jessiman et al. 2009; Macdonald 2007, 2008) but such views fail to recognise the central role that parents play in the pre-proceeding process. Engaging parents necessitates making arrangements for the pre-proceedings meeting that parents find acceptable. Without this there can be no effective meeting. Also, there is no legal basis by which local authorities can require children's involvement. Until the court has curtailed their parental responsibility, children's care is a matter for parents, so the local authority has no mandate to involve children in the meeting unless the parents want this. The approach to the conundrum of respecting parents' position and engaging children against parents' wishes in the *Best Practice Guide* (MoJ and DCSF 2009) is unworkable.

Their format and content make pre-proceedings meetings unsuitable for the involvement of children. Pre-proceedings meetings are not general discussions about plans for children but focused exchanges about what the parent can do to avoid court action. Parents should not be expected to discuss the concerns the local authority has about their care, in front of their children. Of course, there are cases where children's views about the decisions to be made are important but hearing children's views should be a separate activity, and one which is much more appropriate for the task of communicating with children. Where the plan from the meeting is for the child to move away from home (to a relative or into foster care etc.) this needs to be explained subsequently. The child needs to be prepared for the move, with information, reassurance and answers to the many questions they may have.

The pre-proceedings process was used with young people where their care of their (future) children was the focus of concern. These young people were sometimes accompanied by their own parents. They had access to legal advice like other parents. Lawyers with experience in representing children and young people in care proceedings had the necessary knowledge and skills to advise these young parents. Their own mother's involvement was helpful because these grandmothers were their children's main support; their role as secondary or even primary carers was a major factor in avoiding care proceedings. However, the fraught nature of relationships between parents and their teenage children may also require separate advice for parent and grandparent.

- **Lawyers representing young parents, dependent on their own parents should be alert to conflicts of interest and assist grandparents to access separate advice in such cases.**

### *Admission to s.20 accommodation*

Lawyers in private practice and judges tend to view the provision of s.20 accommodation rather differently from local authority staff. They view it as suitable only as a temporary measure, and a potential threat to children's welfare or parents' interests because decisions are made without court scrutiny (Arnold 2008, Munby 2009, Holt and Kelly 2012a). Such views are based on misconceptions about both the use of s.20 and court proceedings. Lawyers have little knowledge or experience of s.20, coming across cases only if care proceedings are brought or a dispute results in a judicial review application. They tend to believe that court proceedings really protect the rights of parents and children, ignoring the very many ways that court (Lindley 1994; Freeman and Freeman and Hunt 1998), lawyer (Brophy et al. 2005; Pearce et al. 2011) and children's guardian practice (Masson and Winn Oakley 1999) distances and excludes lay parties from decision-making. In contrast, social workers believe that working in partnership with parents can make it possible to provide accommodation for children in a way that is also a service to parents. Arrangements for children can be planned and implemented on the basis that only the parents have parental responsibility, and the local authority or carers are limited to making decisions on day to day matters and matters agreed with the parents.

Provision of s.20 accommodation for a child does not normally require legal advice to the parents (or the child), or indeed the social worker. The Children Act 1989, s.22(4),(5) requires local authorities to ascertain, and give due consideration to, the wishes and feelings of parents and children before making decisions about children they propose to look after, so far as this is reasonably practicable. This provision satisfies the procedural aspects of the ECHR, art 8, by providing for parents' involvement in the state's decisions about their children's care. Article 8 does not impose further requirements, such as access to legal advice or a fair trial where parents' civil rights are not curtailed (c.f. Holt and Kelly 2012a). Indeed, art 8(2) expressly recognises that art 8(1) is qualified by the need to protect the rights and freedoms of others, and this allows the local authority to act without parental consultation where protection of the child demands this (*K and T v Finland* 2000; *P, C and S v UK* 2002).

There will be cases where care proceedings can only be prevented by the parents agreeing to alternative care. In such cases the pre-proceedings process could be used either before parents are asked to agree to accommodation or shortly thereafter. In these circumstances parents are likely to benefit from independent advice even where they are in full agreement with the plan for accommodation; and legal advice is essential if pressure to agree is placed on parents, which may make the use of accommodation appear forced (DH 2001; Hunt et al. 1999). If care proceedings are what is really required, then delaying them through the use of s.20 is contrary to the interests of both children and their parents. This is especially true for young children, where adoption may be a possibility.

There are, of course, review processes for looked after children, and as mentioned earlier, IROs have a responsibility to ensure that children do not drift in s.20 care when alternative legal arrangements would be more appropriate; but independent advice for parents, even if they agree with the plan, would be in keeping with rights and utility approaches. If the case does go to court it would also be beneficial

for the local authority to demonstrate that they had made the greatest efforts to uphold the parents' rights and try to engage with them.

- **The Department for Education, the Ministry of Justice and the professions should facilitate greater dialogue between local authorities, private lawyers, courts and parents and children's rights organisations about the use of s.20 accommodation in edge of care cases. In keeping with the recommendations of the Munro and Family Justice reviews, the aim should be to promote reflection, inter-disciplinary learning, greater understanding and better informed decision making and practice.**
- **Local authorities should always consider the use of the pre-proceedings process where s.20 accommodation is provided as an alternative to the use of care proceedings. Parents should have access to a solicitor via level 2 legal aid in these circumstances.**

#### *Removal of children subject to care orders*

It has been suggested (*G v NCC* [2009] 1 FLR 774) that it is improper for local authorities to remove children already subject to care orders without following the pre-proceedings process. Whilst parents need to be consulted in accordance with s.22(4) where this is 'reasonably practicable' there is no basis in statute or guidance to make further demands on local authorities in such cases. Indeed, it does not assist the effective operation of the family justice system for judges to seek to impose requirements on local authorities on the basis of single cases. Judgments from law cases are not easily accessible to social workers and their managers, nor are they readily integrated with the mass of other requirements, much of it unfamiliar to the judiciary and to lawyers. Rather, any extensions of the pre-proceedings process should be subject to consultation and, if accepted, a clear process of dissemination and implementation.

- **Extension of the pre-proceedings process into other areas of child welfare decision-making should occur only after consultation with local authorities.**

#### *Letters of intent*

Where the legal planning meeting concludes that care proceedings cannot be avoided it can still be useful to hold a pre-proceedings meeting where parents are accompanied by their lawyer. Pre-proceedings advice has advantages, both for the parents and the system. It enables parents to obtain advice before receiving the court application and prevents reliance on pressured court door advice and negotiation. Early advice may lead to parents providing the names of potential family carers, avoid a contested interim care order application at the start of proceedings, saving court time, and allow better preparation for children who are placed away from home.

- **Where care proceedings cannot be avoided local authorities should invite parents to a pre-proceedings meeting by sending a letter of intent unless the need for immediate action or the interests of the child preclude this.**

### *Time-limits and reviews*

The statutory *Guidance* (2008) makes no mention of the need to monitor or review cases where the pre-proceedings process is being used. Lack of monitoring and review contributed to drift in some cases. The varying circumstances of the cases, and the operation of the process alongside the formal child protection and care planning systems means that set time limits applying to all cases are unlikely to be helpful. However, when the decision is made to use the pre-proceedings process, the social worker preparing the statement of expectations should consider how to measure its effectiveness.

Those attending the Policy and Practice seminars agreed it was unlikely that parents could show positive progress in less than 6 weeks (although failure to engage might be demonstrated earlier). Allowing cases to continue for more than 3 months without any form of review risked drift and delay for children. Parents should be told when and how the written agreement confirmed at the pre-proceedings meeting will be reviewed.

- **There should be a clear plan for reviewing all cases subject to the pre-proceedings process to determine whether the processes should be continued or ended, and whether care proceedings should be started.**

### **10.4 Learning within and across children's services departments**

The study found that there was a variety of practice between our six local authorities (for example, the arrangements for legal planning meetings, or whether and when to give out a pre-drafted agreement), and also within them (for example, one team manager said that she never held review pre-proceedings meetings, but knew of colleagues who did). Local authorities need to ensure that they learn from their own experience and, wherever possible, the experiences of others. We hope to assist with the latter through this report, the seminars we arranged and other presentations and publications. But in keeping with the Munro report recommendations of developing a learning culture, local authorities can promote internal exchange of practice and ideas, what has worked well, what should be avoided, what else could be tried. Periodic meetings of social work and legal staff (to involve practitioners as well as managers) could facilitate this. Those authorities which had regular scheduled legal planning meetings could periodically reserve one of the time slots for an overview discussion about pre-proceedings practice.

Another option is to give a member of staff a special responsibility to monitor and advise on the use of the pre-proceedings process. One of our authorities had appointed a member of staff to coordinate pre-proceedings work when the *Guidance* came into force, but by the time of our study this specialist role had ended. There is an example of how such a post could work in the 'Triborough care proceedings pilot'. The three London boroughs involved ran a pilot project (2012-13) to reduce the duration of care proceedings, which included (amongst other things) a dedicated 'case manager' to monitor court applications and progress, and assist social workers with their statements. Also, there were regular inter-disciplinary meetings to review cases and identify the key lessons (Triborough Care Proceedings

Pilot 2012, written submission to the Justice Committee 2012). A similar role (if not a dedicated post), and a similar review system could be developed in other local authorities, and could include pre-proceedings work. Email, periodic training events and internal policies and procedures can also be used to encourage discussion, give opportunities to reflect on and share experiences, and promote best practice. In keeping with the Munro approach, it is vital that these meetings and other exchanges are conducted in a spirit of openness and mutual learning, not recrimination and blame.

- **Local authorities should ensure that there are regular opportunities for staff at all levels in the organisation to share experiences about pre-proceedings and court processes, to reflect on their own and agency practice, and spread lessons about what works best.**

There is evidence from our study and other sources (e.g. the Munro progress report 2012 with case studies in the report and on the website; Ofsted 2011 on services to prevent young people entering care; ADCS 2012; Goodman and Trowler 2012) that local authorities are able to take positive and proactive approaches to developing their pre-proceedings work – both at the level of early help and later, when cases are on the edge of care.

The Family Rights Group (2012a), in their submission to the Justice Committee pre-legislative scrutiny of the Children and Families Bill, called for a ‘pre-proceedings protocol’ to be issued to local authorities, to set out the action they should take to engage with families from an early stage. The proposal was that this would draw on evidence of best practice, and be issued as statutory guidance. Later, in oral and written evidence to the House of Lords Select Committee on Adoption Legislation, the FRG expanded on the idea and produced a short outline of the possible contents of such a protocol and examples of good practice (FRG 2102b, 521-528).

The FRG would like to see legal advice made available to parents earlier, by way of a ‘letter of concerns’ rather than a letter before proceedings (FRG 2012a). It may be tempting to hope that involving a lawyer early on will divert more cases from court, but it is unrealistic and unnecessary. Most cases have been in the child protection system, which means the parents will have received letters and reports before, and probably attended many meetings. True, they may not have had independent advice, but most do not need it. Most parents *do* respond to the requirements of the child protection plan, and the support offered to them. Most cases are nowhere near court proceedings, so involving lawyers early on is likely to be very costly, not very beneficial, and not deliverable by the relatively small number of lawyers doing this work. A further difficulty with the FRG proposal is that it focuses on local authority practice and does not assess it in the context of the court’s non-response to the pre-proceedings work. Without confidence in the court’s response, it is hard for local authorities to shift resources to the pre-proceedings stage. The changes that have been achieved are all the more commendable for that, especially in a context of financial restrictions.

The FRG would like to see a more tightly regulated pre-proceedings system, but the danger of introducing this is that it will impede the development of innovative practice such as they identify, and discourage creativity. It is disappointing if some authorities respond to new challenges slowly and

unimaginatively, but the way forward is sharing good practice and mentoring from successful agencies, not going back to the old 'more procedures' approach.

- **The DfE and MoJ should assist in the dissemination of good practice models for early help, promoting parental engagement and working with extended families and other connected persons. This should be done in conjunction with local authorities and other organisations such as Ofsted, ADCS and C4EO, with all recommendations firmly grounded in evidence.**

### **10.5 Access to legal aid**

Legal aid for pre-proceedings work is available to all parents who have received a letter before proceedings regardless of their means. However, access to legal aid is constrained by the limits imposed in solicitors' legal aid contracts by the Legal Aid Agency (which replaces the Legal Services Commission in April 2013). Each case takes one of the limited number of 'matter starts' allocated to the firm; attempts within firms to spread the allocation of 'matter starts' across the year and the exhaustion of a firm's total mean that potential legal aid clients have to be turned away. As a result, some parents experienced additional difficulties in finding a solicitor willing to advise them and attend the pre-proceedings meeting. Given the impact that access to a solicitor can have on parents and the child care proceedings system as a whole, it is hard to justify an approach which limits access to a lawyer in this way. Taking level 2 work outside the 'matter starts' regime would remove one barrier to parents obtaining timely legal advice before care proceedings are started. The cost to the legal aid system would be small. The number of bills will always be limited by the use of the pre-proceedings process. Moreover, the number of level 2 legal aid bills currently only around half that originally expected by the Legal Services Commission (LSC 2009, para 12.4).

