



Response to Draft Public Law Outline

by

British Association for Adoption and Fostering

and

Family Rights group

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Who are we?

This is a joint response submitted by the British Association for Adoption and Fostering (BAAF) and Family Rights Group (FRG)¹. It has been informed by contributions from members of BAAF's Legal Group Advisory Committee, whose members include lawyers from local authorities and private practice, and there has also been an opportunity for discussion with members of the Children sub-committee of the Law Society's Family Law Committee.

Introduction

We welcome the determination to improve the conduct of care proceedings, to reduce unnecessary and inappropriate delay for children, and to provide clearer and more easily accessible information for parents before and during proceedings. We also welcome the attempts to co-ordinate the necessary contribution to the changes by all the relevant departments and agencies, and to consult with practitioners. We do however have serious concerns about the timeframe for implementation of the changes. If comments submitted in response to the consultation are to be taken into account, we do not see how it is possible to finalise the new scheme, re-write the DCSF Volume 1 Children Act Guidance, and provide the necessary inter-disciplinary training for implementation in April 2008. It would be disappointing if the desired improvements were to be frustrated because there had been insufficient time for proper consideration of the proposals and the necessary preparation.

We appreciate that elements of the new proposals are being tested in a number of initiative areas. If the proposed timescale is adhered to, however, there will not be a realistic opportunity to ascertain how they have worked in practice. There is a need to set in place a proper system for evaluating the impact of any changes, which would include ascertaining the views of those personally affected, particularly parents and families, as well as of professionals.

We note also that work is in progress to replace the Family Proceedings Rules by new Family Procedure Rules, so that if the present planned timetable is pursued it will be necessary to adjust to yet further changes within a short time of the implementation of the new Public Law Outline. There is a risk that practitioners may feel disinclined to put in the effort necessary to adjust to the changes when they know that further changes are anticipated within a short time.

The proposals must also be considered in context, including the following:

- Within local authorities, there is considerable upheaval and reorganisation, as Children's Trusts are established, and practitioners

¹ BAAF is the leading charity and membership organisation in fostering and adoption in the UK. Family Rights Group advises and supports families who are involved with social care agencies about the care and protection of their children.

get to grips with a variety of new initiatives, including the Integrated Children's System

- Within the court system, there is adjustment to the introduction of a unified family court system, and the range of differences applicable to different courts and areas
- Uncertainty about the continued availability of adequate legal representation for children and parents (and other parties) arising from the legal aid changes
- No concrete plans as yet to address the issues raised in the consultation paper 'Bearing Good Witness' and the responses to it
- A widespread view amongst practitioners that parts of the draft Vol 1 Guidance, particularly chapter 3, need to be substantially re-written to explain and explore more fully the expectations of courts on local authorities under the PLO

Any protocol or outline can never be more than one tool in achieving the desired changes. However sound the framework, there are other factors likely to have a greater influence, including:

- Judicial continuity
- Active and forceful judicial case management (with training to encourage this where necessary)
- Sufficient numbers of well qualified and experienced social work practitioners within both local authorities and CAFCASS
- Availability of expert witnesses
- Good interdisciplinary communication at national and local levels
- Availability of experienced legal representatives

As the Care Proceedings Review has already identified, any provisions in the court process, whether practice directions or rules, need to be consistent with statutory guidance provided to local authorities by the relevant government department. We welcome therefore the opportunity to comment simultaneously on both the draft PLO and the draft revision of the Children Act Volume 1 Guidance. We are disappointed however that at this stage the latter does not sufficiently address the necessary areas, particularly in respect of the pre-proceedings actions and the delivery of the care plan.

Specific comments in relation to the public law outline

- a) **Delay** is not necessarily and *automatically* damaging. As well as the recognised concept of 'planned and purposeful' delay, the need for speed must be balanced against the importance of the provision of proper evidence, the recognition of the parties' human rights, and the importance for the child of full and careful assessment of possible options. The assessment of a proposed permanent carer, for example, whether or not someone related to the child, must be thorough enough to ensure that the potential risks and benefits of the placement have been analysed, with a consideration of the likely provision of support to enable the carer to meet the child's real needs.

- b) **Commencement of proceedings.** Underlying both the PLO and the draft Vol 1 guidance seems to be a presumption that, unless cases are urgent enough to justify an application for an EPO, they will always be commenced following the completion of a core assessment and the compilation of all the appropriate paperwork. In reality many cases will fall somewhere between the two extremes. A local authority which is in the course of conducting an assessment may reach the conclusion that the harm being caused to the children cannot be allowed to continue even for the further few weeks needed to complete the assessment, or the assessment itself may stall for want of co-operation from the family. Any guidance needs to acknowledge this range of possible different situations in making proposals for the standard steps that must be followed.
- c) **The pre-proceedings checklist.** It follows from the above that there will be some, possibly many, cases where a local authority is not in a position before the commencement of proceedings to file all the documents listed in the draft PLO under the pre-proceedings checklist. Paragraph 6.2 of the draft PLO implies that no application can be filed until all the documents in the checklist have been 'ticked off', which clearly cannot be the case. (As a matter of practice, it must be noted also that where there have been proceedings relating to the child involving a different local authority or held in another court, it will not be straightforward for the local authority to obtain copies of relevant orders).

