



Ministry  
of Justice

# **Action research to explore the implementation and early impacts of the revised Public Law Outline (PLO)**

**Ipsos MORI**

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2014

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# 1. Summary

## 1.1 Background

The Family Justice Review (Ministry of Justice, 2011) highlighted a number of concerns surrounding delays in care and supervision proceedings. As a result, the Government is seeking to introduce a statutory time limit for all care and supervision cases to be completed within 26 weeks wherever possible. The Public Law Outline (PLO) is the key guidance the judiciary use for managing public law cases. Revisions have been made to the PLO to institute streamlined processes which will deliver speedier outcomes that better meet the needs of children and lay the foundation for the planned introduction of the time limit. The revised PLO places increased emphasis on local authority documentation and assessments being completed earlier during pre-proceedings in order to deliver evidence at the outset of a case. It also aims to ensure that the evidence local authorities provide for the court is focused, succinct and analytical.

The revised PLO introduces reduced timeframes for key stages in court proceedings. One of the most significant changes is that the first key hearing, now the Case Management Hearing (CMH), should be held no later than Day 12. Here, detailed case management directions should be given to enable cases, where possible, to be completed within 26 weeks. The requirements of the revised PLO outlined in this report are accurate for the processes and documents in place during the period of the revised PLO, between July 2013 and April 2014. The findings of this research have been used to inform the development of the 'final' PLO (and associated documentation) that will support the introduction of the 26-week time limit included in the Children and Families Act 2014.

## 1.2 Methodology

Implementation of the revised PLO took place between July and October 2013. The Ministry of Justice (MoJ) commissioned Ipsos MORI and their partners at Plymouth University to undertake a study to explore perceptions and experiences of implementing the revised PLO at a local level. Key objectives for the research were to explore how the changes to the PLO are perceived to be affecting pre-proceedings work and court proceedings (including what makes an effective CMH), and whether, and how, the revised PLO is impacting on the wider family justice system. The study specifically took an 'action research' approach, whereby ongoing feedback was provided to the MoJ throughout the project. This feedback and the final findings have been used to inform the development of the 'final' PLO and associated documentation.

The research involved a workshop at each of the eight Local Family Justice Boards (LFJBs) selected for the study, 123 in-depth qualitative interviews with family justice practitioners within these eight areas, and an online survey completed by 164 LFJB members from across all 46 LFJBs in England and Wales. A range of family justice professionals involved in the implementation of the revised PLO (hereafter referred to as 'practitioners') were represented in all elements of the research.

The research was carried out between August and November 2013, shortly after implementation of the revised PLO. As such, experiences expressed and perceptions shared within the research are reflective of early views and not based on extensive experience of working to the revised PLO. A further review, conducted once the changes have been in place for a longer period, may provide a more definitive view of impacts.

## 1.3 Key findings

### Overall views

- Practitioners were very positive about the drive to reduce the time that public law cases spent in court. Many felt the revisions to the PLO were a much-needed change, with better focus on children's timelines and their outcomes. Practitioners felt that the revised PLO and associated guidance and training had helped secure substantial progress in ensuring, where possible, that cases are completed within 26 weeks.
- It was felt cases were being conducted in a more focused and efficient way under the revised PLO. Children's needs were felt to be identified earlier in proceedings, with parties seen to be acting quicker and levels of delay, particularly in court proceedings, being reduced.
- Practitioners described challenges they had experienced during the early stages of implementation and many felt it would take time to adapt to the new requirements. However, practitioners believed that the positive aspects outweighed any challenges, and there were very good levels of engagement and motivation to 'make this work'. Practitioners were keen to stress that the reduced timeframes had encouraged and facilitated joint working and improved communication between agencies.
- Practitioners highlighted some areas that may require further consideration. Some felt that the focus to complete cases within 26 weeks may not necessarily reduce the overall time that children are living in uncertainty. This may be due to a potential increased amount of time that cases spend during the

pre-proceedings phase and because final orders made at 26 weeks may not always result in cases being closed.

## Pre-proceedings

- An increased drive to complete court documentation and assessments earlier during pre-proceedings and a shift to provide more focused and analytical local authority documentation under the revised PLO were welcomed. Most practitioners believed that local authorities were delivering the required documentation at the outset of cases.
- Practitioners were particularly positive about the emphasis on local authorities owning and asserting their cases, with less reliance on independent experts to provide key evidence. However, a number of practitioners believed that some social workers were struggling to adopt a more analytical approach to the chronology and social work statement, and felt that further training may be required. Some social workers questioned the extent to which they were able to build a compelling case without including a full documented history of events. Practitioners felt that some social workers will require further time to adapt and feel more confident in their assertions.
- Some practitioners expressed concern about a perceived level of additional delay in the pre-proceedings phase under the revised PLO. There was a perception that some cases, including some deemed to be pressing, were being held for longer than they should before an application was submitted to court, while the local authority compiled documentation and completed assessments. There was a concern that this potentially transferred delay for the child.
- Practitioners largely agreed that there had been a decline in the instruction of independent experts, and this change was welcomed. The majority of practitioners felt that expert evidence was being restricted to what is necessary, and this enabled the social workers to be viewed as the key expert in the case. Conversely, some practitioners felt that 'the pendulum had swung too far the other way' and voiced concerns that the judiciary may be too quick to dismiss the appointment of experts.
- Practitioners reported that a greater emphasis had been placed on identifying appropriate family members and alternative carers at an early stage of proceedings. This was felt to be yielding positive results, preventing some of the delay that can occur when wider family members become involved late in a case.

- Some concerns were raised that parents and their legal representatives are put under pressure by the positioning of the CMH at Day 12, giving them a relatively short amount of time to engage and consult with Legal Advisers before this first key court hearing. Private practice solicitors felt that engaging with families early and in depth during the pre-proceedings stage may be beneficial for alternative residence arrangements to be explored and to ensure that key evidence can be gathered and presented at the CMH.

## Court proceedings

- Under the revised PLO, the CMH must be held no later than Day 12 and should give detailed case management directions to enable cases, where possible, to be completed within 26 weeks. Practitioners overall felt that the CMH was more focused and effective than first key hearings held under the previous PLO, with all parties having a clear grasp of the key issues in the case. Practitioners believed that this meant few cases required a further CMH.
- Practitioners stressed that certain cases are likely to be particularly complex and require a more flexible approach with the timing of the CMH. While practitioners were confident that there is sufficient flexibility within the revised PLO to accommodate such cases, they requested further clarification on when and how a more flexible approach to the PLO timetable is likely to be needed to ensure a consistent approach is taken across different court areas.
- Practitioners highlighted a range of 'typical' case types that may require flexibility and for which the 26-week timeline may present a challenge. These were complex cases; for example, where there was alleged sexual abuse, parallel criminal proceedings or those involving multiple children. There were calls from practitioners for greater flexibility to be applied to cases where parties have a disability or capacity issue.
- There were some concerns that the reduced timeframes may impact on the ability of families to demonstrate sufficient change, for example in cases with drug or alcohol issues. A further issue was that the reduced time for the court to consider evidence may be leading to a possible shift in the pattern of orders made. While there was no clear evidence to determine this, there was some concern over perceived increased use of care orders at home and Special Guardianship Orders.

## Impact on the wider family justice system

- While many practitioners felt that the changes within the revised PLO had increased their workloads as they adapted to the new requirements, they did not see this as an insurmountable challenge. Indeed, many practitioners felt that workloads had not increased overall, but the increased front-loading of pre-proceedings and the reduced timetable for court proceedings meant that their workloads were more concentrated. Concerns were expressed that courts did not have sufficient capacity to list hearings in line with the revised PLO timeframes.

## Areas for further consideration

- In light of the findings, key areas proposed for further consideration include the need for additional flexibility to extend the CMH beyond Day 12, and greater clarity around complex cases that may require extensions beyond 26 weeks where the interests of the children require it. Finally, practitioners felt that the Case Management Order form was repetitive and required significant revisions.
- Further research and a thorough examination of timeframes and case outcomes after the revised PLO is fully established will provide a more comprehensive assessment of the overall impact of the changes. At the time of the research, the changes have been well received and practitioners were confident that the revised PLO will contribute positively to a more efficient and effective process as public law cases move through the courts.

## 2. Introduction

### 2.1 Background

Delays to care and supervision proceedings have been an issue of concern for some time. In February 2010 an independently chaired review panel (the Family Justice Review) was set up as a consequence of a growing recognition of increased pressure on the family justice system and concerns about resulting delays for children. The final Review concluded that care and supervision cases in England and Wales were taking ‘far too long’, with cases taking an average 56 weeks to complete (Ministry of Justice, 2011, p. 5). The Review reported that delay has the potential to impact negatively on children’s outcomes and their chances of securing a stable home. It also has significant cost implications for the family justice system. The findings of the Review led to a recommendation that a time limit of 26 weeks should be set for the completion of care and supervision proceedings to ensure that cases are completed within timescales that better meet the needs of children.

The Children and Families Act 2014 will introduce new legislation in relation to public law cases that will set a 26-week time limit for all care, supervision and other Part 4 proceedings<sup>1</sup> in England and Wales.<sup>2</sup> The court will, however, retain the discretion to extend cases beyond this time limit where necessary to conclude proceedings justly and in children’s interests. In light of the legislative proposals, revisions were made to the Public Law Outline (PLO), the key practice direction which provides guidance on case management processes in public law cases. The aim of the revised PLO is to help lay the ground for the 26-week time limit and ensure, ahead of its introduction, that cases are progressed and delivered within 26 weeks or less wherever possible. The revised PLO was introduced on a phased basis<sup>3</sup> between July and October 2013, depending on the readiness of individual Local Family Justice Boards<sup>4</sup> (LFJBs) to implement it. The findings of this research have been used to inform the development of the ‘final’ PLO (and associated documentation) that will support the introduction of the 26-week time limit included in the Children and Families Act 2014.

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<sup>1</sup> This refers to proceedings which are not care or supervision proceedings but nevertheless fall under the requirements as set out in Part IV of the Children Act 1989. These include Special Guardianship Orders or secure accommodation orders. Part 4 proceedings are set out in the Family Procedure Rules 12.2.