Where the local authority informs parents by letter of its intention to start care proceedings (that is, it sends a 'letter of intent') level 2 legal aid should also be available. The *Best Practice Guide* (MoJ 2009) suggests otherwise, limiting parents in these circumstances to only means-tested legal advice (para 2.3) but this is not reflected in the Funding Code.

- **The 'matter starts' regime should not be applied by the Legal Aid Agency to this work.**
- **Family Help Lower (level 2) legal aid should be available to all parents who receive a letter before proceedings, inviting them to a pre-proceedings meeting.**

### **10.6 Quality of legal advice for parents in pre-proceedings**

At the pre-proceedings stage parents require clear legal advice from someone who has knowledge and experience about child protection, local authority practice and care proceedings. This work does not need to be limited to members of the Law Society Children Panel or to qualified solicitors. The researchers observed paralegals and trainees who undertook the task well, although they heard anecdotes of inadequate practice by both qualified and unqualified staff. The Law Society or the Association of Lawyers for Children should make available a short training module, possibly available on

line, to ensure that those who do this work have the available knowledge and skills. Pre-proceedings work could then be subject to an accreditation regime in the same way as advice at police stations.

- **Training and accreditation should be provided for those undertaking pre-proceedings advice with public funding.**

## **10.7 Lessons for reform in the family justice system**

### *Research and law reform*

The *Care Proceedings System Review* (DCA and DfES 2006) proposed the piloting of a pre-proceedings process; the process was introduced in initiative areas six months before full implementation and questions about it were included in the early evaluation of the PLO. This approach meant that research did not inform either the development of the process, or its implementation. The *Guidance* was written without a knowledge base, so important areas – the conduct of the meeting, reviews and the link to other local authority processes – were omitted. Also, there was no counter to the negative views recorded in the early evaluation (Jessiman et al. 2009) on the basis of a few interviews and little experience. This cannot have been what the Review intended.

Piloting law reform proposals is problematic, particularly where the change requires statutory reform, and the history of family justice is full of examples of failed pilots which have not recruited a sufficient sample and wasted research effort. In this context, it is understandable that politicians might be cautious about putting in a pilot, but nor should they approve the implementation of an untried scheme without any way of finding out whether it was effective. Outcomes information is as relevant to legal processes that impact on families as it is to interventions with them. Similarly, when research is underway, it is somewhat surprising that another untried scheme, ‘Cafcass plus’ should be introduced with another limited pilot.

Many of the changes to care proceedings practice since the implementation of the Children Act 1989 have been made not as a result of research evidence or interagency consultation but through litigation. The removal of children under interim care orders, the requirements for without notice EPOs and the contact regime where new babies are not in their parents’ care have all been the subject of ‘guidance judgments’. These have imposed standards or procedures which have had major implications for local authorities, the police, carers and children. The close consideration a judge gives to an individual case gives him or her the detailed knowledge of the factual scenario necessary to make a decision. It is neither designed nor intended to provide a wide understanding of the range of circumstances where similar issues arise. Moreover, in our adversarial system, the information the judge receives is not simply an objective account but is intended to influence the decision. For these reasons, it would be better if judgments which were intended to shape the operation of family justice were subject to review and discussion before they were published.

Research has a contribution to make to law reform. Understandings from theoretical work and experience in other jurisdictions can provide some indication about what might work, the problems and



limitations etc. Empirical study of the operation of laws and legal procedures can provide knowledge about practice from a range of perspectives including from litigants themselves, countering beliefs based on anecdote, information derived from the unusual cases that feature in law reports, and from the most vocal in the system. It can supplement the limited information available from case management systems and reach parts of the process that such recording cannot reach. Without research evidence it will not be possible for the Family Justice Board to secure major improvements to the family justice system, or know whether many forms of improvement have actually been achieved.

- **Developments in family justice should not be driven only by court decisions but through interagency discussion and research.**
- **Continued improvement of the Family Justice System will benefit from commissioning and making use of socio-legal research.**
- **Research and implementation need to be planned to avoid waste on ineffective pilots.**

#### *Measuring system-wide delay*

Delay remains a pressing problem within the Family Justice System; legislation to provide for speedier proceedings will increase rather than reduce the pressure to monitor and account for delay and its causes. Just because something can be measured does not mean that measuring it will add to understanding, nor that setting or even achieving a target can reduce delay. The Legal Services Commission's target, introduced in 2010, for the System-wide Target (MoJ 2010a) demonstrates this. There was no direct link between obtaining pre-proceedings legal advice and the duration of care proceedings, nor did the Performance Improvement Group have a clear theoretical model to connect these matters. In addition, the Ministry of Justice lacked information on the numbers of parents who might be eligible for pre-proceedings advice and the numbers of cases where local authorities might be able to make use of the process. Access to level 2 advice was dependent on parents receiving a letter but no data was available on the numbers of letters sent. Also, relating the target to the proportion of cases in proceedings where legal advice had been received, ignored a key purpose of the advice – to avoid the need for proceedings. Thus any target based on numbers or proportion of letters was irrelevant both to the issue of delay and to the effectiveness of the Legal Services Commission's contribution to reducing delay.

Nevertheless, the contribution of the Legal Services Commission to securing pre-proceedings advice could have been measured. A focus on the number of providers and the distance between parents' homes and solicitors doing this work would have made it clear whether parents were able to access level 2 advice if they chose to do so. Such work would have identified advice deserts, also relevant for access to representation in care proceedings, and should have informed the specification for the Legal Aid Family Contract in 2010.

The Family Justice Board now has responsibility for setting performance indicators for the Family Justice System (Family Justice Board 2013). It has identified a new set of indicators relating to the speed of care

proceedings but none take account of the use of the pre-proceedings process or the availability of legal services to parents before or during care proceedings.

- **Given the impact of the legal aid changes on the solicitors' firms it will be important that the Family Justice Board keeps under review the access to legal services in public children work.**

#### *Judicial independence and the implementation of reform*

Judges are rightly protective of their independence, which has led the judiciary to record a memorandum of understanding with the Ministry of Justice on the relationship between local family justice boards and the judiciary (Family Justice Board 2012). This independence does not absolve judges from the need to understand and engage with all aspects of family justice process that are relevant to care proceedings. It provides no justification for the disregard, clear in the findings of this research, for the pre-proceedings process. The process was part of the PLO reforms, and devised with the assistance of Ryder J. The PLO checklist expressly referred to it, and the study local authorities included the documents in the court bundle as required.

- **Judges have responsibilities for the effective implementation of family justice reforms, including by recognising and responding to processes imposed on other parts of the system that are relevant to their decision-making.**

#### **Key points**

- **The pre-proceeding process provides a framework for effective social work practice, particularly working in partnership with parents at the edge of care proceedings.**
- **Universal use of the process in cases on the edge of care respects parents' rights but unless the courts take account of pre-proceedings work the process risks delaying decisions for children and wasting local authority resources. A positive response by the courts is more likely than central direction to promote the use of the pre-proceedings system**
- **Pre-proceedings practice can best be improved and developed through learning within and across local authorities, not by the introduction of any further protocols.**
- **Use of the pre-proceedings process should continue to be counted even though the statistics are not a way of monitoring delay.**
- **Reforms to process and practice need to be owned by all working within the Family Justice System. The introduction of major changes should include provision for research to evaluate and improve practice.**

## RECOMMENDATIONS

### For the Department for Education and local authorities

- There should be explicit reference to the pre-proceedings process in national and local policy and guidance documents on the child protection system.
- The Department for Education, the Ministry of Justice and the professions should facilitate greater dialogue between local authorities, private lawyers, courts and parents and children's rights organisations about the use of s.20 accommodation in edge of care cases. In keeping with the recommendations of the Munro and Family Justice reviews, the aim should be to promote reflection, inter-disciplinary learning, greater understanding and better informed decision making and practice.
- The DfE and MoJ should assist in the dissemination of good practice models for early help, promoting parental engagement and working with extended families and other connected persons. This should be done in conjunction with local authorities and other organisations such as Ofsted, ADCS and C4EO, with all recommendations firmly grounded in evidence.

### For local authorities, social workers and IROs

- Within local authorities, there should be clear arrangements and expectations for legal planning meetings, and for ensuring that letters are prepared and sent without undue delay.
- Local authorities should always consider the potential help of connected persons, and facilitate their involvement in pre-proceedings meetings, family group conferences and other meetings, as far as practicable and consistent with the child's interests and the parents' wishes.
- Explaining the letter to parents is a vital part of the process, requiring high levels of social work skill to keep parents engaged but not undermine the serious message.
- Where care proceedings cannot be avoided local authorities should invite parents to a pre-proceedings meeting by sending a letter of intent unless the need for immediate action or the interests of the child preclude this.
- Meetings need to be well planned to enable maximum participation, in practical terms (e.g. venue, room size, seating, time of day, interpreters, child care assistance), and tone/style.
- It is essential for local authorities to follow through plans and not allow the cases to drift. Continuity of social worker and effective supervision can help with this.

- There should be a clear plan for reviewing all cases subject to the pre-proceedings process to determine whether the processes should be continued or ended, and whether care proceedings should be started.
- Local authorities should consider integrating reviews for cases in pre-proceedings with child protection review conferences.
- IROs need to be aware of the use of the pre-proceedings process for looked after children so that children do not drift in s.20 care when alternative legal arrangements (e.g. care order or special guardianship order) would be more appropriate.
- It is vital for local authorities explicitly to draw the court's attention to the pre-proceedings work.

#### Use of the pre-proceedings process

- The pre-proceedings process is particularly useful in enabling parents to have access to legal advice where pre-birth assessments are being undertaken which could result in plans for compulsory intervention.
- Legal planning meetings should be very clear why the pre-proceedings process should be used in long-term neglect cases. A letter of intent may be a more appropriate way to ensure parents have access to advice whilst avoiding drift.
- If the pre-proceedings process is used where there is a substantial history of neglect clear timescales for monitoring and review are essential.
- Local authorities should always consider the use of the pre-proceedings process where s.20 accommodation is provided as an alternative to the use of care proceedings. Parents should have access to a solicitor via level 2 legal aid in these circumstances.
- Extension of the pre-proceedings process into other areas of child welfare decision-making should occur only after consultation with local authorities.
- Local authorities should ensure that there are regular opportunities for staff at all levels in the organisation to share experiences about pre-proceedings and court processes, to reflect on their own and agency practice, and spread lessons about what works best.

#### **For the Law Society and lawyers representing parents**

- Lawyers representing young parents, dependent on their own parents should be alert to conflicts of interest and assist grandparents to access separate advice in such cases.

- Training and accreditation should be provided for those undertaking pre-proceedings advice with public funding.

#### **For the Legal Aid Agency**

- The 'matter starts' regime should not be applied to this work.
- Family Help Lower (level 2) legal aid should be available to all parents who receive a letter before proceedings, inviting them to a pre-proceedings meeting.

#### **For the Family Justice Board, Ministry of Justice and the Department for Education**

- Continued improvement of the Family Justice System will benefit from commissioning and making use of socio-legal research.
- Research and implementation need to be planned to avoid waste on ineffective pilots.
- Given the impact of the legal aid changes on the solicitors' firms it will be important that the Family Justice Board keeps under review the access to legal services in public children work.
- Developments in family justice should be driven by interagency discussion and research.

#### **For the Judiciary**

- Developments in family justice should not be driven only by court decisions but through interagency discussion and research.
- Judges have responsibilities for the effective implementation of family justice reforms, including by recognising and responding to processes imposed on other parts of the system that are relevant to their decision-making.

## Appendix 1: Example of a letter before proceedings

### PLEASE DO NOT IGNORE THIS LETTER TAKE IT TO A SOLICITOR NOW

Contact  
Direct line  
Fax  
Our Ref  
E-mail

Date 6<sup>th</sup> Month 2009

Dear [mother] and [father]

**Re: Local Authority CONCERNS ABOUT**

**Children's names and DoB**

#### LETTER BEFORE PROCEEDINGS

#### **HOW TO AVOID GOING TO COURT**

I am writing to let you know how concerned Local Authority have become about the care of your children. I am writing to tell you that [name of the Local Authority is thinking about starting Care Proceedings in respect of your children. This means that we may apply to Court and your children could, if the Court decides that this is best for them, be taken into care.

We are so worried about your children that we will go to court unless you are able to improve things. **There are things you can do which could stop this happening.** We have set out in this letter the concerns that we have about your children and the things that have been done to try to help your family.

#### **AN IMPORTANT MEETING ABOUT WHAT WILL HAPPEN NEXT**

Please come to a meeting with us to talk about these concerns on 20<sup>th</sup> Month 2009 at @ 10.30 am at [Office]. The address is

Please contact your social worker on xxx xxxx to tell her if you will come to the meeting.

At the meeting we will discuss with you and tell you what you will need to do to make your child safe. We will also talk to you about how we will support you to do this. We will also make clear what steps we will take if we continue to be worried about your children.

