

Reforming care proceedings 4: Outcomes of pre-proceedings and care proceedings

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Context

The formal pre-proceedings process for care proceedings, introduced in 2008, gives parents access to legal advice at a discussion with Children's Services about bringing care proceedings. The aim is to improve parents' understanding of concerns about their parenting and divert cases from court or, failing that, ensure better preparation and resolve cases more quickly. Further reforms in 2014, designed to conclude cases within 26 weeks, added to the expectations that local authorities prepare cases fully before applying to court. Although more than a quarter of cases are diverted, the number of proceedings has risen, making it harder to keep to the 26 week timescale. Much is expected of the pre-proceedings process, but it has challenging, competing goals (e.g. diversion, preparation, timeliness).

About the Study

The study was conducted in six local authorities in England and Wales: two in London, three in Southern England and one in Wales. It examined the use of the pre-proceedings process and care proceedings in a random sample of 204 cases starting in 2009-10 and tracked them to 2016. A second sample of 203 care proceedings cases brought in 2014-15 was also tracked. Data extracted from court and legal files, was linked to administrative data and Cafcass records for quantitative analysis of the use of proceedings, court outcomes and children's subsequent care. Using this information, the study compared court orders for children in care / not in care during proceedings and examined the long-term outcomes. It tracked 29 cases that were diverted from proceedings in 2009-10, up to 2016.

Key Points

- There were 29 out of 107 cases in the English authorities that went into pre-proceedings in 2009-10 and did not enter care proceedings within 12 months, a diversion rate of 27%. By 2016, however, seven of these cases had gone into proceedings, reducing the diversion rate to 20.5%.
- Avoiding proceedings did not ensure children remained at home; some moved to their other parent, to relatives, or entered foster care. Many children remained vulnerable.
- Where the pre-proceedings process had been used, court cases were significantly less likely to be dismissed or withdrawn and children were significantly more likely to have SGOs.
- Where children were not in care during proceedings, they were most likely to remain at home or in the care of their other parent, with a CAO and or SO.
- Supervision Orders were often unsuccessful in securing long term protection for children; 25% of cases with these orders returned to the court.

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Findings

The findings of the Pre-Proceedings Study (2010-2012) have been updated to provide long-term outcomes for cases diverted from proceedings. The findings on deciding to use care proceedings and the orders made draw on data on proceedings before and after the introduction of the 26 week time limit for care proceedings.

The pre-proceedings system

Decisions whether to use the pre-proceedings process or to apply directly to court in care proceedings are usually considered at a legal panel or legal planning meeting, which reviews case information (usually in writing) from the social worker and identifies further action/ assessments required. After the reforms, legal planning meetings were more rigorous and decisions to apply to court often made only by senior managers.

Social workers prepared and sent pre-proceedings letters to each parent outlining concerns, inviting them to a meeting and providing information about how to contact a solicitor, with a list of local Children Panel lawyers. If requested, meetings were re-arranged to enable lawyers or parents to attend.

Parents' responses to pre-proceedings

Parents found the letter *'hard hitting'* and expressed shock or anger at the content even if they had been told it would be sent, as many were, and similar concerns had been raised at child protection meetings. In trying to explain the letter to parents and keep them engaged, there was a danger that some social workers lessened its forceful impact.

Not all parents saw the need to obtain legal advice, despite the clear prompt in the letter to do so and being given a list of specialist lawyers. Some parents had difficulty finding a lawyer to attend the meeting both because of their own abilities and a lack of available lawyers.

Parents spoke for themselves; their lawyers said relatively little but were a powerful presence in meetings, providing support, advice and restraint. One parent said:

'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 ...'

Another:

'... I think he handled it really well, and he helped me stay calm and if I was rambling on...'

Lawyers advised parents to co-operate with children's services, and sometimes proposed changes to written agreements to make it easier for them to do this.

Social workers' and LA lawyers' views of the pre-proceedings process.

Local authority social workers, managers and lawyers all valued the process as an ethical way of practice, with potential to avoid proceedings and providing time for preparation of any court application. Positive views were tempered with concern about delays for children. By 2016, positive views about using the process and diverting cases from court were constrained by workload pressures, particularly meeting the demands of the court; and some expressed views (echoing judicial statements) that long-term care by relatives in cases of abuse or neglect should be approved in care proceedings where parents have legal representation.

Within the context of the 26 week care proceedings timescale the process was often seen as a period for preparation of documents for court:

'...the clock is ticking and [doing] as much of the work that they can do before proceedings as possible is to their advantage.' (Independent reviewing officer)

But it also has deeper roots and far more to offer - exploring children's needs and giving more time for parents to engage and change, which is limited under the 26 week rule. Communicating to parents that proceedings could be avoided was essential.

Exploring the potential for support from the wider family, particularly the provision of full-time care, posed problems. Working in partnership required parental agreement for contacting kin and telling them about the seriousness of parents' problems; families were often complex, and distant in terms of relationships and / or geography.

Diversion from court

High rates of diversion do not necessarily indicate effective pre-proceedings work. They may indicate that the threshold for pre-proceedings is too low and too many families are drawn into the process. In the Pre-proceedings Study, 34 out of 127 cases considered for care proceedings (27%) did not enter care proceedings within 12 months of the initial legal planning meeting decision. Diversion rates in the six local authorities ranged from 12.5% to 33% with the

lowest rate of diversion in the authority that made least use of the process.

Diversion did not necessarily mean children remained at home with their parent(s). Alternative care arrangements were agreed in 10 cases: 3 children moved to foster care with strangers and the remaining 7 were cared for by parents or grandparents, including 3 where fathers obtained court orders. In 16 cases there were improvements in care or engagement with services and in 6 of these the improvements were substantial. In four cases the local authority legal file had insufficient information to establish how the case had been diverted. Other factors, such as problems establishing threshold on the basis of past concerns and issues with evidence also contributed to decisions not to bring proceedings.