<sup>2</sup> The 26-week time limit is included at Section 14 of the Children and Families Act 2014.

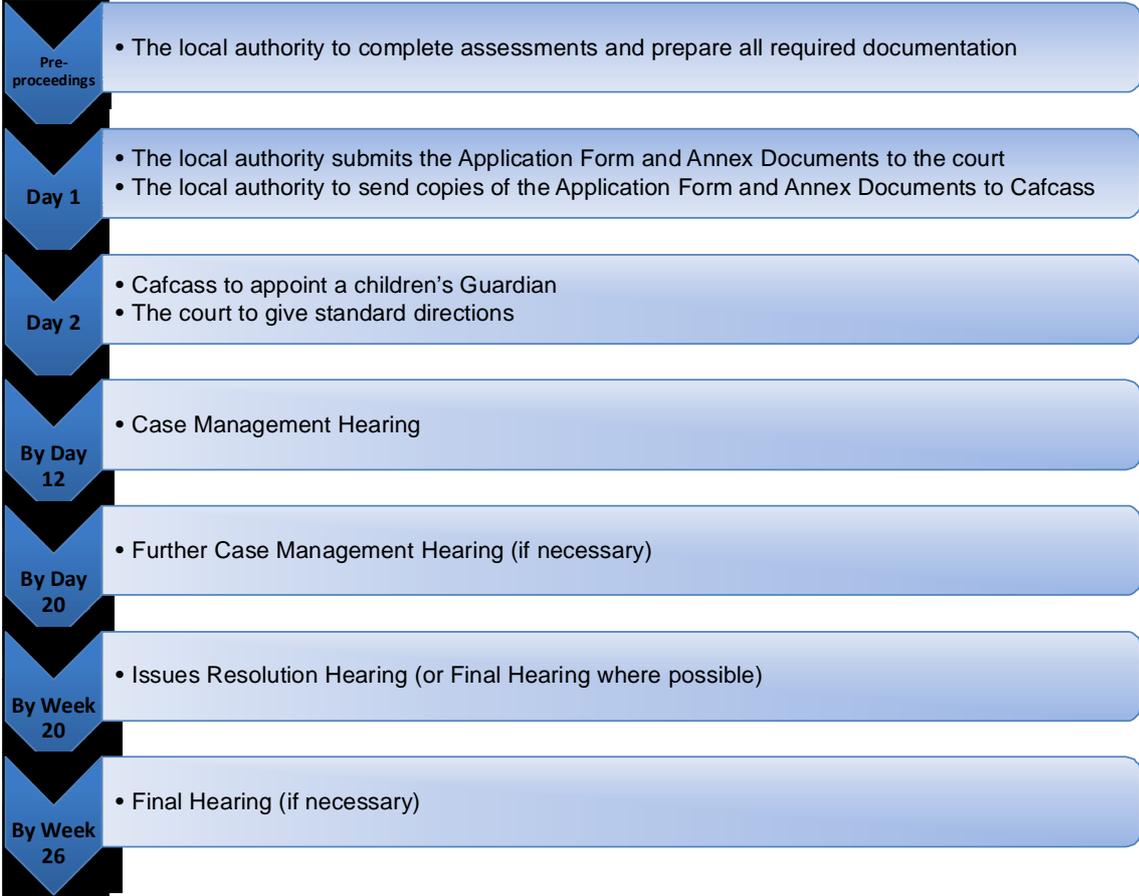
<sup>3</sup> Of the 46 Local Family Justice Boards in England and Wales, 18 implemented the revised PLO in July, 8 in August, 7 in September and 12 in October 2013.

<sup>4</sup> Local Family Justice Boards (LFJB) were created following the publication of the Family Justice Review in 2011. Their purpose is to drive improvements in the performance of the family justice system at a local level. Their core membership typically comprises a range of family law practitioners including, but not limited to, local authority and private practice solicitors, Cafcass/CAFCASS CYMRU, Health practitioners; HM Courts &

## 2.2 Key requirements of the revised Public Law Outline (PLO)

The revised PLO has introduced a number of changes to support the planned introduction of the statutory 26-week time limit. The key requirements (in place for the period of the revised PLO between July 2013 and April 2014) are outlined below. Please see Appendix A for a flowchart of the revised PLO and Appendix B for the Practice Direction.

**Figure 2.1: Key dates in public law case management under the revised PLO**



### Pre-proceedings

The revised PLO has placed an increased emphasis on the local authority being fully prepared with all necessary documentation and evidence when a care or supervision application is submitted to the court.<sup>5</sup>

<sup>5</sup> Tribunal Service (HMCTS) staff and local authority social workers and representatives. The Designated Family Judge or other members of the judiciary are typically appointed as participant observers. The previous PLO stated that the required local authority documentation should be attached to the Application Form filed to court *where available*. The revised PLO states that the required documentation is to be attached to the Application Form and filed with the court.

The pre-proceeding checklist now requires the following Annex Documents<sup>6</sup> to be attached to the local authority's application form when issuing proceedings:

- Social Work Chronology;
- Social Work Statement and genogram;
- Any current assessments relating to the child and/or the family and friends of the child to which the Social Work Statement refers and on which the local authority relies;
- Threshold Statement;
- Care Plan;
- Allocation Proposal; and
- Index of Checklist Documents

A number of changes have been made relating to the local authority documentation and supporting evidence that must be submitted to the courts. Most notably, under the previous PLO, the genogram<sup>7</sup> and Threshold Statement<sup>8</sup> did not have to be filed on application.

The revised PLO and supporting guidance has placed greater emphasis on local authorities to provide evidence that is focused, succinct and analytical. Supporting documentation of the revised PLO provides detailed guidance on the requirements of each Annex Document submitted to the court.<sup>9</sup> In particular, the social work chronology must adopt an analytical approach and summarise the significant dates and events in the child's life in chronological order up to the issue of proceedings.

Checklist Documents include other relevant reports and assessments prepared by the local authority. The previous PLO stipulated that the Checklist Documents must be disclosed to the court at the outset of a case. Under the revised PLO, the local authority must have the Checklist Documents available on the issue of proceedings, but they are no longer to be filed with the court unless expressly directed by the court. Evidential Checklist Documents must, however, continue to be disclosed to parties involved in the case by Day 2.

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<sup>6</sup> Annex Documents are the documents specified in the Annex to the Application Form, submitted by the local authority on issue of a case. These are attached to the Application Form and filed with the court. See Appendix A.

<sup>7</sup> A family tree setting out in diagrammatic form the child's family and extended family members and their relationship with the child.

<sup>8</sup> The Threshold Statement outlines the grounds on which Threshold Criteria are met. Threshold Criteria are the criteria by which a court can make a care or supervision order where it is satisfied that (a) the child is suffering, or is likely to suffer significant harm, and (b) making the order will better meet the child's needs than not doing so.

<sup>9</sup> The previous PLO did not stipulate the requirements of local authority documentation.

Family Procedure Rules<sup>10</sup> have introduced a stricter test relating to expert evidence. The previous test, which asked if expert evidence was ‘reasonably required’, has now been replaced to ask if the expert is deemed ‘necessary’.

## Court proceedings

Changes have been made to the PLO to ensure earlier identification of cases and to clarify the processes for allocation of cases to the judiciary. A new Annex form, the Allocation Proposal, has been introduced which is to be filed with the application. The allocation and gatekeeping team are to use this document when considering the application and use the Annex Documents to allocate proceedings within 24 hours of issue (in accordance with the President’s Guidance on Allocation and Gatekeeping).<sup>11</sup>

The revised PLO has introduced shorter timeframes for court proceedings (Figure 2.1).

The revised PLO aims to bring about a more effective first hearing – the Case Management Hearing (CMH) – to be held by Day 12. At this hearing, detailed case management directions should be given to enable final decisions to be reached within 26 weeks unless, in complex cases, judges decide that extending a case beyond this is necessary. In order to achieve this, the following changes have been made:

- The former First Appointment and Case Management Conference (CMC)<sup>12</sup> stages have been merged and renamed the Case Management Hearing (CMH), with the timing of the CMH moved back to Day 12.<sup>13</sup> Detailed case management directions should be given to enable proceedings to be delivered within 26 weeks wherever possible; and
- A further Case Management Hearing (FCMH) may take place only if it is necessary. This must happen as soon as possible after the CMH and no later than Day 20.

The purpose of the Issues Resolution Hearing (IRH) has changed significantly under the revised PLO. Under the previous PLO the objective of the IRH was to narrow the identified

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<sup>10</sup> Family Procedure Rules, Part 25 (Experts and Assessors), Rule 25.1.

<sup>11</sup> See Appendix B.

<sup>12</sup> This has now been removed by the revised PLO and is no longer undertaken as part of court proceedings. Previously this would have happened around Day 6 of the case and its purpose would be to consider the issues in dispute and discuss whether these could be narrowed before trial. The CMC would also be used by the court to exercise its broad case management powers and give directions for the management of the proceedings leading up to trial.

<sup>13</sup> Under the previous PLO the CMC (where detailed case management directions should be given) was directed to be listed no later than Day 45.

issues of the case with a view to preparing the case for a final hearing. The revised PLO requires the court to consider whether the IRH could be used to resolve all issues and dispose the case as if at the final hearing.

## 2.3 Study objectives

The Ministry of Justice (MoJ) commissioned Ipsos MORI and their partners at Plymouth University to conduct a multi-site, mixed methods research study to explore perceptions and experiences in implementing the revised PLO at a local level. The revised PLO and guidance on which this study is based are provisional and will be subject to amendments. The findings have been used to inform the development of the 'final' version of the PLO that will support the proposed introduction of the 26-week time limit.