### **PLEASE BRING A SOLICITOR TO THE MEETING ON 20<sup>th</sup> Month**

Take this letter to a solicitor and ask them to come to the meeting with you. The solicitor will advise you about getting legal aid (free legal advice). We have sent with this letter a list of local solicitors who work with children and families. They are all separate from children's services.

Information your Solicitor will need is:

Acting Principal Solicitor:

Name, Address & Telephone:

### **WHAT WILL HAPPEN IF YOU DO NOTHING**

If you do nothing we will have to go to Court. If you do not answer this letter or come to the meeting, we will go to Court as soon as we can to make sure Children are safe.

### **YOUR WIDER FAMILY**

Our concerns about your children are very serious. If we do have to go to Court and the Court decides you cannot care for your children, we will first try and place them with one of your relatives, if it is best for your child to do this. At the meeting we will want to talk to you and your solicitor about who might look after your child if the Court decides that it is no longer safe for you to do so.

We look forward to seeing you at the meeting with your solicitor on **20<sup>th</sup> Month 2009 @ 10.30 am** If you do not understand any part of this letter, please contact your social worker [name] on [xxx xxx]. Please tell your social worker if you need any help with child care or transport arrangements in order to come to the meeting, and we will try to help.

Yours sincerely

Team Manager

cc Local Authority In-house Legal Team  
List of Law Society Children Panel Solicitors  
List of things we are worried about

## Appendix 2

### Case study summary

name	initial	attendance	pre-birth	Purpose	Diversion Possible	length Pp	open	s.20	s.31	order	length ct
Adcock	xR	M/MS	x	care	x	?					
Barber	R	M/MS	x	assess	x	4 mth	x	x	CO+PO	12 mths	
Charlery	x	M		care	x	1 mtg	x	x			
Cooke	R	M/MS+F/FS	x	care	x	11 mth	x		x	ongoing	
Cozens	x	M/MS;FS	x	notify		3 mth	x		x	SO	8mth
Drury	xR	M+F+S	x	assess	x	?					
Etherington	x	M/MS		P It	x	6 mth	x		x	ongoing	
Fry	x	M/MS		care	x	ongoing	x	x			
Gooding	x	M/MS		P It	x	ongoing	x				
Hankin	x	M/MS	x	assess	x	3 mth	x		x	ongoing	
Hernandez	x	M/MS		assess	x	ongoing	x				
Imlach	x	M/MS F/FS		P sp	x	ongoing	x				
Kanu	x	F/FS		P rcnt	x	ongoing	x				
Khan	x	M+F/FS		P spec	x	ongoing	x				
Kowalski	x	M/MS		P sp	x	ongoing	x				
Longhurst	x	M/MS		P It sp	x	ongoing	x				
Mahmood	R	M/MS		P sp	x	18 mth	x				
Meloy	x	M/MS		P sp	x	10 wks			x	Co+PO	12 mths
Merrit	x	M/MS	x	P It sp	x	2 mth					
Morgan	x	M/MS+F/FS	x	notify	x	2 weeks		?	x	SO	?
Neale	x	M/MS	x	P spec	x	1 mth	x				
Oldfield	R	M/MS+FS		care	x	6 mth	x				
Quirk	x	MS		notify		?		?	x	CO+PO	?
Randle	x	M/MS+F/FS		notify		1 mtg	x	?	x	CO	?
Rodgers	x	M/MS+F		P It sp	x	ongoing	x				
Sadler	R	M/MS		P It	x	3 mth	x		x	CO+PO	12 mths
Smith	R	M/MS		P rcnt	x	30 mth	x		x		ongoing
Tutt	x	M/MS	x	care		1 wk			NA		
Upton/Watkins	x	M+F/FS		P It sp	x	1 wk	x		x		ongoing
Vaughan	R	M/MS+F/FS		P It	x	9mth	x		x		ongoing
Verney	x	M/MS		assess	x	ongoing	x	?			
Whitley/Wheldon	x	M/MS+F/FS		P rcnt	x	ongoing	x				
Yardley	x	M	x	assess	x	1 mtg	x		NA		



## Appendix 2: Case Studies

### The Adcock family

*Family:* Lauren (Mother), unborn baby. White British.

*Background:* Lauren has five older children, all of whom now live with relatives after private law proceedings. The youngest had recently gone to his father, following an incident of unexplained bruising. There was a long history of concerns about Lauren's ability to care for the children, poor home conditions, unstable relationships with her children's fathers, learning disability, mental health problems, alcohol and drug misuse. Her current partner, Theo, was a care leaver with a troubled background himself. There was uncertainty whether he was the father of the expected baby. The relationship was unstable and it was considered unlikely that he would be able to care for the baby or assist Lauren. The unborn baby was on a child protection plan.

*Reason for sending the letter:* Given the history and the current instability, the local authority considered that the baby would need to be looked after by them whilst fuller assessments took place. The pre-proceedings meeting took place three weeks before the baby was due.

*The meeting:* Lauren attended with her solicitor. Theo was at the office but was not allowed into the meeting, because of the uncertainty whether he was the father. The local authority was represented by the team manager, the out-going social worker and a new one, and their solicitor. The meeting lasted an hour. Lauren's solicitor asked why the authority was not considering a residential assessment. Lauren herself did not want this, arguing that the concerns were not as great as the local authority alleged. She said that she had cared well for her own children until only six months ago, and that she had not caused the bruises to the youngest. Lauren asked that the department do a viability assessment on her mother, which they agreed. They asked Lauren to consider s. 20 accommodation for the new baby while fuller assessments were undertaken. If not, they would start proceedings. Her solicitor asked about the level of contact and what plans the authority had for assessments, and there was an exchange of views between the solicitors about this. A review meeting was fixed for the following week, to see if Lauren agreed to s. 20 after she had discussed it with her solicitor.

*Outcome:* Lauren attended the review meeting, but her solicitor did not. She said they had not discussed the possibility of s. 20. The local authority was left uncertain about how to proceed. The viability assessment of her mother had been started and was positive so far. The team manager said that it might be possible for Lauren and the new baby to stay with her, but this would be subject to further assessments. The new baby did not go into care, but went to live with Lauren. Things went well, and the baby was taken off the child protection plan. Later, the case was closed to children's social care.

**Pre-proceedings only; baby remained with mother, case closed.**

## **The Barber family**

*Family:* Debbie (Mother) and new born baby, Sarah-Jane. White British.

*Background:* Debbie had recently moved to the area and given birth to a baby girl, Sarah-Jane. At the time of the birth, the local authority had limited information, but knew that Debbie had two older children who live with their father in another authority. He is the father of Sarah-Jane. The previous authority had been involved with the family. Debbie has learning disabilities and will need a great deal of support to care for her new baby. There is a history of domestic violence, also of Debbie self-harming and suffering from post-natal depression. The health visitor reported that Debbie's current home conditions are unsuitable for a baby.

*Reason for sending the letter:* The local authority considered applying for an EPO when Sarah-Jane was born, but decided to ask Debbie if she would agree to s. 20 accommodation in foster care, with frequent contact. She did. The local authority's plan was to undertake fuller assessments. The social worker took the letter to Debbie and read it out loud to her, trying to explain it, in the first week after the baby's birth.

*The meeting:* The first pre-proceedings meeting took place when Sarah-Jane was one month old. The decision then was that Sarah-Jane should remain in foster care. There would be further assessments and contact would be built up to see how Debbie coped and what support she needed. A review PPM was held 2 months later. Debbie attended with her solicitor. Social worker, family support worker, team manager, LA solicitor and area manager attended for the local authority. Debbie had been co-operating fully, and the family support worker reported that the home conditions were 'transformed'. The plan was to build up contact with a view to Sarah-Jane going home. No plan to start care proceedings, or to have another PPM review. Progress would be reviewed by the team manager after 4 weeks, and in a LAC review after that.

*Outcome:* The plan did not work out. Debbie was not able to manage as the contact was built up. Within one month the local authority had started care proceedings and obtained an interim care order. The full hearing was fixed (it would have been seven months after starting proceedings), but the father applied for a further assessment. The local authority agreed to this, which delayed the hearing, but then he withdrew from it. Meanwhile Debbie had another baby, and the local authority took care proceedings on him too, with a plan to place the children together for adoption. Care and placement orders were eventually made just over a year after proceedings had started on Sarah-Jane.

**4 months in pre-proceedings + 12 months in care proceedings; care and placement orders when child aged 17 months.**

## **The Charlery family**

*Family:* Abi (Mother), daughter Belinda (12), son Jamie (7). White British.

*Background:* Abi left the children's father two years ago and moved to her current town. There had been a long history of domestic violence, but Abi left with the children when it started to affect them. Long-standing concerns about neglect, poor home conditions, Abi's ability to ensure safe care. Abi has a learning disability and finds it hard to grasp and retain the concerns, but she does try to co-operate – for example, she has been to parenting classes. She struggles to manage household bills and there is now a risk of eviction. Jamie is on 'child in need' plan. Belinda has recently gone on to a child protection plan. Last year she spent some time in foster care, then returned home. She does not get on well with her mother, and spends a lot of time out of the house. She has been excluded from school and is using alcohol.

*Reason for sending the letter:* Matters escalated because of the length of time children's services have been engaged without sustained changes from Abi, the risk of homelessness and Belinda's increasingly worrying behaviour. Belinda told the social worker that she does not want to stay at home. She would like to live with an aunt. The social worker took the letter to Abi and read it out loud to her a few lines at a time, trying to explain it. The social worker tried to help Abi get a solicitor, but none was available in time for the meeting.

*The meeting:* The meeting went ahead without any lawyers. It lasted 40 minutes. As well as the children's social worker, a social worker from the adult services learning disability team attended. The meeting was chaired by the area manager, who did most of the talking, speaking directly to Abi. The tone was supportive, recognising that Abi had tried to co-operate, but clear that 'we don't think you can cope'. The area manager asked Abi to agree to Belinda going to foster care, but said if not, they would need to think about going to court. The plan was for Belinda to get help and return home. Other elements of the plan were for Abi to be referred for a cognitive assessment, and the aunt to be assessed as a carer for Belinda. Jamie to stay at home. Abi agreed to Belinda going into foster care. A review meeting was fixed for three months later.

*Outcome:* Belinda went into foster care under s.20 of the Children Act. A year later, she was still there, still under s.20. Meanwhile, Abi and Jamie had moved to another city, and the local authority was no longer involved with him. As for Belinda, placement with the aunt was not considered suitable. Abi was co-operating with the local authority and the social worker said there was no need for care proceedings.

**Pre-proceedings and s.20; child still in foster care 12 months later.**

## **The Cooke family**

*Family:* Holly (Mother), Ricky (Father), unborn baby, Tracy (Mother of Holly). White British.

*Background:* Both parents were 17. There were concerns about the emotional, social and behavioural development of them both, their readiness to have a baby and ability to provide safe care. Holly had been receiving help from Child and Adolescent Mental Health Services. Ricky was in foster care. There were concerns about the stability of their relationship. Tracy was offering to help, saying that Holly and the baby could stay with her.

*Reason for sending the letter:* The first pre-proceedings meeting was held when Holly was six months pregnant, to consider the feasibility of the baby staying with Holly, living with Tracy. The decision was to undertake a viability assessment of Tracy. A review PPM was arranged for two months later. The initial child protection conference took place in between the two meetings. The unborn baby was made subject to a child protection plan. The family had been complying fully with the plan.

*The meeting:* The review PPM was attended by Holly and her solicitor, Ricky and his solicitor, Tracy, the team manager, social worker, local authority solicitor and an administrator. It lasted 35 minutes. The viability assessment of Tracy had been completed successfully. The family had prepared well for the birth of the baby, buying equipment and decorating the baby's room. The parents had been attending groups at the children's centre. Their relationship appeared stable. The plan was to start a parenting assessment and call a family group conference as soon as possible to explore what extra support might be available. A further review PPM was arranged, but the overall tone of the meeting was positive. The team manager said 'We want to send a clear message to you today Holly, that you are working with us, engaging well and we just want to see that continue'.

*Outcome:* The baby was born, a boy named Toby. He went home with Holly and Tracy as planned. Things went well for the first four months, and plans were progressing for Holly to take on sole care of him. Then Holly and Ricky's relationship ended and things stopped going so well. Tracy asked that Holly and Toby leave. They went to a supported lodgings placement, but this broke down quickly. They then went to a mother and baby foster placement (s.20), but this also broke down. They returned to Tracy. Another pre-proceedings meeting was held at this point. Things broke down again within a few weeks. The local authority started care proceedings, and got an interim care order almost exactly a year after the initial PPM (Toby aged just over nine months). Toby was placed in foster care and the local authority's plan was for adoption. The proceedings were still in progress 17 months after the initial PPM (Toby aged 14 months). By this stage Tracy had put herself forward to be assessed as a carer for Toby.

**11 months pre-proceedings + care proceedings (ongoing), plan for adoption (currently contested).**

## **The Cozens family**

*Family:* Joanna (Mother), David (Father), unborn baby. White British.