Diversion 6 years after the first LPM

The cases from the English LAs were tracked through the DfE administrative databases of Looked after Children and Children in Need, and in the Cafcass database of family proceedings.

There were 7 more cases which entered care proceedings, reducing the diversion rate to 20.5%. In addition, there were 8 cases where the family carer had changed and 4 where children were 'children in need'. There was one case where the child remained in the parent's care, but siblings born subsequently had entered care proceedings. In 6 cases information was incomplete; where children had moved away, court proceedings could be traced but not any other involvement by Children's Social Care.

Whilst it is not possible to identify factors which could accurately predict the future need for care proceedings, substance abuse appears to be a critical factor – 6 of the cases with later care proceedings involved the relapse of a parent who abused drugs or alcohol.

Overall, these findings serve to highlight the long-term fragility of families subject to the pre-proceedings process and the importance of continued access to services for them. Care proceedings may be avoided but most families continue to experience substantial difficulties and need continuing support especially in relation to poor mental health, domestic abuse and parenting.

Avoiding care proceedings can reduce local authority expense on legal proceedings but working with families on the edge of care requires thorough assessments, skilful practice and continual reflection about the need for, and the benefits and disadvantages of bringing proceedings.

The impact of the pre-proceedings system on care proceedings

Examining all children in each sample with clear information about use of the process (470) identified two statistically significant differences between cases with and without pre-proceedings:

1) All but one of the cases which were withdrawn or refused were made without the formal pre-proceedings process.

2) Conversely, the proportion ending with a SGO was almost double where the process had been used (22.9%, 12.4%).

Court orders for children not in care during proceedings

Most children are in care during care proceedings because a court makes an ICO and agrees to their removal from home or they are looked after under s.20.

Whether or not a child is looked after during care proceedings has a statistically significant effect on the order made at their conclusion.

Overall, 20% of the 616 children in the Study were not looked after during the proceedings but were in the care of a parent or relative. In most of these cases the local authority had applied for an ICO, usually at the start of proceedings, but the application had been refused or withdrawn, sometimes after the court had indicated it would not allow the child's removal. Instead, courts made ISOs and children remained at home. Where relatives offered temporary care, but the local authority considered them unsuitable, courts often made ICAOs in the relatives' favour, with ISOs.

The most common order where a child had not been in the care during proceedings was a SO. 57 children (47.1% of those not in care) were made subject to a SO at the conclusion of their case. Conversely, COs were very uncommon in these cases; only 20 children (16.5% of those not looked after) entered care when proceedings ended. There was no significant difference between the two groups in relation to granting SGOs.

Long-term outcomes after Supervision Orders

Whether or not there were further proceedings largely depended on the order made in the care proceedings. Children subject only to Supervision Orders were most likely to have further care proceedings: new applications were made for 31% of S1 children (in 6 years) and 22% of S2 children (in 2 years).

Details of further proceedings after other orders are given in Summary 1.

Conclusions and Implications

Pre-proceedings

Findings that almost 80% of children subject to the pre-proceedings process became subject to care proceedings and others moved to the care of relatives or became looked after under s.20 should not be taken as indicating the process has no value.

- Parents valued the legal advice and support in discussing the Local Authority's concerns.
- Within the context of the PLO, the pre-proceedings process provides parents with further opportunities to avoid proceedings.
- It allows social workers time to assess, and to explore ways to support parents and children before focusing on proceedings.

Care proceedings

The likely order at the end of proceedings should be considered before proceedings are brought. Further efforts to work with parents under the pre-proceedings process may be able to achieve as much as bringing proceedings, particularly if the court will not approve the child's removal from home.

Managers, local authority lawyers and social workers should consider:

- How the order will be used to support the child, their parents and carers, particularly the services which will be provided.
- Whether the child should be in care during the proceedings.
- The evidence required to satisfy the court of the case for removing the child before the final hearing.

The court will refuse an ICO with removal where the local authority is not able to satisfy the judge that separation of parent and child is both *necessary* and

proportionate. The most likely outcome of care proceedings where children are not in care during proceedings is a Supervision Order.

Findings that more than a quarter of children made the subject of a Supervision Order returned to court for further care proceedings raises concerns about the use of these orders, and the support provided to children and families during and after they are made.

On the other hand, three-quarters do endure, and it is important to recognise the successes and on-going needs families have, as it is for kinship care.

Further details of the research

Establishing outcomes of care proceedings for children before and after care proceedings reform was an ESRC-funded Study, undertaken by Judith Masson, Professor of Socio-legal Studies, Dr Ludivine Garside and Kay Bader, Research Fellows, from the School of Law, University of Bristol and Jonathan Dickens, Professor of Social Work and Julie Young, Senior Research Associate, from the School of Social Work, University of East Anglia. The DfE and Cafcass were partners in the research.

There are 3 other summaries for this study:

Reforming care proceedings 1: Court Outcomes

Reforming care proceedings 2: Children's Outcomes

Reforming care proceedings 3: Insights from data linkage

These can be downloaded from:

<https://bit.ly/3a73yd5>

Further details of the research and findings are available in the full research report:

Child Protection in Court: Outcomes for Children, School of Law, University of Bristol and Centre for Research on Children and Families, University of East Anglia (2019)

This can be downloaded free of charge from:

<https://bit.ly/2qseLT8>

The research report for the original study on the pre-proceedings process for care proceedings, ***Partnership by Law?*** (2013) is available at: <https://bit.ly/1DJSmza>

A summary is available at: <https://bit.ly/2Jc4LpR>