The overall aim of the study was to explore how practitioners involved in care and supervision proceedings have understood and implemented the revised PLO, and to highlight any challenges they have experienced (or expect to face) in implementing it. It also set out to identify any additional amendments that could be made to enhance the revised PLO and guidance. The research was conducted with a range of professional groups within the family justice system and focused on the following objectives:

1. To explore how the changes to the PLO are perceived to be impacting on pre-proceedings work and to identify any further changes to the PLO requirements that may assist in strengthening processes to prepare for the planned introduction of the 26-week statutory timeframe;
2. To explore in detail how the changes to the PLO are impacting on court proceedings and identify any further changes that may assist in the delivery of cases within the planned 26 weeks. This includes consideration of, but is not limited to, what makes an effective Case Management Hearing; and
3. To explore whether the changes to the PLO are impacting on the wider family justice system, and if so, in what ways. This may include allocation practices and practitioners' workloads.

The research was conducted between August and November 2013, shortly after the earliest point at which the implementation of the revised PLO began to be phased in (between July and October 2013). As such, experiences and perceptions shared within the research are reflective of early views and not based on extensive experience of working to the revised PLO for a large volume of cases. This also means that LFJB areas, particularly those that implemented the revised PLO in the later stages of implementation, had more experience of

the pre-proceedings and early phases of court proceedings than the final stages of case management or impacts on the wider system. The findings of the study reflect this focus.

### **3. Methodology**

A mixed method design was employed for this action research study. This involved a workshop at each of the eight Local Family Justice Boards (LFJBs) selected for the study, qualitative interviews and discussion groups with wider family justice practitioners working within the eight LFJB areas and an online survey available to be completed by members of all 46 LFJBs in England and Wales. An overview of the three elements of the research study is provided below. See Appendix C for further detail on the methodology and the range of professional groups involved in each element (referred to as ‘practitioners’ throughout this report).

#### **3.1 The Action Research approach**

Part of the overall objective of this study was to identify any additional amendments to further enhance the ‘final’ PLO that will support the proposed introduction of the 26-week time limit. In view of this, an action research approach was adopted so that ‘live findings’ and feedback could be provided to the Ministry of Justice on a continual and timely basis throughout the course of the project. Early and emerging findings were also provided to the Family Justice Board PLO Steering Group, which has responsibility for advising on the revised and ‘final’ PLO. The action research approach also allowed for early lessons and working practices perceived as important in supporting effective implementation to be shared with all LFJBs.

#### **3.2 Stage A: Workshops with LFJB members**

A workshop with LFJB members was held in each of eight LFJB areas. The purpose of these workshops was to allow the research team to gain an understanding of how practitioners collectively viewed and understood the changes to the revised PLO, and their experiences in implementing it. The eight workshop areas were selected by the Ministry of Justice in collaboration with the PLO Steering Group and the research team, using a set of selection criteria to include a mix of geographical locations, a range in average case duration and varying implementation dates. This approach aimed to ensure that the study reflected the perceptions and experiences of different types of LFJBs. Workshops were held in HMCTS or local authority venues between 22 August and 31 October 2013 and lasted between two and three hours.

In total, 108 LFJB members took part, with an average of 14 members attending each workshop (attendance ranging from six to over 20 attendees). Key practitioner groups involved in the implementation of the revised PLO were represented at the workshops,

including the judiciary, local authority solicitors, social workers, Cafcass/CAFCASS CYMRU,<sup>14</sup> Legal Advisers, HMCTS<sup>15</sup> staff and private practice solicitors. The workshops used the revised PLO and PLO Flowchart as stimulus materials to prompt discussion (see Appendices A and B).

### **3.3 Stage B: Qualitative interviews and discussion groups**

Qualitative interviews and discussion groups were held with practitioners in each of the eight LFJB areas. This provided additional detailed insight into individual practitioner views on the revised PLO and helped to create a better understanding of any differences between practitioner groups. A target of 15 interviews (120 overall) with a range of professional groups was set for each of the areas. In total, 123 qualitative interviews were completed.

Contact details for the practitioners were provided by the LFJB chair and fellow LFJB members. Interviews were also carried out with LFJB members unable to attend the workshops and those who requested a follow-up interview after taking part in a workshop. Interviews were conducted by telephone or face-to-face by a member of the research team.<sup>16</sup> The discussion guides used to structure the discussions within workshops and qualitative interviews can be found in Appendix D.

### **3.4 Stage C: Wider Feedback Survey**

The third stage of the study involved an online survey of LFJB members. This element of the research gave LFJB members across all 46 LFJB areas in England and Wales (including the eight included in stages A and B) the opportunity to provide feedback on their perceptions and experiences of the revised PLO.

LFJB members were invited to take part via an online survey link. Practitioners were asked to confirm as part of the survey that they were an LFJB member and that they had not taken part in stages A or B of the research.

Fieldwork for the online survey ran from 29 August to 24 November 2013. In total, 164 LFJB members across a range of professional groups responded. Table C.2 in Appendix C gives a detailed breakdown of respondents across practitioner groups to the online survey. There was a high level of responses from the judicial observers of the LFJBs, and as such they are

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<sup>14</sup> Cafcass is an independent body that represents the voice of the child in care or adoption proceedings. Cafcass will provide advice to the judge incorporating the child's wishes and feelings.

<sup>15</sup> Her Majesty's Courts & Tribunals Service.

over-represented in the survey. When reviewing the results of the survey, readers should take into account that percentages may be skewed towards the views of the judiciary. Statistically significant differences between judicial members and non-judicial members have been highlighted in the report where relevant. Due to small base numbers it was not possible to compare the views of different practitioner groups.

Throughout the report, aspects of the revised PLO that had a particular impact on a specific practitioner group will be noted. In addition, representatives from Cafcass/CAFCASS CYMRU will be referred to as 'Cafcass' throughout the report. Finally, findings that relate specifically to the wider feedback survey will be signposted. A glossary of some definitions and abbreviations used in the report can be found in Appendix E.

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<sup>16</sup> Interviewees were given a choice to participate in qualitative interviews by telephone or face-to-face.

## 4. Aim 1: The impact of the revised Public Law Outline (PLO) on the pre-proceedings process

### 4.1 Chapter summary

#### Key requirements for pre-proceedings under the revised PLO (see section 2.2)

- An increased emphasis on the local authority being fully prepared with all necessary documentation and evidence at the outset of a case. Annex Documents, including the social work chronology and statement, and all current assessments, must be submitted alongside the local authority's application form when issuing proceedings to the court.
- An increased drive to provide focused and succinct analytical evidence, in particular the social work statement. The chronology must focus on significant events in a child's life.
- The Family Procedure Rules stipulate a stricter test in relation to expert evidence. The test should determine whether expert evidence is 'necessary' rather than 'reasonably required'.

- The shift in focus to a more thorough pre-proceedings phase was felt to be the biggest change in the revised PLO. An increased drive to conduct assessments earlier in the process and the emphasis on producing analytical-style local authority documentation were received positively by the majority of practitioners.
- The documentation submitted to court was felt to be focused and clearly addressed the key points in the case. Overall, practitioners felt that all of the required documentation was delivered on application. These changes were felt to greatly assist practitioners, particularly the judiciary, to facilitate a better grasp of the key issues for resolution in the case.
- There were some concerns around the ability of local authorities to cope with the increased pressure to compile evidence in a timely manner before proceedings.
- There were also concerns that some social workers were struggling with the requirement to adapt to an analytical approach to the chronology. Some social workers questioned the extent to which they are able to build a compelling case without including a full documented history of events. Practitioners felt that social work staff will require further time to adapt and to feel more confident in their assertions.
- Some practitioners expressed unease that some cases, even those deemed to be pressing, were being held for longer than they should be during the

pre-proceedings phase while evidence is prepared. This perceived level of 'drift' may mean that time savings during court proceedings are cancelled out.

- A perceived decline in the instruction of experts was felt to be a positive step. The majority of practitioners believed that expert evidence was being restricted to what is necessary.
- Practitioners felt that cooperation and effective communication between agencies and parties was important to ensure a smooth and effective pre-proceedings phase.
- Some practitioners acknowledged that local authorities were being more proactive in identifying more potential carers before court proceedings begin, and were making better use of Family Group Conferences.<sup>17</sup>
- Practitioners felt that private practice solicitors could be instrumental in advising parents to identify carers at an earlier stage, and helping them recognise the implications of the case.

## 4.2 Introduction

This chapter seeks to explore the impact of the revised PLO on pre-proceedings work and any further changes to the revised PLO that could be considered. As part of this research objective, practitioners were asked what they understood the new changes to involve, how they were experiencing and implementing the revised PLO and if they were aware of any local working practices that had supported these changes.

## 4.3 Assessments conducted during pre-proceedings

The revised PLO requires any 'current assessments relating to the child and/or the family and friends of the child to which the social worker statement refers and on which the local authority relies' to be submitted at the outset of a case. Practitioners typically noted that there was an increased drive by local authorities to conduct assessments of family members and other related carers (Connected Person's Assessments)<sup>18</sup> before proceedings started. A range of practitioners noted that the 'message was getting through' and that a higher number of 'more focused' assessments were being completed during pre-proceedings. This marks a departure from practices under the previous PLO, whereby assessments tended to be

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<sup>17</sup> A Family Group Conference is a decision-making meeting in which the wider family makes plans for children who need support and often protection. For further information please see Appendix B.

<sup>18</sup> A Connected Person's Assessment is a viability assessment by the local authority of any person who can be considered a connected person (see Appendix B) to assess if they are fit and able to take on parental responsibility (see Appendix B) for the child. For more information see Appendix B.

conducted during court proceedings. Furthermore, it was acknowledged by some practitioners that local authorities were being more proactive in seeking potential carers:

Some assessments would previously have waited until proceedings, for example a cognitive assessment. It's actually very good to have it early because it assists our work with the parent if they have a learning disability.

(Social worker)

The use of Family Group Conferences was felt to be increasing, with a stronger focus placed upon these in some areas. However, some local authorities conceded that resourcing for these meetings was an issue.