*Background:* Joanna has four older children who are currently in foster care on interim care orders. There is a long history of concerns, including neglect of the children and unhygienic home conditions. Joanna had suffered domestic violence from her previous partner, and has a history of fleeing with the children to a refuge and then returning to him. Joanna also has a history of depression and self-harm. There were concerns about David's drinking, and the older children had alleged that he had physically assaulted them. It was following this allegation that they went into care, initially under s.20 accommodation. Subsequently, care proceedings were started (there were two pre-proceedings meetings for this – one for Joanna and one for the previous partner). The unborn baby had already been made subject to a child protection plan.

*Reason for sending the letter:* There was a psychological report on Joanna as part of the care proceedings that added to the concerns about her mental health and ability to care for the new baby. The local authority planned to apply for an interim care order as soon as the baby was born. Joanna and David had already been told this. The meeting was not called to prevent these proceedings, but to make the plan clear to all and consider what would be necessary for the child to return to the parents in the longer term, or possibly to David's parents, who had offered to care for her.

*The meeting:* Joanna attended the meeting with her solicitor. David was ill and did not attend, but his solicitor did. The meeting was chaired by the area manager. The team manager, social worker and local authority solicitor also attended. The meeting lasted 35 minutes. The area manager asked Joanna questions about the background and the current concerns, noting that she had been co-operating with the department. Joanna denied that David would deliberately hurt the children. She stressed how much better the home conditions were now, and this was acknowledged. David's parents had been helpful in this. The local authority would do a viability assessment of David's parents. Joanna said that she would oppose the care application.

*Outcome:* The authority started care proceedings after the baby was born (a boy). The viability assessment concluded that it would not be suitable to place him with David's parents, so the authority's plan was foster placement. The children's guardian supported this. The case was transferred to the county court. The grandparents said they would help Joanna and David. At the first hearing, the judge made an interim supervision order, and the baby went home. The proceedings ended within a year, with a supervision order.

**Care proceedings at birth; supervision order, child at home.**

## **The Drury family**

*Family:* Colette (Mother), Owen (Father), unborn baby. White British.

*Background:* Colette has three older children, none of whom live with her. There had been recent care proceedings on them. There was a long history of concern about neglect, poor home conditions, domestic violence and substance misuse. Colette had a traumatic childhood and suffers from poor mental health. She also has learning disabilities. Her relationship with Owen was relatively recent. He has grown-up children, but no previous contact with children's social care. At one stage the couple had been made homeless and had to live in a tent, but they had saved money to rent a flat. The unborn baby was subject to a child protection plan.

*Reason for sending the letter:* The long history of concerns, and because these had been increased by the very negative psychological assessment of Colette in the recent care proceedings. It was considered a high risk case, although it was acknowledged that the parents were cooperating very well with the department and making progress. The meeting was called when Colette was six months pregnant. The social worker took the letter to the family, and explained it to them.

*The meeting:* Colette and Owen attended the meeting, represented by the same solicitor, who did not speak during the meeting. The local authority was represented by the team manager, social worker, solicitor and an administrator. The meeting lasted 25 minutes. The team manager and social worker acknowledged the progress that the parents were making and their good cooperation with the department. They were supportive of each and determined to do anything required to keep the baby. They had been attending parenting classes. There were good reports from the health visitor and midwife. The team manager said the department would allocate a family support worker and start a parenting assessment. They would ask for an updated psychological assessment, and a cognitive assessment of Colette. A review PPM was fixed for six weeks later.

*Outcome:* Things were going well at the review meeting. The parenting assessment was nearly finished, with positive reports. An appointment had been arranged for the psychological assessment, but it had not been done yet. The cognitive assessment had been done. Owen was going to go to a course for fathers. Another review meeting was arranged to discuss the plans again when the result of the psychological assessment was known. After the baby was born, he went home with the parents. The case remained in the pre-proceedings process for another three months, but care proceedings were not started. The child was taken off the child protection plan. A year after the initial meeting, the family was getting support via the children's centre, but was no longer an allocated case in children's social care.

**Pre-proceedings only; child remained with parents, case closed to CYPs within 1 year.**

## **The Etherington family**

*Family:* Shereen (Mother), Peter (Father), Tom (16), Becky (10), Naomi (2). White British.

*Background:* Shereen and Peter also have two adult children, and the family had been known the local authority for many years. There had been long-standing concerns about neglect, the hygiene and safety of the home, inadequate furnishing, lack of routines and supervision for the children, not protecting the children from visitors who present a risk to them, and Peter's alcohol use. Tom had a long record of offending. There had been intensive support from the family intervention team and the youth offending team, but changes had not been sustained. There was a history of 'on and off' engagement from the family. At times the parents would avoid social work visits. The younger children were on child protection plans.

*Reason for sending the letter:* The long history of involvement, the absence of sustained change and the difficulties of engaging with the parents. Concerns about the safety of the younger two had increased the sense that something had to be done. The social worker explained that the letter would be coming and what the procedure would be.

*The meeting:* Shereen attended with her solicitor. Peter did not attend, although invited. The solicitor said she would be happy to represent them both. The team manager gave Shereen and her solicitor a copy of the proposed agreement before the meeting started, and they had some time to go over it. The local authority was represented by the team manager, assistant team manager, social worker and solicitor. The meeting lasted an hour. Shereen disputed some of the authority's concerns, notably about the risks posed by visitors to the home, and what she could do about disturbances caused by young people near her home. There was a lengthy discussion about precisely who should be allowed to visit the home, when the local authority should be informed and what checks should be undertaken. Both solicitors took part in this, trying to find a form of words that was acceptable to both parties. Shereen accepted the requirements about keeping the home clean and tidy, allowing social work visits and a referral for a parenting assessment. An amended version of the agreement was to be sent to Shereen to show to Peter, and he would need to agree it too. No review date was fixed in the meeting, but afterwards the local authority decided to arrange one for eight weeks later.

*Outcome:* The local authority considered that no positive changes were being made and started care proceedings on the two girls six months after the initial PPM. Interim supervision orders were made and the girls remained at home whilst further assessments were undertaken. These included a parenting assessment and a CAMHS assessment.

**6 months pre-proceedings + care proceedings (6 months and ongoing).**

## **The Fry family**

*Family:* Sally (Mother), new born baby girl, Danielle (Sally's mother). White British.

*Background:* Sally had a long history of drug and alcohol misuse. She had three older children, all of whom lived with Danielle under special guardianship orders. All the children had the same father, who was currently in prison. There was a history of domestic violence from him. Sally had never cared for any of the children for long, leaving them with Danielle when they were still young. Until very recently, Sally had not engaged with any drug treatment services, but she was now doing so. She was on an intensive programme that had been interrupted for the birth of the baby, but would resume shortly. The baby was subject to a child protection plan.

*Reason for sending the letter:* The local authority had been working with Sally and Danielle to prepare for the birth of the baby. The meeting had been called to confirm the arrangements, but in the event the baby was born prematurely and the meeting took place after her birth. At first Danielle had been reluctant to have Sally and the baby stay with her, except as a short-term measure. The social worker had drafted a plan on that basis, but just before the baby was born Danielle changed her mind. She now said that Sally and the baby could both stay with her on a longer-term basis, while assessments were undertaken.

*The meeting:* Sally attended with her solicitor. The local authority was represented by the team manager, social worker and solicitor. The meeting lasted half an hour. Sally had already seen the draft agreement. It was agreed to change the plan to show that Sally and the baby would stay longer with Danielle. (Sally had told her solicitor that she was unhappy with some of the requirements, but during the course of the meeting she asked for a break to talk to her solicitor and when they returned she did not raise any disagreements.) The team manager stressed that Sally ought not to resume her relationship with the baby's father, when he was released. The meeting ended with the social worker saying that she had seen a change in Sally since the baby was born, that there was strong network and everyone wanted her to succeed.

*Outcome:* Ten months later, the baby was still living with Danielle under s.20. There had been no court applications. Sally was still engaging with treatment services, but there had been more than one relapse. There had been a psychological assessment, which gave a poor prognosis. Danielle had been assessed for special guardianship, and the local authority intended to support her in an application to become the child's special guardian.

**Pre-proceedings and s.20; child remained with grandmother, SGO planned.**



## **The Gooding family**

*Family:* Elaine (Mother), Terry (11), Matthew (8), Sam (6). White British.

*Background:* Elaine also had two older children, who were not the subject of the pre-proceedings process. There were long-standing concerns about Elaine's ability to provide a suitable home environment for the children, in terms of safety and cleanliness. The youngest child had been burned in an accident, and this was attributed to lack of adequate supervision. About a year before, Elaine's partner had been convicted of assaulting two of the children. He had left the family home, and this had improved things for the children, but there were still concerns about their emotional and behavioural development. The three boys had been on child protection plans for a year and a half.

*Reason for sending the letter:* The length of time that the authority had been involved without sustained change from Elaine.

*The meeting:* Elaine attended with her solicitor. The local authority was represented by the team manager, social worker and their solicitor. The meeting lasted half an hour. Elaine and her solicitor had not had time to study the proposed agreement before the meeting, and the team manager said that she did not expect them to agree it today, but to have time after the meeting to discuss it and then let her know. Elaine's solicitor asked for a couple of days. The team manager went through the agreement, which included the local authority providing a 'deep clean' to the home, and advice to Elaine on keeping it to a reasonable standard. Elaine was to allow the social worker access to all the rooms in the home, and to talk with the children on their own. She was to encourage family members, including her older children, to work with children's services and other agencies. Elaine said that she could not make the older children do this, and asked for clarification about the implications. The team manager said it was about her trying to do so, but if they did not co-operate the authority would have to reconsider the arrangements. The team manager said they would amend the agreement to state this. Progress would be reviewed by the team manager and social worker in about six weeks.

*Outcome:* Elaine's engagement with children's services and other agencies improved. A year later, the children were still at home and there had been no care proceedings. The social worker thought that the meeting had made a difference by reminding Elaine that the children might be removed if she did not co-operate.

**Pre-proceedings only; children still at home 1 year later.**

## **The Hankin family**

*Family:* Louise (Mother), unborn baby. White British.

*Background:* The expected baby was Louise's third child. She had a very troubled childhood herself, and a history of depression, self-harm and alcohol misuse. She had suffered violence from the father of her first two children. She had been diagnosed with borderline personality disorder. Louise's first child had died in suspicious circumstances at the age of six months. Care proceedings on her second child were started as soon as he was born. He was placed with relatives and remains with them.

*Reason for sending the letter:* The pre-proceedings meeting was called when Louise was six months pregnant, to give time for further assessments and to work with her to prepare for the new baby. The local authority wanted a new psychological assessment of Louise, to add to the one done in the previous proceedings. Depending on the outcome of that, they would consider a residential assessment. The local authority was concerned about Louise's lack of support and her relationship with the father of the new baby (a different man). They wanted to arrange a family group conference. The social worker explained that the letter would be coming, and visited Louise the day before the meeting to prepare her for it. Louise had also had a meeting with her solicitor the day before.

*The meeting:* Louise attended with the solicitor who had represented her in the previous care proceedings. They were given a copy of the proposed agreement a few minutes before the meeting started. The local authority was represented by the team manager, assistant team manager, social worker and solicitor. The meeting lasted 50 minutes. Louise's solicitor took an active part. The TM opened it by saying that the aim was 'to come to an agreement of what we are going to do over the next few months, so that we don't have to go to court'. The tone throughout was co-operative and encouraging. Louise said that she had good relationships with her mother, the baby's father and his family. She wanted the baby at home, but would co-operate with any assessments. She agreed to the plan of a psychological assessment and a family group conference, and the possibility of a residential assessment when the child was born.

*Outcome:* The psychological assessment concluded that the baby could only remain with Louise if they went to a residential placement where Louise could have therapy. No suitable placement could be found. The local authority started care proceedings as soon as the baby, a girl, was born. They wanted her to be placed with her father under an ICO, and did not propose further assessments of Louise. The court did not accept this. Louise's lawyer said that she would seek an order for a residential assessment under s.38(6). The court ordered the authority to make enquiries about further assessments. The ICO was granted and the baby placed with her father. Louise wanted a residential assessment, but the authority argued for a community-based one. This was ordered and concluded that Louise could care for her child. The local authority held to the position that the baby should remain with her father, and eventually Louise came to this view herself. Ten months after the baby's birth, and fourteen months after the initial PPM, the case was still in proceedings. The issue now was about contact.

**4 months pre-proceedings, care proceedings at birth (10 months and ongoing); child placed with father.**

## **The Hernandez family**

*Family:* Carmen (Mother), Carlos (Father of Roman and Luis), Imelda (13 years), Manuel (10), Roman (7), Luis (5). Latin American.

*Background:* The local authority had recently taken over the case when the family moved into their area. The background was that two years ago Imelda had told her teacher that she had been sexually abused by Carlos. This had been investigated by the police, and was considered credible, but later Imelda withdrew the allegations. Carlos had been living away from the family since the allegations were made, having contact with the boys but not with Imelda. Carmen did not believe that he abused Imelda, and resented social work 'interference' in the family. There had been a long history of partial cooperation. The previous authority had called a pre-proceedings meeting about a year ago, but then the family moved. All the children were on child protection plans.

