

ENGAGING FAMILIES EARLY: TIME FOR A NATIONAL PROTOCOL?

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Current statutory guidance on working with families before care proceedings start is found in *Children Act 1989 Regulations and Guidance Volume 1 Court Orders* issued in April 2008. In our view, it is now inadequate, outdated and no longer fit for purpose. Yet effective pre-proceedings work with families is particularly critical if the forthcoming reforms to the family justice system are to succeed in achieving optimal outcomes for children in a way that respects their, and their families' human rights. In this article, we consider why early family engagement is key, why a national protocol is needed to support the reforms and what it might contain in relation to early family engagement.

WHY IS IT CRITICAL TO ENGAGE FAMILIES EARLY?

The rise in the number of child protection referrals, care order applications and looked after children combined with a shortage of foster carers and adopters means that safe family placements are essential to achieving permanence for a large proportion of children at risk of harm. In accordance with s 22C of the Children Act 1989 (as amended) such placements include children:

- (1) remaining at, or returning, home to either of their parents where the safeguarding concerns have been addressed; and/or
- (2) being placed with relatives or friends who may be willing to offer short or long term/permanent care. Such arrangements for children who would otherwise be in the care system also result in huge cost savings to the State.

Moreover, enabling children to live safely within their family network is consistent with the child's right to respect for family life under Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention) and also research demonstrates the positive outcomes for the children involved. Farmer and Moyers (2008) and Hunt et al (2008) found that despite these children suffering from similar adversities to children in the care system and their carers often suffering financial and other hardships, with little or no support, children in family and friends care are as safe, and are doing as well, if not better, in relation to their health, school attendance and performance, self-esteem and social and personal relationships, as children in unrelated foster care. Only 6% of family and friends carers failed to protect the children in their care, which is the same figure as for unrelated foster carers. Moreover, there is a marked improvement in their emotional health and behaviour following placement and their carers are more likely to match their ethnicity and be highly committed to them, leading to more stable placements. A further two recent studies by Hunt et al (2012) and Selwyn et al (2013) also found that the well-being of children placed with family and friends carers improved substantially during placement: interviews with children demonstrated that 84% had a 'balanced self-concept' and 89% were 'happy and content with life'.

Family and friends care also offers the same short and long-term care as prospective adopters under the Foster for Adoption model set out in Clause 1 of the Children and Families Bill, with the associated advantages of early attachment and stability which can continue long term if the child cannot return to their parents. Fostering for adoption involves children

who are unlikely to remain with their birth families long term, being placed with approved adopters on a temporary fostering basis pending a decision of the court. However, recent and imminent reforms potentially militate against the child being placed with their family because:

- The revised safeguarding guidance in *Working Together to Safeguard Children* (TSO, 2013) fails to mention the importance of working in partnership with families and drastically reduces the detailed framework for supporting practice when there are child protection enquiries, leaving far more to social work discretion. It should be noted that there is no existing legal duty on the authority to consider wider family placements before the child is looked after at which point the duty arises in s 22C referred to above.
- The foster for adoption proposal referred to above (as currently drafted at the time of going to press) will mean that unless family-based solutions are explored and supported early, there is a serious possibility the child will be settled outside their family network even before there has been a judicial decision that the threshold for removing a child from their family has been established. Once the child is in such a placement, the 'status quo' argument militates against a court moving the child from their prospective adopters to a relative's home, however, suitable they may be.
- The introduction of a 26-week time restriction on care proceedings combined with the new pilot 'PLO' (Practice Direction 36C), may reduce the chances of children being placed within their family network once a case is in proceedings because there may be little time to identify and assess alternative family carers in proceedings. Effectively, for the 26-week timeframe to work, family members will need to have come forward as potential carers by day 12 of care proceedings under the new PLO. This is due to the requirement that social work evidence (including detailed assessments of potential family and friends carers) must be considered at the case management hearing which is also the last real opportunity for any party to apply for permission to instruct an expert, including an independent social worker who might conduct such an assessment. If family and/or friends come forward later than the case management hearing, either they will not be assessed or the case may be adjourned, with the 26-week target being exceeded, as suggested in the case of *Re B-S (Children)* [2013] EWCA Civ 1146, [2013] 2 FLR (forthcoming, and see below p 1485).