Although carrying out more thorough assessments before proceedings was noted as a positive step, practitioners felt that a number of key barriers affected this process. Some practitioners, particularly private practice solicitors, felt that social workers did not have time to conduct comprehensive viability assessments and that these were subsequently 'being rushed'. Another issue that made these assessments problematic was the number of people who might be nominated by parents during pre-proceedings as potential carers; sometimes 'five to ten in a single case'. Some may appear unsuitable at the outset of assessment, but the view following *Re B-S*<sup>19</sup> was that the local authority had to be seen to be carrying out in-depth assessments and exploring every option when proposing adoption, or the case may encounter difficulties in court. This was described as requiring additional resource, and practitioners felt that it was difficult to know under what circumstances a local authority might decide a potential carer was not viable and decline to carry out the assessment. Practitioners said that they would welcome additional guidance on this matter.

Practitioners also noted that potential carers often tended to make themselves known only during the later stages of court proceedings. It was perceived that the reluctance of relatives to come forward in case they are seen as contributing to the child being taken away from the parent was inevitable in some cases. It was also felt that some parents will refuse to provide contacts until the word 'placement' or 'adoption' was mentioned or they are 'at the doors of the court'. Practitioners suggested that a range of emotional factors could determine their decisions. Some parents were perceived to be in denial or did not appreciate the seriousness of the situation; others believed it was 'a vote of no confidence' in their parenting ability.

Parents say 'it's not going to go to court ... I'm not giving you any names'. If they do there's a sense that they're letting themselves down, they're not fighting it.

(Social worker)

In cases where potential carers came forward after the CMH, the judiciary would have to exercise discretion as to whether it permitted these assessments to take place. This would be likely to impact on the 26-week timescale.

### **The involvement of private practice solicitors during pre-proceedings**

Practitioners felt that the level of funding available<sup>20</sup> to private practice solicitors during the pre-proceedings phase was limiting the availability of legal advice for parents prior to court proceedings. Private practice solicitors consequently raised concerns that a limited amount of time with parents prior to proceedings may not be sufficient to assist them in recognising the implications of the action to be taken by the local authority. Further, some practitioners felt that private practice solicitors were instrumental in persuading parents to nominate carers earlier in the process. It was felt that these issues posed particular challenges given the reduced timeframes to work with parents during court proceedings under the revised PLO. In one area, good personal links between private practice solicitors, local authority Legal Advisers and Cafcass were being sustained by the solicitors doing 'pro bono' work with parents in pre-proceedings.

## **4.4 Local authority documentation**

Changes to the documentation that local authorities are required to submit upon application to the courts, and the supporting guidance offered, have been received positively by the majority of practitioners. Most agreed that the amount of documentation they were required to produce had effectively been reduced, which they felt cut the level of 'repetition' and streamlined the overall process. Furthermore, many practitioners noted that a change in the presentation style had led to more concise, evidence-based and analytical documents being produced by local authorities. Such documents were felt to focus the parties' minds on the key issues of the case:

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<sup>19</sup> Re B-S (Children) [2013] EWCA Civ 1146 noted that 'there must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option.'

<sup>20</sup> Private practice solicitors receive a fixed fee for stages of the care proceedings, as opposed to receiving payments linked to the amount of work completed.

The new documents are succinct and focus on the key questions ... 'What is the local authority asking for?', 'What's the significant harm?', 'What are the key concerns?' This avoids a lot of repetition.

(Local authority solicitor)

Members of the judiciary expressed particularly positive views about the reduction in the documentation and improvement in the quality of the analysis. This was felt to have streamlined the allocation process for the allocation and gatekeeping team, who can assess the complexity of the case more quickly.<sup>21</sup> It has also allowed the judiciary to gain a better understanding of the case, which is especially important with the limited time available prior to the CMH.

A small number of practitioners, most notably local authority solicitors, stated that the importance of thorough pre-proceedings work was clearly emphasised in the previous PLO published in 2008. Since this time, they felt that processes had 'slipped'; and welcomed the revised PLO as reintroducing and reinforcing this way of thinking.

Local authority representatives,<sup>22</sup> legal teams and social workers noted that although there were reductions in the volume of documentation submitted to the court, this did not necessarily correspond to a reduction in their workloads and the time taken to prepare documents. Some practitioners disagreed that the amount of documentation had reduced and said they were still receiving long statements and lengthy Annex Documents. Conversely, a small number felt that some documents were not comprehensive enough, with some information missing or deemed 'inconsistent' or 'patchy'.

### **Impact on social workers**

On the whole, social workers welcomed the changes to local authority documentation with the increased focus on providing succinct analytical evidence. Practitioners believed that the move to consider the social worker as the 'expert' in the case sends out an empowering message and others noted that it encouraged social workers to take greater ownership of

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<sup>21</sup> The 'President's Guidance on allocation and Gatekeeping for Care and Supervision and other part 4 proceedings' (July 2013) states that cases are to be allocated to the appropriate level of judge (magistrate, District, Circuit, and High Court) on issue of proceedings. This is typically carried out by a gatekeeping team, which includes a District Judge and Legal Adviser. As part of this process, the local authority is required to submit an Allocation Proposal Form on issuing proceedings, which the District Judge and Legal Adviser use as the basis to allocate cases. This is carried out at a fixed time every weekday. See Appendix B. This guidance was current at the time of the research but may be subject to change.

their cases. Practitioners noted that this analytical approach – being able to assert confidence in their assessments – was a marked change compared to the previous PLO, described as being descriptive and without the need to make firm judgements. It was felt that this more prominent role under the revised PLO would take time to embed as a core working norm.

A number of practitioners were also conscious that newly qualified social workers were not routinely receiving training on analytical writing within basic degree courses. Consequently, some felt that they were finding it difficult to adapt to this analytical approach and were still providing lengthy, repetitive statements and chronologies. Some practitioners, including social workers themselves, noted that this may be compounded by past experience of having ‘had their fingers burnt’ in court when they had been accused of not providing sufficient information. There was a strong feeling that more social workers would benefit from further guidance and ongoing support to write analytical, evidence-focused and succinct documents.

Social workers have to change their way of thinking. They want the court, advocates and parents to have as much information as possible [*to show*] how decisions have been reached ... Social workers have been criticised in the past for not providing enough information. Now they are being asked and trusted by the court to be concise, which is a good thing. I’m not sure if the balance is there – maybe it could be at the discretion of the social worker. How compelling can you be in a document that is prescribed and brief?

(Social worker)

## Chronology

The revised PLO requires the chronology to be limited to three to four pages in length and to focus on significant dates and events in the child’s life over the past two years. For social workers, this was the most problematic issue relating to documentation. Many expressed concerns regarding the two-year limit, particularly cases involving long-term neglect or more than one child. Although they acknowledged that the guidance allows for additional information to be included if it was crucial to the local authority’s evidence, they still felt that this was limiting the extent to which they could build a ‘compelling’ case. They felt the requirements of the new guidance may restrict the ‘whole picture’, meaning that context or

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<sup>22</sup> Local authority representatives included anyone who works for the local authority. Examples of local authority representatives who took part in the research included Heads of Social Work Teams, Heads of Service for Protection and Prevention and Directors of Children’s Services.

patterns are not evident. Although these views were largely expressed by social workers, other practitioners reinforced these concerns.

### Submission of the local authority documentation to the courts

Under the revised PLO, the Annex Documents must be submitted with an application to court. The majority of practitioners felt that local authorities were routinely delivering all of the required documents on application, and described this as a clear improvement. However, some practitioners, particularly Cafcass representatives, noted that delays were still occurring, or that documents were missing or incomplete. The online survey supported these findings – over half of practitioners (54%) agreed that the **local authorities are delivering all of the required documentation on application**. However, almost one in three (30%) disagreed with this statement.<sup>23</sup>

### Impact on the Case Management Hearing (CMH)

Most practitioners believed that the drive to produce analytical local authority documentation was having a positive impact on the CMH. The PLO guidance for the Checklist Documents means that those involved in proceedings should receive the documents by Day 2. Practitioners felt that the clearly defined structure and analytical content of the Checklist Documents allowed the parties to identify and understand the key issues of the case and resulted in those involved being better prepared at the CMH. These changes were subsequently viewed as contributing towards more organised and focused CMHs. However, some practitioners noted that the quality of the hearing depended on the quality of the documentation and, as mentioned previously, there were some issues relating to consistency in this area.

The results from the online survey support these perceptions. Around two thirds of respondents agreed that the new PLO requirements (relating to local authority documentation at the start of the case) are having a positive impact on the **court's ability to give directions on Day 2 of the case, and on the quality/effectiveness of the case management hearing** (64% and 66% respectively). Members of the judiciary were significantly more likely to 'strongly agree' with this statement in comparison with other practitioners (31% versus 14% respectively).

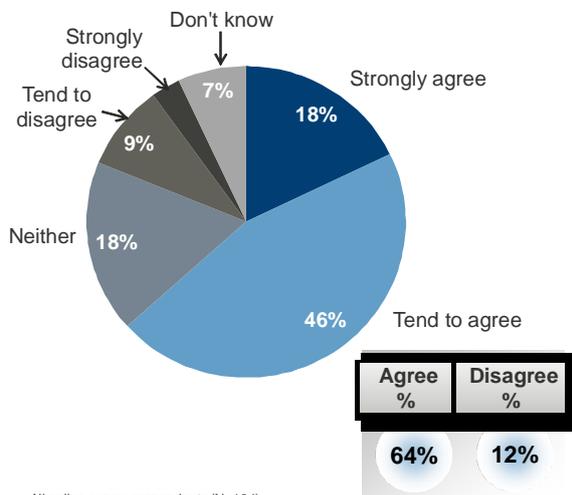
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<sup>23</sup> This question did not specify the type of case in which local authorities were not providing required documentation on application. Consideration should therefore be made for cases linked to Emergency Protection Orders (EPOs) or those which do not meet the criteria for an EPO but which, to ensure children's safeguarding, must be brought swiftly so an Interim Care Order can be agreed. In such cases not all documentation may be available.