*Reason for sending the letter:* Given the history and the current impasse, with Carmen not accepting the authority's concerns but wanting Carlos back, the authority called the meeting in order to 'move things on'. They wanted Carmen to agree to a specialist assessment of the family, and a family group conference. The conference would be to see what support could be offered to the family, or whether anyone else might be able to care for the children if they could not stay with Carmen. The social worker had told the parents about the letter before it was sent, and visited them to discuss it a week before the meeting.

*The meeting:* Carmen attended with her solicitor and an interpreter. Carlos came with her, but without a solicitor, and was offered a separate meeting. He agreed and left. The team manager gave the proposed agreement to Carmen and her solicitor, and then left them to go over it by themselves before the meeting started. The local authority was represented by the team manager (chair), assistant team manager, social worker and solicitor. The meeting lasted 30 minutes. Carmen's solicitor played an active part. The team manager said that the authority hoped the assessment would identify what could be done to make sure the children were safe, but if it showed risks that could not be managed, they would have to go to court. Carmen agreed, wearily, to a specialist assessment, the family group conference, and that Carlos would not have unsupervised contact with the boys.

*Outcome:* A year later, little progress had been made. Carlos did not engage with the pre-proceedings process. The local authority eventually decided to go ahead with the specialist assessment of Carmen and the children anyway, but the agency that had been identified to do it no longer did that sort of work. The children remained at home.

**Pre-proceedings only; children remained with mother, no progress over 12 months.**

## **The Imlach family**

*Family:* Estelle (mother), Peter (father), Colin (1). Colin is of dual race heritage – white British and black African-Caribbean.

*Background:* There were concerns about domestic violence between Peter and Estelle. Both parents were young and in care themselves, living in independent accommodation. Their relationship had ended and there was a non-molestation order against Peter. Colin lived with Estelle on a child protection plan (category emotional abuse). One aspect of the plan was that Estelle and Peter should not have contact.

*Reason for sending the letter:* The local authority decided to start the pre-proceedings process when they learned that Estelle and Peter had remained in contact, in breach of the non-molestation order and the CP plan. They called separate meetings for the two parents. They wanted to undertake parenting assessments of each of them. They also wanted a risk assessment of Estelle's mother and a family group conference.

### *The meetings:*

*Estelle's meeting.* Estelle attended with her solicitor. The meeting lasted over two hours, with two breaks for her to discuss matters with her lawyer. The local authority was represented by the team manager (chair), deputy manager, social worker and a paralegal. There was a note taker. The TM said they would go over the history as set out in the letter, and ask Estelle if she accepted each point. Estelle's solicitor objected because they had not had time to discuss all this before the meeting. The TM said the meeting was not a court and she was interested to hear what Estelle said, not the lawyer. As the meeting progressed, Estelle's lawyer objected again to the way it was being done, saying it was not a fact-finding exercise. The TM said it was quite unusual for a solicitor to have so much input in a PPM.

Estelle did not accept that she needed a parenting assessment. She argued that the concerns were about domestic violence, not her parenting. The meeting ended without agreement on this, with the TM asking Estelle to think about it over the next few days.

*Peter's meeting.* Peter attended with his solicitor. The meeting lasted over two hours. The local authority was represented by the deputy manager and a solicitor. The social worker was unable to attend. The DM opened the meeting by saying that they would go over the list of concerns in the letter and ask Peter whether he accepted each of them. She said it was not a court hearing and they did not expect Peter's solicitor to intervene. The aim was to come up with a plan that Peter should sign at the end, including a parenting assessment.

They went through the list of concerns which included a wide range of matters as well as violence against Estelle and breaching the non-molestation order. Peter accepted some, denied some and said he could not remember others. At one point he said he was just agreeing everything to get through the meeting. At the end he signed an agreement, which included supervised contact with Colin, a parenting assessment, complying with the court order and child protection plan, and attending anger management and drug counselling programmes.

*Outcome:* Estelle was not happy about the way the meeting had been conducted or the requirement of the parenting assessment, and on her solicitor's advice made a complaint about it. As a result a revised plan for the assessment was drawn up, so that it would focus on the issue of domestic violence but also address Estelle's parenting of Colin. Later, Estelle and Peter acknowledged that they had resumed their relationship, and the plan was to assess them together and separately.

Seven months later, there was a review pre-proceedings meeting, with the couple together. The social worker had continued working with Estelle and Peter over this period. Colin was still living at home, and the social worker considered their day-to-day care of him to be good. However, the formal parenting assessment had not started because of staffing difficulties.

The difficulty, from the social worker's point of view, was that the couple would not carry out the tasks that the local authority asked them to do – they would always come up with reasons why they were not possible. The review meeting ended with a new agreement, on similar lines to the previous one. The social worker said it had been made clear to the couple that there would be no further review meetings, and if things did not improve the local authority would take the case to court.

**Pre-proceedings only for 7 months; child stayed at home but concerns remained.**

## **The Kanu family**

*Family:* Obike (father), three children aged under 5. Black British (dual heritage: Black African and Black African-Caribbean).

*Background:* Obike has been looking after his three small children since their mother separated from him, leaving him with the children. The local authority was concerned about neglect, especially under-stimulation, and the impact of Obike's drug use, his possible involvement in violent crime and gang activity, and domestic violence. There were also concerns about Obike's mental health. Obike had a troubled childhood and had been in care himself. The children were on child protection plans.

*Reason for sending the letter:* The local authority decided to send the letter because they were not satisfied that Obike was taking their concerns seriously. Also, the children's mother had become re-involved in the care of the children, but Obike had not informed the authority about this.

*The meeting:* Obike attended with his solicitor. The local authority was represented by the team manager (chair), deputy manager, social worker and solicitor. An admin worker took minutes. The meeting lasted nearly two and half hours, with a fifteen minute break in the middle. The TM opened by saying they would go through the letter asking Obike to say whether he agreed or disagreed with what was recorded. It was an opportunity to talk openly about the concerns: 'We want to work with you and support you, and avoid going to court'. Obike did not accept most of the matters put to him, about drug and alcohol use, violence towards his ex-partner and violent crime. The proposed agreement was for Obike to continue working with the social worker and taking the children to nursery; and to engage with a mental health assessment, a domestic violence programme and a parenting assessment (with the children's mother). Obike signed the agreement. His solicitor only spoke towards the end, to ask for more financial help with the children's nursery places.

*Outcome:* Nine months later, the children were still with Obike. The case had not gone into care proceedings. Both parents had completed separate parenting assessments. The social worker reported that there had been significant improvements and the tasks on the child protection plan had been accomplished.

**Pre-proceedings only; children remained with father, protection plan accomplished within 9 months.**

## **The Khan family**

*Family:* Smita (mother), Zarif (father), Javed (son, 10). Asian.

*Background:* The case had been referred by Javed's school, because of concern about a number of injuries. A medical examination found over 20 injuries, some of which were considered accidental and others non-accidental. There was a joint social work-police investigation. Smita admitted slapping Javed for taking money. Javed, who has learning disabilities, spoke about being hit by his father, but Zarif denied this. There was a bite mark that the parents could not explain. They said the injuries were the result of playing football, or of being bullied by older boys. Both parents were later charged by the police. Javed had been made the subject of a child protection plan.

*Reason for sending the letter:* The investigation had revealed concerns about Javed being physically and emotionally ill-treated, and being inadequately supervised. The school reported that he had few friends, and lacked self confidence. There were also concerns about his mother's mental health. The local authority wanted to arrange a comprehensive parenting assessment, a mental health assessment of Smita, a family group conference, therapeutic help for Javed, and ensure the parents complied with the child protection plan.

*The meeting:* The observed meeting was the fourth attempt to hold it. Previous meetings had been adjourned for various reasons, including problems getting legal representation for both parents. This time Smita still did not have a solicitor but agreed to go ahead with the meeting. There was Smita and Zarif, Smita's brother, Zarif's solicitor, and an interpreter. The local authority was represented by the social worker, duty manager, team manager (chair) and a paralegal. An administrator took notes. The meeting lasted over two hours, with a short break in the middle. The team manager went through each of the concerns asking the couple to comment on them. The parents continued to deny that they had injured Javed. Towards the end there was a short discussion about the plan, which had been set out in the letter. The parents signed the agreement at the end of the meeting.

*Outcome:* Nine months later, there had not been care proceedings. Javed was still living with his parents, and their extended families were more involved now. Smita pleaded guilty to assaulting Javed. The case was still being monitored through the child protection system.

**Pre-proceedings only; child remained at home but still on a child protection plan after 9 months.**

## **The Kowalski family**

*Family:* Anka (Mother), son Patryk (1), grandmother Roksana. East European

*Background:* Anka was a young mother, now 18 years old, who had moved to England with her mother, Roksana. They were living with several other lodgers in a crowded house. Patryk attended a nursery. He was referred by them because of a history of unexplained bruises, soiled clothing and poor hygiene. There was a medical examination. Patryk was made the subject of police powers of protection. He went home after three days under a tight agreement with Anka and Roksana. He was put on a child protection plan under the category of neglect, and the local authority decided to call a pre-proceedings meeting.

*Reason for sending the letter:* The local authority thought that Anka and Roksana did not really understand the concerns about Patryk, but always minimised them. They wanted to emphasise the seriousness of their concerns, so that Anka and Roksana would cooperate more fully. They also wanted a parenting assessment of Anka. There were several weeks between the sending of the letter and the meeting, and during this time Anka and Roksana did begin to cooperate more.

*The meeting:* This took place nearly three months after the initial referral from the nursery. Anka and Roksana attended with a solicitor. There was also an interpreter. The local authority was represented by the team manager (chair), social worker and solicitor. There was an administrator to take notes. The meeting lasted just over an hour. The team manager went through the letter, asking Anka and Roksana to comment on each concern. There was still disagreement about the injuries – for example, they said that Patryk's teeth were decayed, not broken. The plan was to call a family group conference, to see what support family and friends could provide. Patryk should not be left unsupervised, or with anyone other than Anka or Roksana. They should continue to work with the social worker, and take part in an assessment.

*Outcome:* The parenting assessment went ahead. The team manager did not expect the case to go into proceedings. Although the original concerns had been very high, these had reduced as Anka and Roksana began to cooperate more. Nine months later, the family were no longer in the pre-proceedings process. The team manager thought that the process had been effective in getting Anka and Roksana to recognise the concerns and engage with the local authority.

**Pre-proceedings only; child remained at home, concerns reduced; no longer in pre-proceedings after 9 months.**



## **The Longhurst family**

*Family:* Mary (Mother), Rosie (5). White British.

*Background:* There was a long history of concern about Mary's care of Rosie. Mary had a troubled childhood herself. She had suffered from post-natal depression and this had continued despite medication, becoming a longer-term illness. Rosie came to the attention of children's services three years ago because of an injury. She was placed in foster care but was eventually rehabilitated to Mary. There had been a one-year supervision order. When Mary is under pressure she tends to shout at Rosie and use physical punishment. Rosie was on a child protection plan for emotional abuse.

*Reason for sending the letter:* The local authority decided to send the letter because a psychological assessment of the family had raised concerns about the impact of the unpredictable and frightening home environment on Rosie, reflected in disturbing behaviour at school. It was considered that they needed to set clear and limited timescales for change. The social worker had told Mary that the letter would be coming and warned her that the wording was 'quite harsh'.

*The meeting:* Mary attended with her solicitor. The local authority was represented by the team manager, deputy manager, social worker and legal executive. An admin worker took the minutes. The meeting lasted half an hour. Neither lawyer spoke during the meeting. Mary said that she had stopped taking her anti-depression medication, which had been the wrong sort, and was now feeling much better than she had done for years. The team manager was encouraging throughout, saying that Mary's attendance at the meeting was positive and the local authority did not intend to go to court. Mary accepted the written agreement, to continue working with the social worker, attending a parenting group, having psychotherapy and agreeing to a family group conference.

*Outcome:* Six months later, the case was still in the pre-proceedings process. The social worker reported that there had been some progress but the local authority was still concerned about aspects of Mary's parenting, and further assessments were being undertaken.

**Pre-proceedings, 6 months and on going; child stayed at home, concerns remained.**

## **The Mahmood family**

*Family:* Zainab (Mother), Wasim (Father), 4 children aged between 8 and 4. Pakistani

*Background* Zainab was brought to the UK from Pakistan for an arranged marriage with her cousin, Wasim, a British born Asian. Zainab had no relatives other than her husband's family in the UK. She was the victim of Wasim's domestic violence, to the extent of taking out a non-molestation order with power of arrest against him, despite being under pressure from his family to have him back. Wasim has also refused to attend any meetings or engage with Children's Services. Zainab is not totally opposed to reuniting with Wasim once he has changed his ways. There were no concerns about Zainab's care for the children who were thriving and doing well at school but the children reported violent incidents between their parents to their teachers. An initial Pre Proceedings meeting had been held in the previous year, followed by a review 2 months later. This meeting was the second review, held 5 months after the first review.