An unrelated foster carer recently contacted Family Rights Group to explain she had been caring for 'a little one [who moved] onto special guardianship last year with an auntie [who] didn't even know she existed til she was 12 months old . . . she would have missed out under the new timescales and would have been adopted out of her culture which would have been very sad'. It is therefore essential that families are effectively engaged and supported to address the concerns and draw upon their strengths to identify safe alternative family placements as soon as it becomes clear that their child may be removed from the parents.

WHY IS A NATIONAL PROTOCOL NEEDED?

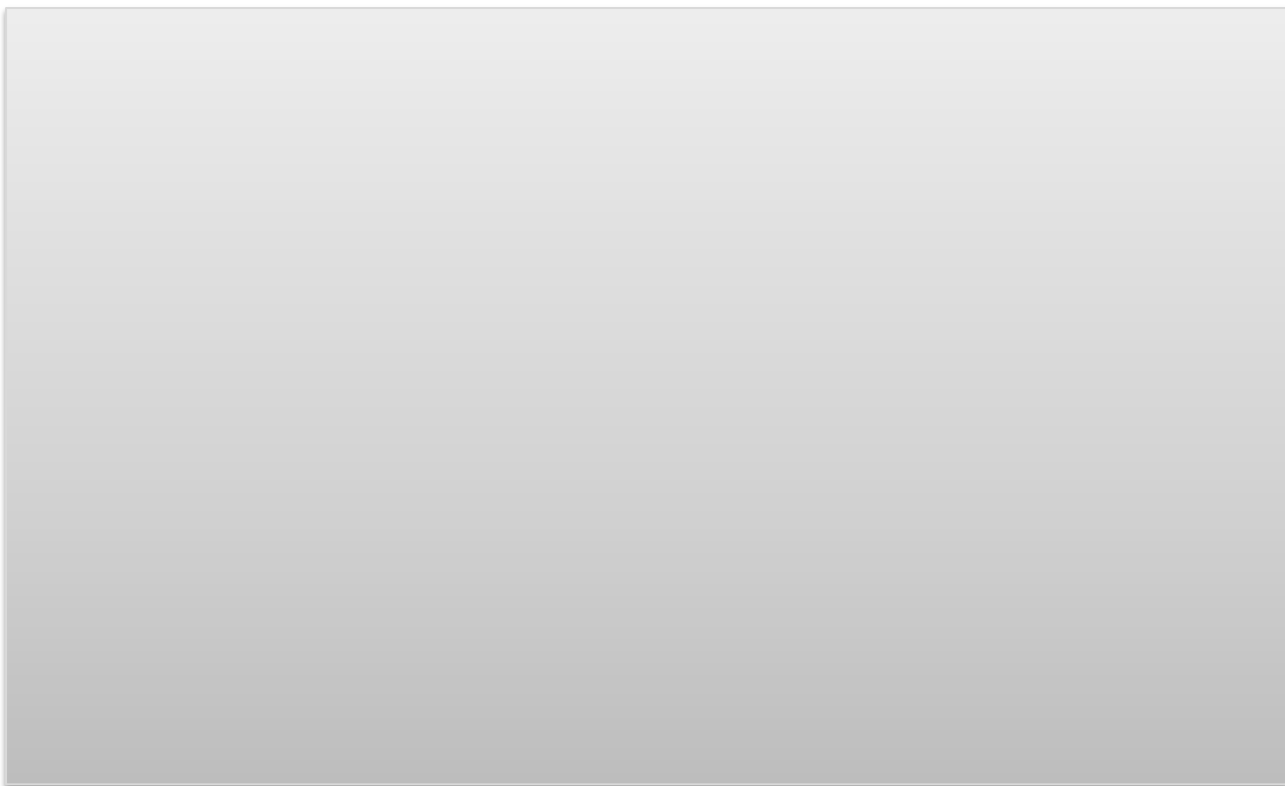
Recent evidence found that pre-proceedings work, including a letter to, and meeting with, the parents, before proceedings start, can successfully divert cases from court: Masson et al (2013) found that 1/4 of cases did not enter care proceedings – in 1/3 of these children were protected by kin care or foster carer; and in 2/3 by improvements in care at home. Yet the absence of up-to-date guidance on pre-proceedings work means that there are wide variations in practice (see J Masson, 'Care proceedings reform: The future of the pre-proceedings process' at p 1413 below).