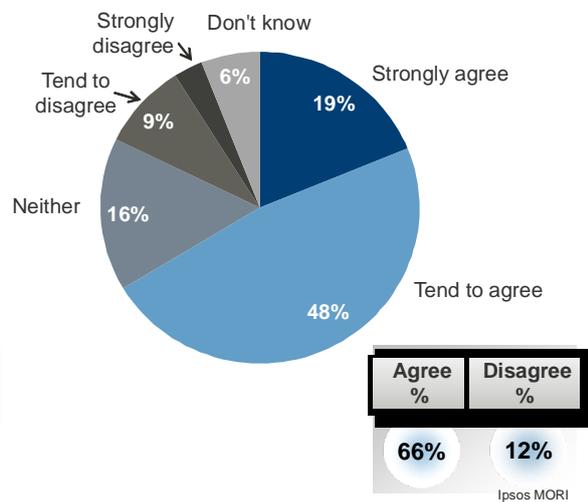
**Figure 4.1: Local authority documentation – wider feedback survey**

**To what extent do you agree/disagree, that the new PLO requirements (relating to Local Authority documentation) are having a positive impact on ...**

... the court's ability to give directions on day two of the case



... the quality and effectiveness of the Case Management Hearing (CMH)



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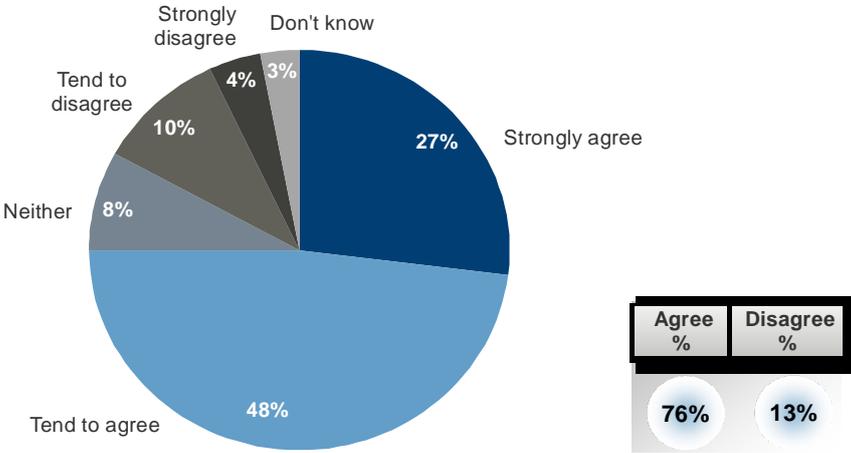
## Use of independent experts

Across all strands of the research, a majority of practitioners felt that the changes to the Family Procedure Rules<sup>24</sup> on experts were a positive step. The previous test, which asked if expert evidence was 'reasonably required', has been replaced with a stricter measure which asks if the expert is deemed to be 'necessary'. Practitioners confirmed that this has led to a corresponding reduction in the use of independent experts, and this perceived culture change has been widely welcomed. Results from the wider feedback survey showed that over three quarters of practitioners (76%) felt that **expert evidence is being restricted to what is necessary**. Agreement levels were significantly higher for members of the judiciary (94% versus 68% for non-judicial members).

<sup>24</sup> Family Procedure Rules, Part 25 (Experts and Assessors), Rule 25.1.

**Figure 4.2: Use of expert evidence – wider feedback survey**

***To what extent do you agree/disagree that expert evidence is being restricted to what is necessary?***



All online survey respondents (N=164)

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In particular, practitioners believed that the use of psychologists and independent social workers had declined noticeably, although psychiatrists’ assessments relating to the capacity and cognitive abilities of the parents were still required, as were reports from medical experts. The majority felt that experts were able to submit their reports within the required timescales and speculated that this may be related to a drop in demand and a corresponding increase in capacity. One notable exception relates to medical reports, where the availability of health colleagues can be limited.

An additional note of caution was sounded by a minority of practitioners, including members of the judiciary, who felt that the ‘pendulum may have swung too far the other way’. They believed there could be a risk that the judiciary may, in some cases, be too quick to reject the recruitment of an expert, which may lead to an increase in the number of appeals. A few practitioners were able to cite cases where the use of an independent expert had transformed the case and led to a different outcome.

I encouraged an application for a psychological assessment in one case. The parent had adopted a damaged child and the local authority had started care proceedings as they thought that Mum wasn’t coping. The psychologist identified that ... she wasn’t a parent who was failing; she had adopted a damaged child

who was not getting the support that she needed from the local authority. It completely transformed the case and led to a different outcome. The mother and social workers are now working together and it's much better. Previously the plan was for removal.

(Circuit Judge)

A further issue concerns the funding of expert reports. Local authorities are responsible for bearing the cost of expert reports commissioned during the preparation of their cases. However, during court proceedings the cost of an expert is split between the parties (funded by legal aid and local authorities). Some practitioners felt that under the revised PLO local authorities were more wary of supporting parents' solicitors' subsequent requests for additional expert reports during pre-proceedings as they were more likely to be deemed responsible for funding them.

## **4.5 Dealing with urgent cases**

### **Emergency Protection Orders (EPOs)**

If a local authority believes that a child is in urgent need of protection, it can ask the court to make an EPO. This order lasts for up to eight days and one extension can be granted by the court for a further seven days.<sup>25</sup> The revised PLO stipulates that nothing should deter local authorities from bringing cases to court swiftly where this is essential to children's safeguarding. The majority of practitioners reported no major problems relating to the issuing and scheduling of EPOs.<sup>26</sup> A number of practitioners reported that it was too early, however, to provide feedback on this issue, given the low number of EPOs that had been issued since implementation. Practitioners typically noted that the courts were able to schedule these hearings quickly and that the documentation received is sufficient for the court to give initial directions. In cases where a limited amount of documentation is available, local authority practitioners noted that the courts will accommodate the situation and accept oral evidence when necessary. Similarly, members of the judiciary and court staff reported that the local authorities will do their best to gather as much information as possible prior to issue.

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<sup>25</sup> For additional information please see Appendix B.

<sup>26</sup> The revised PLO, paragraph 3.1, page 9 specifies that 'Nothing in this Practice Direction affects an application for an Emergency Protection Order under s.44 of the 1989 Act'.

The Designated Family Judge (DFJ) tells Social Services that if they need emergency protection then they should not hold off and will not expect all of the documents. They are being reasonable.

(Social worker)

### **Interim Care Order (ICOs)**

An Interim Care Order (ICO) is a temporary order made by the court which states that the child should be looked after in the care system for a temporary period.<sup>27</sup> As with EPOs, the majority of practitioners reported no problems with contested ICOs. The documentation was typically described as sufficient to enable the court to give initial directions and schedule accordingly. However, some isolated issues were reported. For instance, courts in one location resisted scheduling contested ICOs before the CMH on Day 12, and some confusion arose where it was assumed that a contested ICO could not be heard until the CMH (unless all parties agree to move the hearing forward). The findings suggest that this is an area where clarification of the existing guidance may help.

A common difficulty related to cases involving unborn children who require protection as a matter of urgency from birth. Several practitioners cited examples of cases where the local authority was not sure when the mother would give birth and although they preferred to proceed with a Section 31 application,<sup>28</sup> they felt that the urgency and unpredictability of such cases meant it could be difficult to schedule a timely ICO hearing. Practitioners felt that clearer communications between social workers and medical agencies would ensure local authorities are able to act swiftly when babies are born.

## **4.6 Pre-proceedings: good practice**

Practitioners were able to cite a range of good practice examples that had supported the implementation of the pre-proceedings stage of the revised PLO.

### **Improved communication and cooperation between agencies**

The most often cited examples of beneficial working practice related to the high level of cooperation and communication between agencies (particularly between the courts and the local authorities) and the early involvement of Cafcass in the pre-proceedings process. In the small number of areas where it was implemented, a number of practitioners deemed the

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<sup>27</sup> See Appendix B for more information.

<sup>28</sup> Care or supervision order. See full definition in Appendix E.

Cafcass PLUS initiative<sup>29</sup> to be helpful in this regard. They described the scheme as helping local authorities to consider more realistic options for the child earlier on in the process and helping to plan contact. A number of Cafcass practitioners felt that the scheme may be beneficial in their area, believing that Cafcass' input and advice could reduce the number of cases progressing to court.

It's a good model and we'd like to be involved in it. I think that three or four of the fifteen cases we've seen since implementation [of the revised PLO] could have been dealt with without going to court if Cafcass were involved in pre-proceedings.

(Cafcass representative)

Several practitioners noted improved levels of liaison between agencies. As an example, one practitioner mentioned that the local authority had a named court official with responsibility for ensuring efficient communication between all parties through the course of each public law case. Others provided examples of inter-agency working, including regular meetings between the local authority legal department and the social work team to examine cases that are likely to move into pre-proceedings and those already within the pre-proceedings phase. These meetings are felt to be a very effective forum for discussing case planning and actions to be taken to prevent potential delay.

The creation of pre-proceedings protocols, which had been developed and agreed across agencies (including the courts, local authorities and Cafcass), was cited by some practitioners as beneficial to joint working. The protocols were felt to lead to noteworthy improvements in identifying the issues and the progress of the case.

The pre-proceedings protocol effort was drawn up between me and the local authorities. The concern was that delays within the court process would be reduced, but there would be a balancing delay at the pre-proceedings stage. It was essential to come to an agreement with local authorities as to how they would arrange things prior to proceedings. It has been very beneficial.

(Circuit Judge)

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<sup>29</sup> Cafcass PLUS is an initiative which promotes earlier joint working between children's social workers and Cafcass Guardians.

## Judicial support and guidance

The strong and proactive role of the Designated Family Judge (DFJ), in particular, was cited by a number of practitioners who believed that this served to increase engagement and ensured that the revised PLO was implemented successfully. For example, practitioners in one area mentioned that their DFJ held regular briefing sessions for all practitioners involved in public law, which set out clear expectations relating to the documentation and processes to be followed. A key driver of effective local implementation was felt to be:

*[The] strength and ability of the DFJ to implement the changes and their skill in taking stakeholders with them.*

(HMCTS representative – wider feedback survey)

## Dedicated ongoing support for social workers

Alongside the initial training given to social workers,<sup>30</sup> a number of areas were implementing further training, due to the fundamental nature of the changes to the social worker role. One area was working with local university academics who teach social work to provide specialist training on analytical approaches to completing documentation and being more assertive in the management of public law cases. Additionally, practitioners in two areas said that they had revised the format for statements, care plans, chronologies and other documents.