*Reasons for the letter* For this second review, the local authority wanted to convince Zainab to continue with the domestic violence support programme and to keep the non-molestation order in force, as they were concerned that, if the threat of care proceedings was lifted, Zainab would take Wasim back into the home and the situation would revert to its previous state. This had happened previously after her injunction lapsed, although at the first signs of violence from Wasim, she had contacted the police. The local authority also wanted to ensure that Zainab continued to cooperate with the social worker and allow unannounced visits.

Wasim did not attend any meetings, although he had had some contact with the social worker, who had persuaded him to attend a domestic violence perpetrator's course. Since then no further incidents had been reported by the children at school. Zainab's immigration status had improved –she had been granted Leave to Remain in the UK.

*The meeting* Zainab attended with her solicitor. There was no interpreter but there had been at previous meetings. With the help of lessons, Zainab's understanding of, and ability to speak, English had improved considerably and she was able to express herself fairly clearly. The social worker and Team Manager Chair were both keen to stress the enormous progress Zainab was making towards becoming independent and dealing with Wasim. She was about to begin Citizenship classes and was asking for courses concerning domestic violence for both partners for people from her culture. She was now supported by her mother-in-law, who had previously only supported Wasim. The Chair told Zainab that the local authority would stop the PLO process now, but would continue to monitor the family with the child protection plan. If there were any concerns, the PLO process will be reinstated.

*Outcome* The PLO process has ended but the children remain on a child protection plan. Wasim has contact with the children, supervised by his mother at his mother's house where he lives. The situation was still working well 6 months later although Wasim had not yet moved back into the family home.

**Pre-proceedings only (18 months); children remained at home, still on child protection plans.**

## **The Meloy family**

*Family:* Debbie (Mother), Aaron (Father), daughter Kimberly (2) White British

*Background* Kimberly 's parents are separated, she lives with her mother, Debbie. Her father, Aaron has a new partner. Both parents are drug abusers and there were concerns when they were together about domestic violence. This continued after their separation, particularly as Aaron stayed occasionally at Debbie's flat. The local authority does not consider either parent to be a suitable carer. However the plan was for Debbie to be the primary carer with Aaron having pre-arranged contact away from her home. Debbie has a Drug Support Worker.

*Reasons for sending the letter* The letter was sent to both Aaron and Debbie to arrange a meeting together to consider how to avoid issuing care proceedings by finding ways of dealing with the domestic violence between them and for Debbie to get off drugs. The letter included a list of actions to be contained in a Partnership Agreement with the parents.

*The meeting* Debbie attended with her solicitor. Aaron had not found a solicitor and wanted the meeting postponed for this reason. The local authority solicitor was keen for the meeting to proceed, so after a great deal of persuasion by herself and the Family Support social worker Aaron agreed to a separate meeting for him once he had found a solicitor. However, he continued, to hang around outside the meeting with his new partner and a friend. Debbie had brought her sister for support. The Chair bustled into the room at the last minute and immediately started the meeting, making introductions and checking that Debbie has had time to go through the Partnership Agreement with her solicitor. Initially Debbie's solicitor spoke for her client but Debbie very quickly took over, addressing the Chair directly. She suggested her own solution which was to move away from her current neighbourhood to live with her father so as to get his support and to help her with coming off drugs. Aaron had also been reading the Partnership Agreement; the Family Support Worker joined the meeting to inform them that Aaron was not prepared to have his contact with Kimberly supervised as suggested. The Family Support Worker and the Chair together persuaded Debbie to accept support offered to improve her parenting skills, management of finances, and to ensure Kimberly attends nursery, as well as help with managing her own anger and the domestic violence she and Aaron inflict on each other. Debbie signed the Partnership Agreement. A review date was set for 6 weeks time and then a further 6 weeks if there was any improvement. She was told that if there was no improvement, care proceedings would be issued.

*Outcome* A PPM was never arranged for Aaron, because he did not obtain legal representation. Debbie was unable to come off the drugs, care proceedings were issued after the next review meeting.

**10 weeks pre-proceedings + 12 months care proceedings; care and placement orders**

## **The Merritt family**

*Family:* Jackie (Mother), Dion (8) and ETTY (2). Unborn child. White British

*Background* Jackie was in care for a large part of her teenage years, so she knows the score. She was a strong woman who stood up for herself and found it difficult to accept help from Children's Services. She said she would do anything to ensure her children do not end up in care. Jackie's children all have different fathers. Although there were some issues between her and Dion's father, Jackie has never experienced serious domestic violence from her partners but other women have. Jackie smokes cannabis. She has recently moved from her old haunts into an area where Dion is able to attend a better school which he is enjoying more. The children are on child protection plans.

*Reasons for sending the letter* ETTY's father had recently been released from prison following a conviction for a serious assault on his previous partner; Jackie had renewed her friendship with him. Her current partner, the father of her unborn child, has anger management problems but has agreed to accept help for this. He has a good relationship with both children. Children's Services want to initiate supervised contact between Dion and his father.

*The meeting* This was the first pre-proceedings meeting. An agreement was handed to Jackie and her solicitor as soon as they arrived – half an hour late, with Jackie's mother, the children and her Domestic Violence support worker in tow. The Chair allowed the solicitor some time to discuss the agreement with Jackie. Jackie was very clear about what she does and does not accept in the agreement. The Chair knew that Jackie would speak her mind and when the meeting eventually began, wasted no time in addressing Jackie directly about the agreement. With the help of her solicitor, Jackie renegotiated the wording of several parts of the agreement without substantially altering its terms, which were to ensure that she would not allow any, even unexpected, contact with ETTY's father. Jackie checked to make sure that she understood the agreement clearly. She accepted social workers' concerns about the need to protect her children, but felt she could do that herself. Jackie signed the agreement after some of her amendments had been incorporated.

*Outcome* A review meeting was held after the baby was born 2 months later and the PLO process was stopped. Jackie continued to have help from her domestic violence support worker. The children also ceased to be on child protection plans.

**Pre-proceedings only (2 months); children remained with mother, closed to CYPs.**

## **The Morgan family**

*The family:* Jenny (Mother), Nathan (Father) Unborn child. While British

*Background* Jenny's previous child had been adopted because of neglect due to her learning difficulties, drug abuse and a violent partner. She had not disclosed this to the midwife until she was 8 months pregnant. The local authority were planning care proceedings at birth because of the need to assess Jenny's ability to care for her child with the help of her current, more supportive, partner, Nathan. As a short term measure, until assessments had been carried out, they proposed to place the baby with Nathan's sister. Jenny had abstained from drugs since she knew she was pregnant with her first child but had not made use of drugs support services. Jenny and Nathan do not live together yet. The local authority knew very little about Nathan.

*Reasons for sending the letter* The meeting was arranged in a hurry as the baby's due date was imminent. The local authority wanted the parents to have legal advice at a meeting to discuss the arrangements when the baby was born on the basis that care proceedings would be started.

*The meeting* Both parents attended the meeting with their very experienced child care solicitors, hurriedly organised the day before. Jenny's solicitor had represented her in the previous care proceedings. The social worker responsible for the assessment of Nathan's sister as a carer was also present. The Chair set a formal but friendly tone. She immediately engaged Jenny in discussion about her previous child, exploring Jenny's understanding of the reasons for the adoption, with a particular focus on her drug use and neglect, such as feeding the baby the wrong sort of food, and on the violent relationship with her former partner. The Chair also engaged Nathan, exploring how their relationship and care for the baby would work when they do not live together, and whether he understood why Jenny's baby had been adopted. Both parents expressed their willingness to do whatever was required. Nathan told the meeting about an assault for which he was on bail. During their assessment as carers, Jenny and Nathan expressed their preference their baby going into temporary care with Nathan's sister – who had a young family of her own as against a foster placement. The social worker confirmed willingness to carry out the assessment as speedily as possibly but noted that the baby would have to stay in hospital if it were born prematurely. The solicitors took little part in the meeting, allowing the parents to answer for themselves. It was made clear to the parents that care proceedings would be issued but in the context of their assessment. No agreement had yet been prepared. After the meeting both parents continued the discussion with their solicitors.

*Outcome* The baby was born within a couple of weeks, care proceedings were issued and the baby moved to live with Nathan's sister. Assessments were carried out, the parents went to parenting classes and the baby eventually went to live with Jenny and Nathan at Jenny's father's home, under a supervision order.

**Pre-proceedings (2 weeks) and care proceedings at birth; child home under a supervision order.**

## **The Neale family**

*Family:* Gemma (Mother), Tony (Father), son, Jake (10), daughter, Emily (2), unborn child due in 2 months. White British

*Background* Jake's older sister (16) left Gemma to live with her father because she was physically assaulted by Tony. Jake remained with his mother. The main concerns were Tony's drinking and the consequential violence towards Gemma and sometimes Jake and Emily. Gemma and Tony have separated but Tony lives opposite. He has been asked not to make contact with the children but neither Gemma nor Tony really understand why this should be. The local authority want Gemma to move away from the area with the children.

*Reasons for the letter* Gemma has failed to recognise the danger Tony poses to the children and both Gemma and Tony have lied about contact they have had. The local authority are reluctant to allow Tony even supervised contact until they are convinced that Gemma will keep away from him and protect the children from him. Both parents were sent a letter for separate meetings. Tony had already had his meeting in the morning at which he was told why he had to stay away from the children. At the end of his meeting Tony had signed an agreement about this.

*The meeting* Gemma attended with a trainee solicitor, who took a supportive, sometimes aggressive stance on Gemma's behalf, and Gemma made it clear that she hadn't liked the 'nasty' letter. An agreement was handed out but Gemma was given no time to read it. The tone was friendly but formal. The Chair stressed the positives - Gemma's co-operation with her social worker, and explained the meeting was necessary because of concern about Gemma's contact with Tony. There was considerable discussion between the Chair and Gemma about the local authority's plan for Gemma to move. Neither Gemma nor her solicitor felt it was right for Gemma to move from her childhood home to a new area, rather than Tony whose violence was the problem. They were also concerned about the change of school for Jake and Emily. Gemma's solicitor read out a letter from Jake, stating his unwillingness to move, and this upset Gemma. The Local Authority solicitor made clear that if Gemma did not comply, they would *consider* issuing care proceedings. The Chair reinforced this, emphasising that the move was right for the children. The trainee refused to let Gemma sign the agreement because the solicitor had had no opportunity to discuss it with Gemma beforehand. No date was set for a review.

*Outcome* Gemma moved out of the area a month before her baby was born. She was very upset about this as it took her away from close family and friends but she made herself a new life there. Jake kept returning to his old neighbourhood to be with his friends. The PLO process was stopped soon after the move but the children were still on a child protection plan.

**Pre-proceedings only; children remained with mother at new location and on protection plans.**

## **The Oldfield family**

*Family:* Nikki (Mother), Ben (Father), George (8 months). White British

*Background* Both parents are young: Nikki is 14 and Ben is 15. Nikki lives with George and her mother, Denise; Ben is in foster care. Nikki attends a school for teenage mums where she can do her GCSEs and learn parenting skills. Nikki's family has never been involved with Children's Services, whereas Ben's are well known, and to the police, for violent behaviour. Ben has not attended the arranged contact sessions but Nikki admits to seeing him occasionally when she is out with the baby. More recently Nikki became depressed and made a suicide attempt. She said that Ben had been violent during their relationship, and another boy had raped her while she was pregnant. Following a report from Denise that she had noticed unusual bruising after Nikki had left George briefly in Ben's care, a child protection plan was made for George for physical and emotional abuse.

*The reason for sending the letter* The first PPM was held 6 months earlier and focused on the arrangements for baby' George's care. It was agreed that Nikki would be the primary carer, with support from Denise.

*The meeting* This meeting was a planned review. Nikki attended with Denise and a trainee solicitor. Ben's solicitor (also a trainee) also attended; Ben had been invited to a separate meeting later that day. The Chair explained that the threshold for care proceedings had been met but because Denise has, in effect, been George's principal carer, proceedings were unnecessary. The local authority wanted to formalise this arrangement in an agreement because of Nikki's depression and recent disclosures. Denise expressed concern that Ben and his family kept attempting to make contact. Nikki said she was afraid of being beaten up by them. The Chair said that Denise should be designated George's primary carer in a written agreement, hastily adding that this reflected the current situation - Nikki would still attend school with George. Nikki became upset; her lawyer and Denise, who were very supportive of Nikki, took her out of the meeting to calm her and talk through the agreement, returning after 10 minutes. The Chair gave Nikki a week to think about whether she wanted to sign the agreement. She also said that Ben would be offered an agreement on contact but advised Nikki to walk away from him if he attempted to contact her. The social worker praised Nikki for her care as such a young mum.

*Outcome* An agreement, transferring primary care of George from Nikki to Denise was signed the following week. Ben did not turn up for his pre-proceedings meeting and has had no further contact with the family. The PLO process has stopped, although the family situation is still being monitored by Children's Services.