It is most important that the language used in the PLO is consistent with that used in the Volume 1 Children Act guidance. Paragraph 3.17 of the draft guidance lists the contents of the 'notification to parents' of the local authority's intention to apply for a care or supervision order, but it is not quite clear which - if any - of the documents listed in the PLO under 'pre-proceedings checklist' are meant to correspond to this document, nor, in the absence of immediate safety issues suddenly arising, the expected time lapse between sending this letter and the issue of proceedings. Surely this time lapse needs to be meaningful to enable parents to respond by addressing the local authority's concerns as far as possible, otherwise there is a risk this letter will be nothing but a paper exercise? The provision of this notice to parents was identified early in the care proceedings review as a crucial part of the desired improvements, and it is vital that there is clear understanding by all concerned about what is expected here.

Again, the PLO checklist refers to 'outline care plans'; is it intended that this should be what is referred to in paragraph 3.17 of the draft Volume 1 guidance as 'the care plan, setting out information about the local authority's plan for the future care of the child, including where and with whom the child will live, both immediately and following the application (assuming that it is successful) and, as far as possible, in the longer

term'? If so, there seem to be important matters missing, particularly proposals for contact if the child is to be placed away from the parents.

- d) **Family Group Conferences.** Mention is made in the draft PLO of family group 'meetings'. The existing protocol also refers to the desirability of holding family group conferences. It is important to have a clear understanding not only of the value of family group conferences, but of how they work in practice. We append to this response a near final draft of a practitioners' guide for Family Group Conferences, drawn up by Family Rights Group in conjunction with the Family Group Conference Network, and would suggest that it would be helpful for this, once finalised, to be appended to the PLO. Note, for instance, that 'minutes' of family group conferences are not taken, but it would obviously be helpful for the documents filed with the court to include a copy of the plan agreed by any conference that has been held.
- e) **Timetable** We welcome in principle the idea that the timetable for public law cases should be determined by the needs of the individual child, but despite the obvious drawbacks of a forty week timetable applied without sufficient regard to the needs of the individual case, this somewhat crude target does seem to have had some success in concentrating minds, and we have some fear that a new framework which leaves the timing completely flexible and open could risk opening the door to additional drift and delay.

If a date for the final hearing is not identified until the Issues Resolution Hearing (it is not quite clear from the draft PLO whether this is intended to be the case) it is unlikely that expert witnesses will be available at such short notice, and there may also be a problem about the availability of the advocates. Obviously a last-minute change of advocate needs to be avoided if at all possible. We recognise the frustration generated by late vacation of hearing dates, particularly in those courts with a relatively small volume of business, and there may be lessons to be learnt from the 'initiative areas', provided enough time is allowed to consider the effect of the work being undertaken there – which again underlines the need to consider delaying implementation of the changes until there has been time to consider the success or otherwise of the different approaches being adopted in these areas.

- f) **Advocates' meetings.** There are a number of issues to address here, both matters of principle, and practical factors. Practice currently appears to vary as to whether 'professional' parties (the local authority social worker and CAFCASS officer) attend these meetings. While it can be seen that the meetings may be more productive if the advocates for the local authority and the child have immediate access to their clients in order to have up to date instructions, it is hardly likely to be conducive to promoting parents' confidence in the fairness of the process if they are the only people excluded from these meetings. Practitioners who have contributed to this response have experience of

cases where 'deals' struck by advocates have subsequently been disavowed by their clients (most commonly the parents). It is therefore suggested that none of the parties should be present at these meetings; however, if some are, then they all should be in order that justice is seen to be done.

Perhaps the best solution is for all the parties to be on hand when their advocates meet together so they can be consulted when necessary about the issues still in dispute. However this will present a logistical problem as the venue for such meetings would need to have at least four rooms available: one for the meeting itself, and one for each of the parties – parents/family, local authority social worker and CAFCASS officer – to wait in. This may be very difficult to achieve. In any case, finding the time and venue for advocates' meetings can prove difficult. Advocates after all are engaged in the preparation of more than one case at a time.

In addition consideration needs to be given as to how litigants in person are involved in advocates meetings and whether they have access to appropriate support and advice. At the very least, referral to Family Rights Group advice service may be appropriate.

- g) **Placement order applications** It is a matter for regret that there is no draft yet available of what is proposed for the co-ordination of linked care and placement order proceedings. Although cases where adoption is the care plan may be the minority, they are nevertheless a significant minority, and have already been shown to be problematical in case management terms.

Conclusion

We should be happy to have the opportunity to discuss our comments with those involved in trying to complete a final version of the Outline, and, in particular, would welcome the chance to voice our concerns about the current proposed timetable for implementation. The care proceedings review provides an invaluable chance to bring about improvements for children and families in the conduct of proceedings which are likely to have an effect over many years. It is important to get the changes right.