We've devised a statement template for our social workers to use. The fields that they write in can't be increased in size so it forces them to refer only to the relevant information.

(Local authority solicitor)

## Further examples of beneficial practices to support local implementation in pre-proceedings

- **Restructuring work within some local authorities**, e.g. allocating funds and resource so that a separate assessment centre could be created (which reduces the burden on social workers and frees up their time).
- Provisions which have enabled parents to obtain **legal advice during pre-proceedings**. For example, ensuring attendance of the parent's solicitor at Family Group Conferences.

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<sup>30</sup> Initial training included national training rolled out with the support of the Association of Directors of Children's Services, the Department for Education and the Children's Improvement Board.

- **Early notification systems** in place between the local authority legal departments and Cafcass. In addition, legal planning meetings held during pre-proceedings allow Legal Advisers more time to prepare and contributes to a smoother process when the local authority issues proceedings.

## 4.7 Challenges experienced during pre-proceedings

Overall, the research highlighted a sense that changes to the pre-proceedings stage arising from the revised PLO were having a positive impact. However, as noted throughout this chapter, some concerns exist. Practitioners generally felt that the changes were a ‘work in progress’ and will take time to embed during what they described as a transitional period.

### Delay during pre-proceedings

Practitioner perceptions of unintended impacts of the revised PLO tended to focus on the perceived issue of delays during the pre-proceedings stage. Once a decision has been made to commence proceedings, there is no timeframe within which the local authority must produce the documentation to submit an application with the court. Practitioners across a range of professions expressed concern that the increased drive for local authorities to complete the necessary assessments and prepare the documentation for the outset of a case had lengthened the time taken to bring a case to court under the revised PLO. A few practitioners said they were aware of cases where this had happened. There were concerns that, even in pressing cases, some local authorities were not submitting applications until they had **all** the documentation required, which meant that the pre-proceeding process was taking longer than it should for the children involved. Consequently there was potential for delay to be transferred away from court proceedings to the pre-proceedings phase, which may mean the time the child spends in ‘legal limbo’ exceeds 26 weeks.

A number of social workers also expressed concerns that, because the local authority was solely responsible for the progression of the case during the pre-proceedings phase, the local authority was in effect ‘holding the risk for longer’ without the court’s involvement. This created a sense of unease and anxiety for social workers. A solution raised was that a time limit could be introduced during the pre-proceedings stage to enhance the local authority’s ability to prioritise and progress cases in the best interests of the child.

## Increased pressure on local authorities

There was a clear feeling amongst practitioners that the increased emphasis on the ‘front-loading’ of assessments during pre-proceedings had increased pressure upon local authorities and social workers. Some social workers said they felt that increased levels of work were being devoted to cases that may not go to court, e.g. assessments being undertaken which may not be needed.

We used to do viability and full Connected Person’s Assessments during court proceedings and now we’re doing them all in pre-proceedings. It’s creating a lot of work that may not be needed ... it’s causing resourcing difficulties.

(Local authority representative)

However, some social workers predicted that workloads would become more balanced as practitioners adapted to the new requirements of the revised PLO. (See section 6.4 for the perceived impact of the revised PLO on the workload of all practitioner groups.)

## Cafcass involvement

Another impact was raised by a Cafcass representative who felt that as Cafcass was unable to play a part in pre-proceedings under the revised PLO, the role of the Guardian may be less effective given that the local authority’s thinking may be firmly embedded at an earlier stage of the case.<sup>31</sup>

## 4.8 Potential areas for further consideration

In light of the findings within this chapter, consideration could be given to the following improvements proposed by practitioners:

- **Ongoing training for social workers** to help them balance the need for brevity in the chronology and statements with the requirement to provide sufficient evidence and thorough analysis of the case;
- **Additional clarification around the handling of pressing cases and contested ICOs** provided to ensure that these cases are scheduled prior to the CMH and brought to the court quickly where necessary;

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<sup>31</sup> Under the previous PLO assessments may have been carried out during proceedings with the Guardian’s involvement.

- Review what can be learnt from the positive experiences reported by practitioners of **earlier engagement of Cafcass during pre-proceedings**. This may include consideration of expanding the implementation of Cafcass PLUS;
- Consider what **further guidance or other action might be appropriate to ensure delays do not occur during pre-proceedings**; and
- Consideration to ensure **parents are given focused legal guidance** in the lead-up to the issuing of proceedings.

## 5. Aim 2: The impact of the revised Public Law Outline (PLO) on court proceedings

### 5.1 Chapter summary

#### Key requirements during court proceedings under the revised PLO (see section 2.2)

- The revised PLO introduces reduced timeframes for key stages of court proceedings.
- Day 1: The local authority must submit the Application Form and Annex Documents to the court. The local authority must send copies to Cafcass.
- Day 2: The local authority must serve the Application Form, Annex Documents and evidential Checklist Documents on the parties together with the notice and time of the Case Management Hearing (CMH). The court must give directions and Cafcass must appoint a children's Guardian.
- The Case Management Hearing (CMH) has been introduced and must be held no later than Day 12.<sup>32</sup> At this hearing, detailed case management directions should be given to enable final decisions to be reached within 26 weeks, unless in complex cases, the judge decides an extension is necessary.
- A further CMH may only take place if necessary and no later than Day 20.
- The Issues Resolution Hearing (IRH) should be used to dispose of live issues in the case and wherever possible, be used as a final hearing.<sup>33</sup>

- Many practitioners noted a major drive and effort to ensure that the revised PLO is effectively implemented and that momentum is sustained in the long term. This is reflected in the positive feedback that local authorities are providing sufficient information at the outset of a case for the court to give its directions on Day 2. Furthermore, practitioners felt that local authorities have been able to serve the Checklist Documents on the parties and, in most cases, Cafcass were able to appoint Guardians on Day 2.

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<sup>32</sup> The CMH replaces the former First Appointment and Case Management Conference (CMC) under the previous PLO. Under the previous PLO the CMC (where detailed case management directions would be given) should be held no later than Day 45.

<sup>33</sup> Under the previous PLO the aim of the IRH was to narrow issues and prepare the case for a final hearing.

- The timeframe for preparation for the CMH received mixed feedback. Private practice solicitors cited increased pressure to prepare for the CMH once they have received all the documents. Most notably, they described difficulties in attending advocates' meetings<sup>34</sup> by Day 10 and engaging families swiftly to ensure that the best use is made of the CMH. Cafcass representatives similarly described pressure to meet with the child and their families and prepare their reports.
- On balance, the CMH was felt to be more focused and effective than the first key hearing under the previous PLO, with parties all having a clear grasp of the key issues in the case. Practitioners believed that this meant few cases required a further CMH.
- Practitioners acknowledged the new challenges for social workers and Cafcass representatives to develop the skills to confidently assert the local authority case in court in a way that stands up to judicial scrutiny. Early signs are positive that the consideration of the social worker as the expert during court proceedings is effective.
- Practitioners felt that due to the early timing of the research they were unable to give a thorough assessment of how the revised PLO is impacting on some aspects of court proceedings, particularly the extent to which the judiciary were ready to give final orders at the IRH or whether cases tended to move on to a final hearing. Where practitioners felt that they were able to comment, the views were mixed. Some believed that more cases were concluding at the IRH, although others noted that parents were more likely to push for a contested final hearing as they felt that they had not been given sufficient time to prove their case or demonstrate real change (particularly where drug and alcohol issues were a factor). Some felt that under the previous PLO, these families would have been given more time if they were demonstrating progress. Although the revised PLO does allow for flexibility at any stage of the proceedings,<sup>35</sup> some practitioners felt that the judiciary were too focused on the 26-week timeframe

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<sup>34</sup> The advocates' meeting is held prior to the CMH and is attended by all legal representatives. At this meeting the legal representatives consider the local authority evidence, identify any disclosure requirements, identify the respective positions of each party (to be incorporated into a draft order), identify any proposed experts and draft the questions. Under the revised PLO this should take place no less than two clear days before the CMH.

<sup>35</sup> Paragraph 2.3 in Pilot Practice Direction 12A states that 'The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing. For example, if the issue on which the case turns can with reasonable practicability be crystallised and resolved by taking evidence at an IRH then such a flexible approach must be taken in accordance with the overriding objective and to secure compliance with section 1(2) of the 1989 Act and achieving the aim of resolving the proceedings within 26 weeks or the period for the time being specified by the court.'

and were not allowing for this. Clarification on this matter may therefore be required.

- It was also too early for many practitioners to comment on the way in which the new processes had impacted on the handling of adoption placement applications. Nevertheless, some concerns were raised that the limited timescales would mean a potential increase in the number of cases where it would not be possible to ‘dovetail’ the adoption process into care proceedings. This could result in a return to court at a later date to deal with adoption, meaning that the end of care proceedings would not be a ‘true ending’ for the child.
- There is no clear evidence to determine whether the reduced timeframe has resulted in a shift in the types of final orders being made. However, there was some concern over the potential for increased use of care orders at home for those families where improvements had been noted but were not sufficient for concerns to be fully addressed. In such cases, considerable additional monitoring and interaction between social services and families would be required. Some felt that this situation could undermine the overall aim of reducing the amount of time that children are living in uncertainty.
- Practitioners highlighted a range of ‘typical’ case types that may require a more flexible timeline and may not be resolved in 26 weeks. These included complex cases; for example, where there was some form of non-accidental injury (NAI), sexual abuse, parallel criminal proceedings and those involving multiple children. Cases where parties have some form of disability or capacity issues were perceived to cause delays and there were calls from practitioners for greater flexibility to be applied here.

## **5.2 Introduction**

This chapter seeks to explore the impact of the revised PLO on court proceedings and any further changes to the revised PLO that could be considered. Practitioners were asked about their experience of implementing and working to relevant court proceedings sections of the revised PLO, including any challenges faced and locally identified good practice.