**Pre-proceedings only (6 months); child in care of grandmother in family home with mother.**

## **The Quirk family**

*Family:* Danielle Quirk (Mother), daughter Natasha (2). White British

*Background* Danielle is a young mum, 18, with some learning difficulties. She is currently homeless; Natasha is living with her maternal grandmother and great grandmother. Her maternal grandfather is a sex offender who is in contact with his wife but does not live in the same household. Danielle spent most of her teenage years in care and is still in contact with her 'leaving care' social worker and a homeless project worker. She is not happy with the plan that her mother should care for Natasha long-term. She would prefer a mother and baby foster placement. Natasha has been on a Child Protection Plan for 8 months for neglect. Danielle has named 3 men as possible fathers, one of whom is violent and currently on remand after a serious assault. Danielle and her mother have been posting their problems with each other on Facebook.

*Reasons for sending letter:* The relationship between Danielle and her mother and grandmother has become more turbulent in recent weeks. The local authority plan is for Natasha to remain long term with her grandmother, who is currently being assessed. There are concerns about Danielle's haphazard living arrangements, although her physical care of Natasha has been assessed as good. The purpose of the letter was to inform Danielle of the local authority's decision to issue care proceedings, once viability assessments of Danielle, her mother and Danielle's older sister, who has put herself forward as a temporary carer, have been obtained.

*The meeting* This was the first meeting pre-proceedings meeting for Danielle. There were three social work staff present (the current social worker, her replacement and the team manager) in addition to the Local Authority Solicitor; Danielle's solicitor attended but Danielle did not turn up. After Danielle texted her solicitor to say she was not coming as they were going to take Natasha away from her anyway and attempts by her solicitor to persuade her failed, it was decided to proceed without her as her solicitor was present. Danielle's solicitor said that the letter saying care proceedings would be issued 'got to' Danielle. The team manager outlined the current circumstances, including assessments and services and Danielle's solicitor asked about contact, Natasha's father, legal representation for the grandmother, and other possible family carers. The local authority solicitor explored what was known about the dispute between Danielle and her mother. Danielle has not been turning up for some contact and when she attends arranged contact sessions for Natasha avoids her mother. As Danielle has stated that she is no longer willing for Natasha to live with her mother, the plan is either for Natasha to remain with Danielle's grandmother or to go to a foster placement. Danielle's older sister is not interested in being a long-term carer. The decision to issue care proceedings as soon as the viability assessment of grandmother has been carried out was confirmed rather than arrange another meeting. Danielle's solicitor raised no objection to this plan. After Danielle's solicitor left the local authority team discussed the proceedings. The local authority lawyer expected Danielle's solicitor to argue for a mother and baby placement at the first hearing and the social workers expected Danielle's mother to argue that Natasha should be placed with her.

*Outcome* **Care Proceedings were issued; the court made care and placement orders.**



## **The Randle Family**

*Family:* Susan (mother), Terry (father), daughters Gaby, (12) and Michelle, (10). White British

*Background* Both parents have mental health difficulties: Terry has post traumatic stress disorder and has made a number of suicide attempts; Susan suffers from depression. Both have anger-management problems and their relationship was abusive but they were thought to have close relationships with their children. Gaby and Michelle had been subject to child protection plans on and off over a number of years because of emotional and physical abuse.

*Reasons for sending the letter* There was an incident during which Gaby was injured by Susan. Susan left the home and Terry struggled to care for the children because of his own problems. The parents agreed to the children's temporary accommodation with a relative who lived a long drive away, to ensure their safety and allow Susan's return home. Concern that the parents would withdraw their consent prompted a decision to hold a pre-proceedings meeting with a view to formalising longer-term placement, with the relative or elsewhere. The parents were told to expect a letter calling them to a meeting on a specific date but the letter only arrived on the morning of the meeting. It stated specifically that the meeting was to discuss how proceedings could be avoided.

*The meeting* On the morning of the meeting the social worker and manager agreed that proceedings would be started because of changes in the children since their placement away from home. The parents' solicitors were informed and given time to explain this to their clients before the meeting started. The meeting was held in a very small room and the parents entered upset from the news about the proceedings. The Chair acknowledged that notification of the proceedings must have been a shock for the parents and also that distance made contact difficult for them. The Chair emphasised the importance of focusing on the future, securing the children's placement and assessing the possibility of their return to the parents. Terry was unhappy with the current arrangements and became increasingly agitated in the meeting. In contrast, Susan appeared to be calm and content. The written agreement detailed the contact arrangements for the parents. There was a break of more than half an hour so that the parents could speak to their solicitors privately. Terry was still upset when they reconvened, discussion continued about possible plans for the children and Terry was warned not to raise this when he saw them. At this point Terry appeared to be rejecting the contract agreement; his solicitor took him outside to calm down. When he returned both parents signed the agreement and left, immediately, in some distress.

*Outcome* Care proceedings were issued but there was a delay before the first hearing because of lack of court time to hold a contested hearing. In the event the parents did not contest. There were a series of psychological and psychiatric assessments with negative conclusions about the parents. The children's placement broke down after six months and they were placed together in their home area. Care orders were made; the children remain in long-term foster care.

**Care proceedings; care orders, children moved from relatives to foster care after placement breakdown.**

## **The Rodgers Family**

*Family:* Barbara (Mother), Ian (Father), daughters, Katie (16) and Lily (3) and son, Mark, (6) living with mum. White British

*Background* The family have been involved with children's social care for many years because of domestic violence and problems with an older child who has now left home. The parents have been separated for four years but the domestic violence has continued, particularly in connection with Ian's contact. Barbara has taken out injunctions against Ian but does not seek to have them enforced. Ian is very verbally aggressive, frequently threatening her, including in front of the children. He has also threatened the social worker. The children have been subject to child protection plans for over 18 months because of emotional abuse. Recently, Katie has moved to live with her father, which Barbara finds very upsetting.

*Reason for sending the letter* The social worker was concerned about the younger children's welfare and the lack of progress in relation to the child protection plan. The local authority wanted Barbara to engage in programmes to support victims of domestic violence. She already had a domestic violence support worker. Both parents were invited to same meeting.

*The meeting* Barbara and Ian attended the meeting, which was held in a small room. There were 4 representatives of the local authority – a team manager, a senior social worker and a social worker as well as the local authority solicitor. Barbara was represented by a solicitor. The chair made no introductions and established no ground rules but immediately started speaking directly to Ian explaining the meeting was being held because things had not improved. Ian responded angrily, blaming the problems on children's social care and on Barbara. This appeared to make the Chair back down. Ian became more abusive, swearing at everyone present. Attempts to mollify him failed as did the attempt by the local authority solicitor to refocus the meeting on future plans for Barbara and the children. The Chair then tried to engage mother who has been sitting in silence. Ian responded with streams of abuse to the social workers and tried to leave but his exit was blocked by lack of space. He left the room followed by the Chair, who got him out of the building with the assistance of another staff member.

The meeting reconvened focusing on what Barbara could do to protect herself and the children from Ian's abuse. She was praised for her engagement with the children's centre and encouraged to continue this. There was a lot of discussion about everything that had been tried to help Barbara deal with Ian's abuse but no changes were made to the contract, which was based on the child protection plan and related to both parents' behaviour. The meeting ended with the Chair saying that a copy of the contract would be sent to mother's solicitor for Barbara to sign, and to Ian. Also, the message that further incidents of domestic violence would result in care proceedings was repeated. A review date was set for 6 weeks time.

*Outcome* Six months later the case was continuing in pre-proceedings. Barbara was engaging with all the support programmes she had been offered; Ian was no longer having contact with Lily and Mark but Katie was still living in his home.

**Pre-proceedings (6 months and ongoing); younger children remained with mother.**

### **The Sadler Family**

*Family:* Paula (mother), Charlie (15 months), Cherie (4) and Annabel (3). White British

*Background* Charlie has been the subject of a child protection plan since before his birth because of neglect. He has some development delay and epilepsy. Paula has some learning difficulties and depression. Her relationship with Charlie's father has ended and she is socially isolated. In her previous relationship with the girls' father, Paula was a victim of domestic violence and spent some time in a refuge. Cherie and Annabel were neglected and, despite intensive support with therapy and a parenting programme, Paula was unable to sustain improvements to her parenting. The girls are currently in foster care with a plan for adoption.

*The reason for sending the letter* The local authority wanted to ensure that Paula understood the seriousness of their concerns, made more efforts to care for Charlie and avoided care proceedings. They wanted her to engage in local services for mothers and toddlers, give Charlie more attention and improve her self-care. There were particular concerns about Paula's dealing with the health services; she was viewed as making too many emergency calls and trips to A & E for Charlie, and not following advice.

*The meeting* Paula was represented by a solicitor at the initial pre-proceedings meeting. At the end of the meeting she signed a statement of expectations, and a review meeting was fixed for 10 weeks later. This review should have taken place after a child protection review meeting but that was rescheduled because of the social worker's illness. The team manager decided to hold the review PPM so that approval to bring care proceedings could be sought at a legal planning meeting the following week. The purpose of the review meeting was to inform Paula in the presence of her solicitor that she had not done enough to meet the earlier statement of expectations.

Paula's solicitor attended for the review meeting. When Paula failed to attend she was telephoned and then collected by the family support worker. Charlie came too and spent the meeting sitting on Paula's or the FSW's knee or playing on the floor. The absence of the social worker due to illness meant the FSW's input in the meeting was required and she could not look after Charlie elsewhere. The team manager explained the purpose of the meeting and asked Paula's lawyer if she should go through the notes of the previous meeting. Paula's lawyer suggested focusing on the main concerns and the local authority lawyer encouraged the team manager to use the statement of expectations to do this. Much of the meeting was taken up with a discussion of what Paula had and had not done, with Paula giving reasons for recent lapses but ignoring the bigger picture which suggested she was not really engaging with services and unable to focus on Charlie's needs for attention and stimulation. Towards the end of

the meeting the team manager stated that they were worried that Paula had not made sufficient progress. Paula then asked directly, 'Are you going to take him away from me?' The team manager replied that they would take legal advice. Paula repeated her question; her lawyer asked when legal advice would be obtained. Paula then became very distressed. The meeting ended with Paula and her solicitor remaining behind so that they could talk.

*Outcome* Care proceedings were started. Until the final hearing, Paula remained determined to fight for Charlie, despite advice about the strength of the local authority's case.

**12 weeks pre-proceedings+ 12 months care proceedings; care and placement orders**

### **The Smith Family**

*Family:* Rebecca Smith (mother) and Billy, (2). White British.

*Background* Eighteen months previously the local authority obtained an EPO linked to Rebecca's then relationship with someone with convictions for offences against children and a range of concerns about her drug and alcohol abuse, shoplifting, and neglect of baby Billy. No care proceedings were started but the pre-proceedings process was initiated. Apparently there were no reviews during the first year of the pre-proceedings process. Rebecca moved from an isolated rural location to live in the home of an elderly disabled relative. Other young people also lived there too. She was put in contact with an intensive support team in her new location and had begun to make some progress.

*The meeting* This was the second review. The newly allocated social worker expected this meeting to be used to notify Rebecca that care proceedings would be started. Rebecca was represented by her solicitor who had attended the previous meetings. The meeting was chaired by a local authority lawyer. A new written agreement had been prepared and sent to Rebecca. Rebecca arrived late, with Billy, who ran around ignored, by everyone. The Chair checked Rebecca's understanding of the purpose of the meeting, which was to improve Billy's care and avoid care proceedings. The social worker then took over and proceeded to go through the statement of expectations in detail, identifying Rebecca's progress but reinforcing what more she needed to do. Rebecca was specifically asked whether she had sought legal representation for her coming trial for theft offences. A lot of concern was expressed about Rebecca's money management – she had received substantial assistance with furniture etc and had problems with her housing benefit. Rebecca signed the new agreement. Her solicitor suggested that a review should be fixed and it was, for three months hence.

*Outcome* The third review took place; there was similar limited progress. Two and a half years after the initial meeting, the Legal Panel gave permission to start care proceedings. Billy, now three years old, is currently still with Rebecca.

**30 months pre-proceedings + care proceedings (ongoing)**

## **The Tutt Family**

*Family* Ruth Tutt, 23 and her unborn baby. White British

*Background* Ruth was referred by the maternity hospital because she was rejecting medical advice and refusing social work support. She had some mental health difficulties, including a history of anorexia and self neglect. She was thought to have very unrealistic expectations about care for her baby. Ruth was unclear about who the baby's father was and identified three different men.

*Reasons for sending the letter* The social worker felt that Ruth would not be able to care for her baby on her own and wanted her to agree to a supported placement. The baby's due date was less than a week away. The letter included a list of concerns and a draft agreement.