When the Adoption Select Committee recently considered the proposed changes to adoption law in the context of wider reforms to the family justice system, they specifically looked at the impact of the fostering for adoption proposal on practice. Recognising the importance of the child's right to be raised by their family wherever possible and of early support to families to achieve this, they rightly stressed the need

for quality work with families in the pre-proceedings phase. The Committee therefore specifically recommended that there should be a national protocol to support local authorities to effectively engage with families before proceedings start, drawing on evidence based practice of what works for families, including through routine use of Family Group Conferences. The aim of such a protocol should be to avert unnecessary proceedings and to identify wider family members who may wish to care for a child much earlier in the process before alternative care options are considered (see *House of Lords Select Committee on Adoption Legislation*, 2nd report of session 2012–13, HL paper 127, paras 85–91).

A national protocol would also help to guard against the kind of situation that arose in the recent case of *Re IA (A Child)* [2013] EWHC 2499 (Fam) in which the judge eventually made a shared residence order in favour of the mother and grandmother in respect of a child, for whom the original local authority care plan was adoption. Mrs Justice Pauffley was highly critical of the lack of pre-proceedings work done with the family in the case:

‘As it is, I am bound to say that Ms K’s work was of poor quality, superficial and, most worryingly of all, did not reflect the key principles which underpin the workings of the family justice system. I mention just three – first that wherever possible, consistent with their welfare needs, children deserve an upbringing within their natural families (*Re KD* [1988] AC 806, [\[1988\] 2 FLR 139](#); *Re W* [\[1993\] 2 FLR 625](#)); second, that the local authority’s duty should be to support and eventually reunite the family unless the risks are so high that the child’s welfare requires alternative provision (*Re C and B (Care Order; Future Harm)* [\[2001\] 1 FLR 611](#)); and third that orders ratifying a care plan for adoption are “very extreme” only made when “necessary” for the protection of the children’s interests, which means “when nothing else will do”, “when all else fails”. Adoption “should only be



contemplated as a last resort” (*Re B (Care Proceedings: Appeal)* [2013] UKSC 33, [2013] 2 FLR (forthcoming); *Re P (Care Proceedings: Balancing Exercise)* [2013] EWCA Civ 963, [2013] 2 FLR (forthcoming); *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965, [2014] 1 FLR (forthcoming)).’

This was echoed in the recent case of *Re B-S* in which the Court of Appeal stated that, in order that the court can determine which is the best option for the child, ‘the evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option’ (para [34]). The court added that in the context of the family justice reforms, ‘If, despite all, the court does not have the kind of evidence we have identified, and is therefore not properly equipped to decide these issues, then an adjournment must be directed, even if this takes the case over 26 weeks.’ (para [49])

Thus, if the work is not done to engage families before proceedings start so that the necessary evidence is available for the court to evaluate options for the child within the family network, the target of 26 weeks for care cases may well not be met. Furthermore, a national protocol would help promote a consistent approach working with families, which can be very challenging work in the pre-proceedings context. This is due to:

- Parents whose children are subject to child protection enquiries often being frightened, angry and overwhelmed by continuous assessments and meetings in which they are under the spot light of a large numbers of professionals. They are often unclear about the totality of the concerns and the reasons for them; and as soon as a social worker becomes involved, many fear that their child may be removed by the local authority and therefore find it difficult to work with the social worker (C Fraser and B Featherstone (2011)). This can deter some social workers from wanting, or knowing how, to engage with them constructively.
- Many potential family and friends’ carers refrain from offering to care for the child whilst there is still a chance that the parents may be able to raise the child long term. In some cases, this is because they are unaware of the depth or totality of concerns; in others it is because they don’t want to undermine the parents or are fearful of reprisals from the parents if they step forward. Therefore, many wait until there is a finding of fact against the parent(s), before putting themselves forward as alternative carers. Moreover, social workers often focus exclusively on the mother, and do not actively engage the father or routinely seek out potential carers in the wider family, particularly paternal relatives, before proceedings start.

Yet there are effective, time efficient, innovative approaches being used in localities in the UK and internationally, that engage families in making safe plans for their children (such as identifying alternative family care arrangements if the child can’t remain with their parents). Moreover, the impact of legal aid reforms on solicitors firms means there are many fewer willing or able to give pre-proceedings advice to families, making it all the more essential that there are positive family engagement models/services being used or commissioned by Children’s Services.

PROPOSED CONTENTS OF THE PRE-PROCEEDINGS PROTOCOL FOR LOCAL AUTHORITIES TO MAXIMISE FAMILY ENGAGEMENT

We have recently witnessed innovative pre-proceedings protocols being developed in some local areas, including localities in the North West and South West of England and London. These local protocols are designed to assist practitioners to prepare their case in order to meet the expectations of the reforms, including removing unnecessary delay during care proceedings. Some also address some ways in which families can be effectively engaged before proceedings start. These local protocols are not the norm across the country. However they could be drawn upon to develop a national protocol, which, as well as providing guidance on case preparation, could also usefully address effective mechanisms for early work with families. In relation to early family engagement, the

following is a suggested draft list of contents to be developed in consultation with relevant stakeholders:

- a) research evidence on the impact of partnership working and outcomes for children raised in family and friends care to support the protocol;
- b) legal and practice framework including working with families during the whole spectrum of the child protection and pre-proceedings processes;
- c) evidence based approaches to engaging families to work in partnership that gives them a voice in planning, pre proceedings, including:
 - i. independent specialist advice for all families;
 - ii. independent specialist advocacy from the initiation of s 47 (child protection) enquiries;
 - iii. offering all families a family group conference before a child become looked after (except in emergencies);
 - iv. family mediation;
 - v. other positive practice innovations, eg the Coventry and Warwickshire Cafcass pre-proceedings pilot (K Broadhurst, 2013, see p 1480 below);
- d) good practice in service delivery for families, eg Family Intervention Projects Strengthening families/signs of safety, Multisystemic Therapy, Family Nurse Partnerships, intensive family support for children on the edge of care as being offered in Wales, the Badaraco multi-family group model, the family recovery project, the reclaiming social work model and implementation of recommendations from Family Rights Group's Fathers Matter research on working with fathers and paternal family;
- e) family and friends care including:
 - i. assessment approaches suitable for family members;
 - ii. policies, practice and support (summarising statutory family and friends care guidance requirements and expectations);
- f) working with parents who may lack mental capacity.

CONCLUSION

The current reforms to the family justice system are still works in progress. Some reforms, such as the 26-week limit on care proceedings, are already being implemented ahead of legislation. Other areas such as the need for coherent guidance across the whole spectrum of working with families before proceedings start (including child protection) have, to date, been neglected. However, it is clear from our advice service that there has been a recent increase in the numbers of parents and family members seeking advice about pre-proceedings involvement with Children's Services, particularly in relation to pre-birth child protection cases and in some cases where fostering for adoption is actively being considered, without any national framework for how this should be consistently approached. We therefore think that a pre-proceedings protocol, addressing early family engagement, to be published in conjunction with the revised Public Law outline due in April 2014, needs to be given urgent consideration.

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