## **5.3 Day 2 of the case**

Under the revised PLO, the court should give standard directions by Day 2 of the case. As detailed in the previous chapter, the majority of practitioners believed that sufficient information is available in the documentation provided at the outset of a case for the court to achieve this. Only a small minority suggested this was not the case. The main issues here

tended to relate to missing documents or the judiciary needing to request additional information. A small number of practitioners noted that it was not possible to ascertain immediately from the documentation how urgent a case was, i.e. if a hearing was required before Day 12, and they therefore had to seek further clarification.

The revised PLO stipulates that evidential Checklist Documents must be served to the parties in the case by Day 2. In the online survey, around six in ten practitioners (62%) believed that the **local authorities were routinely serving the Checklist Documents upon the parties by Day 2 of the case**. Non-judicial practitioners were more likely to disagree with this statement (20% versus 6% for judicial practitioners).

#### 5.4 Guardian appointments

Practitioners confirmed that the requirement for Cafcass Guardians to be appointed by Day 2 was largely being met. It was noted that this process had improved with the revisions to the PLO. Practitioners reported that local authorities in some areas will email Cafcass when they are about to issue the case, giving them extra time to allocate a Guardian. The areas which had implemented the Cafcass PLUS initiative felt that this improved the process because it meant the Guardian was already appointed at this point.

A small number of practitioners, including Cafcass representatives, reported that the allocation of Guardians by Day 2 could be problematic at times, for example if Cafcass were facing resourcing difficulties or if the court did not notify Cafcass in a timely way.

#### 5.5 Preparation for the Case Management Hearing (CMH)

The majority of practitioners believed that the increased level of preparation required in advance of the CMH served to 'focus minds' and helped parties to be sufficiently prepared and ready for meaningful case management directions to be given at the CMH by Day 12. A range of practitioners felt that local authority representatives were sufficiently prepared given the volume of work they had undertaken during pre-proceedings. The online survey reflected this; just under two thirds of practitioners (63%) believed that a CMH by Day 12 is **appropriate for enabling parties to prepare and be ready for meaningful cases management directions**. A quarter (25%) disagreed.

There was however, a clear message from a variety of practitioners that solicitors representing the child's parents and parents themselves are under great pressure between days two and 12 and are less likely to be fully prepared. The key issue for parents' solicitors

was the ability of the solicitor to meet with the parents and take meaningful instructions within this time. Practitioners suggested that this could be due to a number of factors – for example, heavy workloads, fewer solicitors engaged in legal aid work, and/or because some parents' lives may be 'chaotic' making it difficult for them to attend scheduled appointments. In addition, the solicitor may not have been involved in pre-proceedings and, in some cases, would be meeting the parents for the first time in this interim period (or even on the day of the CMH itself). Furthermore, solicitors are described as being under pressure to obtain all of the required documentation, review the documents, assess the threshold, draft and submit the parents' response, attend an advocates' meeting and understand the case issues within what was felt to be a relatively short space of time. Private practice solicitors were also concerned that parents were not being proactive in engaging them at the earliest opportunity.

The problem is that part of the design of the PLO assumes that parents will consult solicitors before proceedings are issued, so that solicitors will not be starting from scratch. There are two problems with that. Parents often don't instruct solicitors pre-proceedings, and parents involved in these cases are not the sort of people who will necessarily behave efficiently, so typically they will fail to instruct solicitors in time for them to prepare a detailed statement by Day 12.

(Private practice solicitor)

Concerns were expressed by practitioners in relation to a number of issues concerning parents. Firstly, they noted that parents frequently arrive at the CMH with no legal representation. Practitioners recognise that this also occurred under the previous PLO, but stressed that the reduced time period between issuing and the CMH exacerbated this. Such parents were also described as more likely to have 'chronically chaotic' and very complex lives, for example with substance abuse problems. In addition, they typically have a lack of resources for day-to-day expenditure such as travel or telephone calls. Despite efforts to engage parents during pre-proceedings, practitioners were concerned that parents will not be capable of processing the situation between pre-proceedings and the CMH.

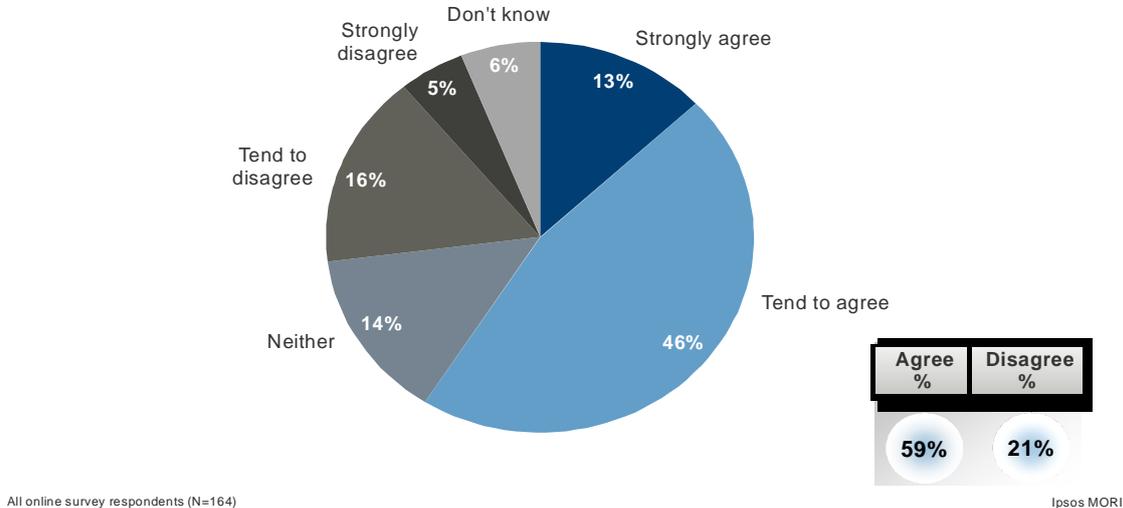
A number of Cafcass representatives were concerned about the pressure on their Guardians to visit the parties and compile their report between days one and 12. Some noted that this was particularly difficult if a parent involved in proceedings is currently in prison or if the family has a large number of children. The timescale for the written analytical report was therefore described as limited, with an implication that associated parties 'may not get the best out of the Guardian'. Indeed, practitioners mentioned some occasions when Guardians

had only received the relevant documentation at the advocates' meeting, and therefore had very little opportunity to engage with the child.

Despite these concerns and challenges, around six in ten (59%) practitioners responding to the wider feedback survey believed that **Cafcass/CAFCASS CYMRU were filing their cases analysis(es) on time**. One in five (21%) disagreed with this statement.

**Figure 5.1: Cafcass/CAFCASS CYMRU case analysis – wider feedback survey**

*To what extent do you agree/disagree that Cafcass/CAFCASS CYMRU is filing its case analysis(es) on time?*



Concerns were noted about potential difficulties for parties joining the case between days one and 12 and their ability to prepare or be made a party to proceedings. This was particularly felt to apply to birth fathers without parental responsibility who cannot become eligible for legal aid funding or become a party until Day 12. Moreover, practitioners felt that even if the birth father had instructed a solicitor before Day 12, then his representative would not be able to obtain the documentation or attend the advocates' meeting because he has not yet achieved party status. This potentially leaves the father in a 'legal limbo'. Although the local authority may request this information from the birth mother during pre-proceedings, practitioners believed that there is no requirement for her to divulge the birth father's contact details. Whilst improvements were widely noted on the impact the revised PLO is having on this area, it was a concern.

If the father does not have parental responsibility and party status at the outset of a s31 application, the shorter timescale for the PLO means that it can be difficult to get his involvement from the start of proceedings. His eligibility for financial support (along with the cost of representation) is triggered when he is formally made a party to the process. However, this does not happen until the first CMH, which leaves a gap in provision between the initiation of proceedings and the CMH.

(Local authority solicitor)

The research also found inconsistencies in the approach taken to scheduling the CMH. Some areas reported routinely listing the CMH before Day 12, either due to local protocol or because of resourcing issues and schedules at the court. For example, one practitioner noted that the Family Proceedings Court in her area sits three times a week, which means that the hearing may be brought forward. Similarly, the court allocation hearings may not take place every day, so there may be a delay in allocating the case. This was felt to limit practitioners' ability to be ready given that it further reduces the length of time between practitioners being notified and the CMH.

### Appropriate timescales

Most practitioners believed that holding the CMH no later than Day 12 is an appropriate timescale. Some suggested that there could be greater flexibility to extend to Day 15 in very complex cases (for example, those involving parents in prison, criminal proceedings, parents with learning difficulties and multiple children at risk). Others believed that days 15 to 20 would be more appropriate, with mixed views as to whether this would be beneficial for all cases, or just those deemed to be very complex. Although some practitioners noted that discretionary flexibility was applied to some cases, others noted the rigidity of adherence to Day 12 and a perceived lack of flexibility in their area.

A number of representatives from Cafcass also suggested that a slightly later CMH may not necessarily impact on the overall 26-week timescale.

It could be better to take a bit more time and have the CMH a bit later. We could use the 26 weeks more evenly, given that for much of the 26 weeks nothing much is happening [*between CMH and the IRH*].

(Cafcass representative)

## 5.6 The Case Management Hearing (CMH)

### What makes an effective Case Management Hearing?

The purpose of the CMH is to provide detailed case management directions to enable completion of cases within 26 weeks, unless, in complex cases, judges decide that an extension is necessary. Practitioners cited the importance of documentation being filed in a timely manner, with the parties' positions clearly set out. This helped ensure that parties had sufficient time to review them and contributed to an effective CMH.

A CMH is also perceived to be more effective if an advocates' meeting has taken place, so that the legal representatives are well versed in their case and their position. The guidance states that an advocates' meeting should take place two days before the CMH. The online survey showed that about half (48%) of all practitioners agreed that **both sets of advocates' meetings are routinely occurring within the timeframes specified in the revised PLO**, with around one in five (22%) disagreeing.

Practitioners felt that the timescales can mean that advocates' meetings are scheduled very hastily, often taking place on the morning of the CMH. This can be particularly problematic for solicitors of the child or the parents, who therefore have a limited amount of time for preparation.