*The meeting* Ruth attended with her solicitor and the social worker. The Chair and social worker went through the agreement and Ruth challenged their concerns, bringing up alternative proposals which had been rejected as unsuitable by the social worker. The meeting was rather repetitive as Ruth appeared stuck on certain points. Both the Chair and social worker dealt with this patiently but were clear that the expectations, including the placement in mother and baby foster care were not negotiable. Ruth's solicitor supported her client but appeared to accept the suitability of the local authority's plan and persuaded her to agree. Ruth did not sign the agreement saying that she needed to speak to the social worker on her own before she did so. The meeting ended with the Chair making it absolutely clear that proceedings would be started if Ruth did not accept the foster placement. Ruth's solicitor re-iterated that in these circumstances the court would make the decisions.

*Outcome* The baby died of natural causes and so the foster placement was not required.

**Pre-proceedings only; baby dies of natural causes.**

## **The Upton/Watkins Family**

*Family:* Tracy Upton (Mother) Phil Watkins (Father) daughter, Lottie (6 months). White British

*Background* Tracy, a heroin addict has two older children who are living with different relatives as a result of previous care proceedings. Phil also has two other children who he sees occasionally, living with their mother but has no previous involvement with Children's Services and is considered by the social work as a safe carer despite a history of criminal convictions for drug dealing and violence. Lottie was the subject of a child protection plan before birth.

*Reasons for sending the letter* The parents have a history of non co-operation with children's social care and health services. Phil has always taken an aggressive stance towards social work involvement. Tracy's drug tests have recently been negative but she does not regularly comply with testing. She has hinted that Phil is violent towards her. Lottie is not registered with a GP and has not been immunised. At the core group, the parents said they would comply fully with weekly drug test for Tracy and accept support. The social worker told them that she would seek legal advice if they did not. When they did not comply, legal advice to the social worker was to use the pre-proceedings process.

*The meeting* The social worker had arranged to take the parents for Lottie's immunisations before the meeting but they were still in bed when she called. She brought them to town in advance of the meeting and they arrived for it late with Lottie. Phil was represented by a solicitor; Tracy's solicitor was not able to attend at such short notice. The social worker was seeking a firm approach to the parents. It was the first pre-proceedings meeting the Chair had conducted and she took a solution-focused approach, which the social worker thought was insufficiently formal. The chair asked the social worker to list the concerns and then went through each expectation in the contract. It became clear that the father was losing control; he became increasingly dismissive and verbally aggressive, particularly when he was told not to retaliate to violent incidents. His solicitor suggested time out and took Phil outside. The Chair continued discussion with Tracy focusing on an incident in the street where she asked Phil to hold Lottie whilst she punched a woman. Tracy left the room. Phil's solicitor returned saying his client reluctantly agreed to ignore violence towards him and to being tested for drugs. Phil signed the contract presented at the meeting and Tracy said she wanted to consult her solicitor before she did so.

*Outcome* The agreement was immediately breached because the parents failed to attend that day to register the baby with the GP and for drug testing. Two days later Tracy was violently assaulted by Phil. Initially she said nothing, then she went to a refuge but returned to live with Phil after a few days. Both parents were also in breach of probation orders. The local authority decided to start care proceedings; Tracy agreed to Lottie staying with a relative as a temporary measure but two days later Lottie was placed with foster carers under an ICO because of concerns about the parents' continual lies. Phil was sent to prison for burglary but his prosecution for assaulting Tracy had stalled because she withdrew her statement. Tracy has disclosed that she uses heroin daily; her contact with Lottie is sporadic. Care proceedings are continuing.

**1 week pre-proceedings + care proceedings ongoing**

## **The Vaughan Family**

*Family:* Janet (Mother), John (father of Sam), sons Robert (14) and Sam (3); daughters Annie (12), Beth, (6) and Clare (4). White British

*Background* Children's social care have been working with Janet and her family since 2003. The concerns are around long-term neglect. Janet uses heroin and her current partner has convictions for drug possession; Robert has learning difficulties and is still soiling; and the other children are unkempt. The home is filthy and over-crowded because Janet's cousin is also living there; the children have no fixed sleeping places and Sam has no bed. Robert's school has repeatedly raised concerns; Robert is often smelly and has no friends. All the children have poor school/ nursery attendance. The children have three different fathers, and only the youngest has contact with his father, Janet's current partner, John, who does not live with them. Beth and Clare see their paternal grandparents at weekends but Janet says she has no contact details for their father. Janet has a difficult relationship with her mother, who is often involved in arguments at the family home and is aggressive towards Janet's social worker. Janet herself gets on with her social worker but has not made significant progress in improving her care.

*Reasons for sending the letter* The children have been subject to child protection plans for some time – Janet's care has shown a pattern of short-term improvement in response to pressure from CSC and provision of support but then relapse. Janet has ignored medical advice about Robert's soiling, and does not give him his medication. There are periods when drug tests do not show heroin use but Janet misses appointments for testing, giving various excuses and conflicting explanation about use of over-the-counter medicines. It is clear that the threshold was met long ago; the local authority's failure to bring proceedings in the past is inhibiting legal action now. The meeting was originally arranged in mid July; neither Janet nor Sam's Dad attended. Two further meetings were arranged, but cancelled because Janet said her lawyer could not attend; in fact she had not approached the lawyer whose name she had given to the local authority.

*The meeting* On the fourth attempt, Janet and John attended with separate solicitors. They had already been sent a statement of expectations with a long list of specific requirements about hygiene for the home and children, especially Robert. The meeting was chaired by a senior social worker. John's solicitor immediately sought to distance his client from any responsibility for the state of the home. Following discussion, it was agreed that different contracts would be provided for Janet and John. Both solicitors expressed concern that the details of the child protection plan were incorrect – the concerns were neglect not emotional abuse as the letter stated. There was further negotiation about some wording in the contract. The Chair sought to gain Janet's co-operation for a Family Group Conference which could result in more support for her, particularly from Beth and Clare's paternal family. However, Janet felt there was no point in this. The social worker withdrew to prepare the separate contacts and all

the other local authority staff left, leaving the parents with their solicitors. Both parents signed the contacts. No review date was set.

*Outcome* Janet complied with parts of the contract throughout the autumn and the social worker felt heartened by this but the children were still being neglected. Robert was continuing to soil and Janet began to miss medical appointments for him. The old pattern seemed to be reoccurring; Robert's school remained very concerned. The other children's school attendance improved. John became more involved in the care of the children, taking them out. Nearly nine months from the pre-proceedings meeting the decision was made to start care proceedings. Robert and Annie were placed with foster carers under an ICO; Beth and Clare went to live with their paternal grandparents and Sam to his paternal grandmother. Care proceedings can be expected to last many months.

**9 months pre-proceedings + care proceedings (ongoing)**



## **The Verney Family**

*Family:* Angela Verney, (Mother), Chris Wood (Father), son, Frankie, aged 18 months. White British

*Background* Angela and Chris never lived together but Angela was determined that Frankie should have contact with his dad. There has never been any involvement with children's social care.

*Reason for sending the letter* Frankie was taken to hospital by Angela with bruises to his face and head, which she said his father had caused during contact. The paediatrician confirmed that NAI was a likely cause and contacted children's social care and the police. Frankie was admitted to hospital and then, with Angela's agreement, he was placed in the temporary in the care of his maternal grandparents. Arrangements were made for a core assessment and an initial child protection case conference. At the conference it was decided that the pre-proceedings process should be used; in the meantime Frankie should remain with his grandparents and the parents' contact should be supervised. Letters were sent to Angela and Chris inviting them to separate meetings but only Angela responded. Both police and local authority investigations were continuing.

*The meeting* Angela attended with her solicitor and her father. The Chair tried hard to engage them both. The Chair went through the agreement checking that Angela understood and agreed to all that was being asked, particularly to co-operating with a 12 week parenting assessment. Angela said very little, merely nodding to the points raised. Copies of the agreement were circulated and the Chair encouraged Angela's solicitor take her client out for a private discussion. He also checked that the grandfather understood and was prepared to sign a separate agreement about the supervision of contact. There was a brief discussion between Angela, her solicitor and her father outside the meeting, when they returned the agreement was signed. A date was set for a review in six weeks time.

*Outcome* Investigations and the parenting assessment were still continuing at the date of the review. Angela's parenting assessment was going well. Chris was not engaging at all. The grandparents were fully supportive of children's social care and their daughter, encouraging her co-operation and supervising daily contact.

**Pre-proceedings only (8 weeks and continuing); child cared for by grandparents.**

## **The Whitely/ Wheldon Family**

*Family* Stacey Whitely, mother (17), Dan Wheldon, father (17), Tommy (aged almost 1 year)

*Background* Both Stacey and Dan had disrupted childhoods and Dan has mental health difficulties. They have been living in their own accommodation for a few months but are very isolated with little family support, mainly from Stacey's dad who is an alcoholic. Tommy has been the subject of a child protection plan for neglect for a few months. The local authority has arranged support for the family from a voluntary agency, who are helping with budgeting, parenting and home management.

*The reason for sending the letter* The social worker was concerned that the parents showed no progress in being able to manage without intensive family support and lacked awareness of safety issues for Tommy as he became fully mobile. She thought that the pre-proceedings process would show the parents how serious the issues were and tie them to a detailed contact of expectations. Stacey immediately made an appointment with lawyers and saw her solicitor before the pre-proceedings meeting. Her solicitor thought Stacey had little understanding about why the children's services was so concerned.

*The meeting* Contrary to the parents' specific request, the meeting was held on Tommy's birthday with very little notice. Both parents attended, each with their own solicitor. They were handed a new version of the contract of expectations at the meeting and the Chair then focused in great detail on each point in it, particularly getting the parents to accept help so they could have some time to themselves. The local authority also proposed a FGC but the parents thought it would be a waste of time and were unwilling to accept involvement from their families. The mother's solicitor asked for a break so she could discuss aspects of the agreement with her client; both solicitors and the parents left for a short while. As a consequence it was agreed that Stacey did not need to ask her doctor for a check-up. Throughout the meeting the Chair repeatedly stressed to the parents the importance of healthy eating for themselves and Tommy, and keeping Tommy safe in the home. Dan's solicitor said nothing at all. The parents were keen to end the meeting because they had planned a celebration.

*Outcome* Seven months later the case was still open to children's social care under the PLO and the parents were still receiving considerable support.

**Pre-proceedings only (7 months and ongoing); child remained at home with parents.**

## **The Yardley Family**

*Family:* Margaret Yardley (Mother), David Yardley (Father) sons, Simon (12), Peter (10). White British

*Background:* The Yardleys have been separated for 10 years and have no contact. Simon lives with his father; Margaret and Peter live some distance away. Both parents have new partners. Simon, who has ADHD and Asperger's syndrome was known to children's social care because his difficulties but his father has not accepted offers of services.

*The reasons for sending the letter:* Simon was accused of sexual assault of a little girl. The police made a referral to children's services while the investigation was going on. The local authority wanted to discuss with parents how to avoid care proceedings. The social worker was very concerned that the father was handling the situation badly - calling Simon a paedophile in front of others and threatening suicide. Separate letters were sent to each parent inviting them to separate meetings. The father replied that he would not attend.

*The meeting with mother:* Margaret arrived after a long journey. She had not consulted a solicitor because she thought she would not qualify for legal aid; no one at the meeting was able to tell her clearly about her right to legal aid. She wanted to help children's services to help her son but felt completely powerless – she did not even know his address and was upset because Peter had no possibility of contact with Simon. She was very distressed at the thought that David was refusing services for Simon, particularly because she had tried to get help for Simon when he was younger but this had been refused. The meeting was used to keep mother informed about what was happening and to get her permission to access CAMHS' records on Simon. The Chair explained briefly what would happen if care proceedings were issued, told mother that she would be formally notified and encouraged her to take legal advice.

*Outcome:* Simon was prosecuted and made subject to a supervision order. There was no further contact between children's social care and Margaret.

**Pre-proceedings only; child prosecuted.**

## Case List

*A Local Authority v M and F* [2009] EWHC 3172

*Coventry CC v C* [2012] EWHC 2190 (Fam)

*G v NCC* [2009] 1 FLR 774

*Johansen v Norway* (app 17383/90) (1996) 23 EHRR 33 ECtHR

*K and T v Finland* (app 25702/94) [2000] 2 FLR 79 ECtHR; [2001] 2 FLR 707 ECtHR (Grand Chamber)

*Law Society v Legal Services Commission* [2010] EWHC (Admin) 2550

*P, C and S v UK* (app 56547/00) [2002] 2 FLR 631 ECtHR

*R (G) v Nottingham CC* [2008] EWHC 152 (Admin)

*R (G) v Nottingham CC and Nottingham University Hospital* [2008] EWHC 400 (Admin)

*R v Cornwall County Council ex parte LH* [2000] 1 FLR 236

*Re C* [2007] EWCA Civ 2

*Re CA (a baby)* [2012] EWHC 2190 (Fam)

*Re F (in Utero)* [1988] Fam 122

*Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam)

*Re GR* [2010] EWCA Civ 871

*Re K and H* [2006] EWCA Civ 1898

*Re K (Care Order)* [2007] EWCA Civ 697

*Re LA (Care Chronic neglect)* [2009] EWCA Civ 822

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