

The Public Law Outline. In force April 2008

Everyone working in the field of child protection needs at the very least a basic awareness of the fact that April 2008 brought with it the implementation of the new Public Law Outline. If you are a social worker, child care lawyer, Magistrate, or other professional directly involved in the instigation and conduct of Care (Child Protection) Proceedings you will by now have a working knowledge of its requirements!

What is it?

The Public Law Outline (PLO) is essentially a re-ordering of the way Care proceedings are instigated, structured and conducted. The PLO replaces the Protocol for Judicial Case Management of 2003.

Why was it brought in?

Several reasons including, as ever, the intention to reduce delay in the conduct and conclusion of cases, the need to accommodate an ever increasing number and cost of care cases and to manage cases in a way that will make the optimum use of the resources and Court time that does exist.

The structure of the PLO

There are broadly two stages; 'Pre Proceedings' and 'Post Instigation of Proceedings'

Pre Proceedings

There are now formal and mandatory Pre Proceeding steps that have to be taken before issuing proceedings. Prior to this requirement much of this work that is now a formal requirement was carried out as part of the Social Work Process.

Assessments and Identification of Alternative placements

In order to minimize delay once proceedings have been issued and maximise the possibility of resolving problems without proceedings The Local Authority is expected to have carried out assessment work prior to the instigation of Proceedings; to have identified and assessed any possible alternative placements with relatives or friends; and to have explored all the possible alternatives to the instigation proceedings. Some Local Authorities will already work in this way

Gateway Meetings

Once the Local Authority decides that proceedings are necessary a meeting between the Social Worker and Local Authority legal advisor must take place, the discussion is recorded in the SW records. A letter before action must be sent to the Parents following this meeting informing them of, inter alia, a summary of the LA's concerns; action required to remedy the concerns; information about what the LA has done to safeguard the children to date; what the outcome would be if the concerns are not addressed and remedied and how to obtain legal

advice. This letter will trigger the availability of Public Funding (Legal Aid) for legal advice which will include the attendance of a solicitor with a subsequent meeting with the Social Worker and the LA legal advisor to discuss the situation. This meeting must be followed up with a further letter to the parents outlining the/any revised plan for the children and the action the LA will take, i.e. Court Proceedings, if the problems are not resolved.

What about Emergency situations?

Should the welfare of the child require immediate Court protection then proceeding should be instigated without the pre proceedings steps .The LA will explain to the Court why it was not possible or appropriate to go through the Pre Proceeding steps.

Post Instigation of Proceedings

The Court Process is reduced from six to four stages

1 Issuing of Proceedings and First Appointment (by day 6)

The need for any immediate contested hearing will be dealt with and listed if required; initial directions made and listing of the CMC

2 The Case Management Conference (no later than day 45) will be preceded by an Advocates Meeting.

Experts will be identified and questions drafted; case management directions given; consideration if transfer to the County Court is appropriate and listing of the IRH dealt with.

3 The Issues Resolution Hearing (between 16 and 25 weeks)

The intention here is to identify which issues are agreed and still in dispute. The final hearing will usually be listed at this point. It is anticipated that many cases will finalise at this stage obviating the necessity to list a final hearing at all.

4 The Final Hearing will resolve any outstanding issues and applications.

It is intended that Magistrates and Judges will take a more proactive part in the management and planning of cases. It is expected that they will be more robust in requiring the identification of key issues in dispute and the reasons the Parents have for their stance. They will need very compelling reasons for the commission of independent expert assessments and reports

The Timetable for the child is now formally incorporated into the documentation e.g. the date a child starts and transfers school.

Who it affects and how?

Many of the provisions are a formal requirement of things that are already happening .However there are significant changes, some as follows:

Parents will have the formal benchmark warnings of the Letter Before Action and the Pre proceedings meeting with legal advisor present- if they engage with the process. It may well be that once in proceedings that courts are less prepared to bend over backwards in

agreeing to independent and further assessments where existing assessments and opinions of experts are clear and unequivocal and there may be less opportunity for yet another 'last chance'.

All Local Authorities will have to ensure a thorough and up to date Core assessment, statement and care plans are available at the commencement of proceedings.

Local Authority and private law solicitors will have the new Pre proceedings meetings and case management advocates (rather than the more 'joined up professionals meeting) to attend and more advocacy preparation documentation to prepare. A Template Case Management Order is to be completed in advance of the CMC and the IRH by the LA following the Advocates meeting

Magistrates and Judges are expected to be more proactive and robust in the management of cases. Is it a realistic expectation even of the most astute and insightful of Magistrates, that they will have the necessary depth of knowledge to be able to take into account the often complex and sensitive work that social workers and solicitors carry out before they get into Court during a care case? This often involves negotiations, discussions and building of relationships between clients and professionals. The consequent suggestions about how a case should and could progress are made by solicitors to the Court taking all this into account.

Child Protection Case Review Conferences will be a forum for the review of the Child Protection Plan agreed at the 'Letter Before Action meeting' with legal advisors. This will make sure that there is multi agency input into the review.

Should the CPRC conclude that there has been insufficient progress; an immediate review meeting should take place with the parents, SW, SW Manager and LA solicitor. as care proceedings may be imminent.

The Children's Guardian will be required to file an initial case analysis at the beginning of the proceedings. Final Hearing dates should if the theory is correct be available earlier, as final hearings will not be listed at the commencement of a case but at the IRH stage when the issues in dispute are narrowed and clear. It is intended that this will avoid the court lists being filled up months in advance with the listing of lengthy hearings, which often become unnecessary, as was the case under the old 2003 Protocol. For a time at least, this should create the earlier availability of Judges.

However the number of Care cases will continue to increase as long as the patterns of adult behaviour which give rise to harmful and inadequate care of children continues to perpetuate and increase without check.

More information and templates?

For the 'Public Law Outline' itself and the new 'Volume 1 ("Court Orders") Children Act 1989 Guidance' see <http://www.justice.gov.uk/guidance/careproceedings.htm>