Practitioners noted that clear communication between all parties was an additional factor in a successful CMH. They also felt that it was beneficial for as much work as possible to be undertaken in pre-proceedings to ensure that potential carers are approached and, where possible, assessed. Finally, all parties were keen for everyone to have a clear understanding of how the case will progress between the CMH and the IRH and which actions the various parties will undertake.

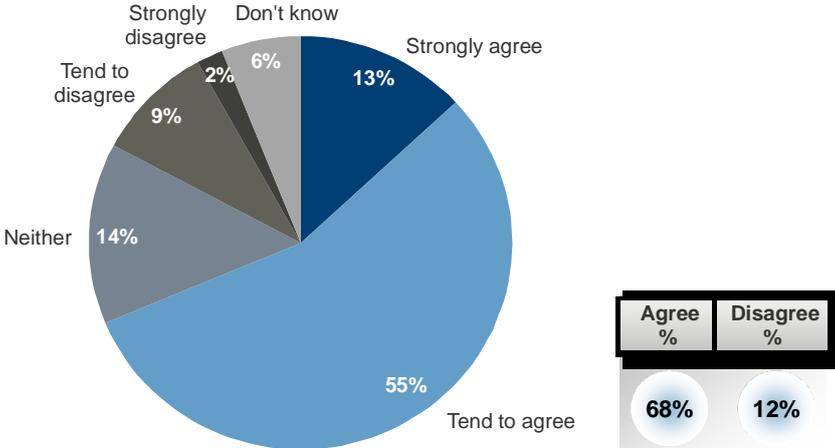
### Key issues for resolution at the Case Management Hearing

Overall, the vast majority of practitioners believed that the key issues for resolution in the case are clearly identified at the CMH and that the revised PLO has contributed to this improvement. As noted in the previous chapter, there was positive feedback on the impact of the reduced amount of documentation submitted, the drive for a more concise threshold, the analytical nature of the documents and the increased level of work undertaken during pre-proceedings. Practitioners confirmed that parties have a clearer grasp of the issues and place a greater focus on narrowing them prior to IRH than when working under the previous PLO.

These findings were supported by the online survey feedback, where over two thirds of practitioners believed that **the key issues for resolution are being clearly and routinely identified at the Case Management Hearing (68%)**.

**Figure 5.2: The Case Management Hearing – wider feedback survey**

**To what extent do you agree/disagree that the key issues for resolution by the court are routinely and clearly being identified by the Case Management Hearing (CMH)**



All online survey respondents (N=164)

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Although the timescales between the issuing of court proceedings and the CMH were felt to be limited, most agreed that the CMH facilitates a much clearer focus on the direction of the case. Overall, it was deemed to be resulting in more effective and productive hearings in comparison to the first hearings under the previous PLO. A small number of practitioners noted that more court time is required for the CMH to take place. However, the effectiveness of this hearing was felt to lead to time savings in the long term.

**Appeals against a case management decision**

As the research was undertaken shortly after implementation of the revised PLO, practitioners had minimal experience of appeals against a case management decision. However, a very small number of practitioners noted that any appeals they had seen were listed very quickly and had not impacted on the case timings.

In relation to this, there was additional speculation from some practitioners, specifically private practice solicitors and Cafcass representatives, that there may be an increase in the number of appeals as a result of perceived inflexibility by the judiciary to make a final order at week 26. Practitioners cited appeals relating to parents being denied further time to demonstrate effective rehabilitation, where expert applications have been denied or where potential carers have come forward late in the process but assessments had been rejected. Further research may be required to ascertain whether such appeals are affecting the overall timescales.

## 5.7 Further Case Management Hearings

The revised PLO states that a further CMH should only take place if necessary. Practitioners largely agreed that a meaningful CMH reduces the need for a further CMH.<sup>36</sup> If practitioners have completed the work required, and if everyone is prepared with all the relevant information, then practitioners felt the CMH can often lead directly to the IRH (to be used as a final hearing where possible). Practitioners noted that the types of cases that would require an additional hearing were likely to be more complex cases or those where specific issues may subsequently arise; for example, potential carers coming forward at a late stage. Some practitioners felt unable to comment on this issue, given the early timing of the research.

## 5.8 The Issues Resolution Hearing (IRH)

Under the revised PLO, the IRH should, wherever possible, be used as the final case management hearing where all identified issues should be resolved. There were mixed views on whether the orders made at the IRH were replacing the need for a final hearing. Although the majority of practitioners believed that this was typically proving to be the case, they also advised caution and could not be confident that this can be attributed directly to the revised PLO. This was primarily because they had not yet seen enough cases, or because an increase in cases completing at the IRH had occurred prior to the implementation of the revised PLO. Those who felt they could attribute this change directly to the revised PLO noted that the narrowing of the key issues, parties adopting a clear position and the succinct nature of the documents had assisted this change.

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<sup>36</sup> Further CMHs are typically held if case management issues are not resolved in the hearing on Day 12. According to the revised PLO, 'A further CMH is to be held only if necessary, it is to be listed as soon as possible and in any event no later than Day 20 (week 4)'. In addition, paragraph 2.5 states that that 'further CMHs must not be regarded as a routine step in proceedings'.

The directions made at the CMH are working towards everyone being put on an equal footing as to what their case is. As people have to file their case by the CMH everyone's position is stated at the end of the hearing. This is enabling more cases to be resolved by the IRH.

(Legal adviser)

Conversely, a number of practitioners, particularly private practice solicitors, felt that there had been an increase in the number of cases progressing to a (contested) final hearing and not being concluded at the IRH. The main reason for this was said to be that some parents believe the 26-week timescale is not sufficient for them to have proved their case or make the changes required. The revised PLO was felt to result in less flexibility from the judiciary in terms of permitting extensions for rehabilitation as they were perceived to be employing more robust case management practices.

We've had more final hearings since implementation. If parents are making the changes but it's not quite there, and it's not within the child's timescales, then they are finding this difficult to accept ... 26 weeks used to be a guidance which allowed more time if needed, e.g. to consider the possibility of rehab, whereas now it's rigid.

(Private practice solicitor)

## 5.9 Adoption and placement order timescales

A local authority may apply for a placement order<sup>37</sup> during the course of care proceedings if it believes that adoption is in the child's best interests and this plan has been approved by the Agency Decision Maker (ADM).<sup>38</sup> Placement orders and care orders should be considered and concluded concurrently wherever possible, in order to minimise delays for the child. However, the stipulation for proceedings to complete within 26 weeks applies only to care orders. Participants were asked how far the new revised PLO processes had impacted on the handling and timeframes of adoption placement applications.

### The Agency Decision Maker

A number of practitioners cited instances where care proceedings may have been resolved more rapidly if the decision of the ADM had been available at an earlier stage of

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<sup>37</sup> A placement order is an order made by the court authorising a local authority to place a child for adoption with prospective adopters who may be chosen by the authority.

proceedings. Concerns were also expressed that this issue could become more evident as more cases progress swiftly under the revised PLO. Without a change in local authority practice, delays associated with the decision of the ADM may lead to difficulties in completing cases within 26 weeks, and necessitate additional and separate hearings to conclude the placement application.

The change in decision maker (from an Adoption Panel to the ADM)<sup>39</sup> was not perceived by practitioners to have sped up the process. A small number of practitioners noted that judges and Independent Reviewing Officers (IROs)<sup>40</sup> were liaising with local authority ADMs regarding adoption. In one area, proactive steps were being taken to avoid a mismatch in timing through the DFJ's discussions with local ADMs.

If the local authority comes to court with the Agency Decision Makers' availability then that's factored into the timescales. It's usually built into the timeframe and care and placement proceeding run alongside each other. It's rare for care proceedings to finish and then placement proceedings to start.

(Private practice solicitor)

## Challenges

Practitioners identified further difficulties in 'dovetailing' the adoption process into care proceedings. The 26-week period was described by some as being long enough to achieve a care order, but not long enough for a placement order. While not all practitioners agreed on this point, it was suggested that difficulties in achieving a placement order within 26 weeks could mean that there may be more 'split' outcomes in a case. The concern was that, if the reduced timeframes make it more difficult to be certain about parental capacity and the evidence is not sufficient to make a final order for adoption within 26 weeks, the court may issue 'twin-track' final orders rather than further explore parenting capacity during proceedings. An example could be a care order with a plan for either rehabilitation or adoption, depending on the response of the parents to a 'final' opportunity for rehabilitation at home.

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<sup>38</sup> The Agency Decision Maker is a senior member of staff within the authority who oversees the service. The ADM's responsibilities include deciding whether a child should be adopted.

<sup>39</sup> Adoption decisions are made by the ADM without referral to an Adoption Panel (Regulation 17 of the Adoption Agencies Regulations 2005, as amended in 2012). For further information please see Appendix B.

<sup>40</sup> Every child who is 'looked after' by Children's Services must have a designated Independent Reviewing Officer (IRO). Their role is to monitor and determine whether Children's Services are meeting the child's needs and whether the care plan is being implemented. They also chair 'looked after' child review meetings.

If there is a view that parents can ‘turn things around’ but it will take longer than 26 weeks, then this is an option that might be used.

(Social worker)

A further concern was raised that faster court processes would not necessarily serve to speed things up for children waiting for adoptive families unless the adoption process also catches up.

Children are still waiting for adoptive families months after the court case ends. The impact of shorter care proceedings on their progress to permanence will be negated by other sources of delay.

(Workshop practitioner)

If the adoption process could not be satisfied within 26 weeks, there may be a need to return to court for a placement order application following the conclusion of care proceedings. This was perceived by some practitioners to be a problem. It was suggested that the end of proceedings is not a true ending for the child or the family; and the timetable for resolution of the child’s future care needs is longer than the ‘timely’ conclusion of the care case. There were some concerns that splitting the proceedings sequentially into care then adoption proceedings could be ‘playing with the system’. Other practitioners did not perceive this to be a problem if it meant that there were no delays.

### **Beneficial working practices**

Pre-existing local practice and the possibility of introducing local protocols were two factors that affected practitioners’ views about whether or not the conditions for making placement orders could be satisfied during the 26-week period. Active case management by the judiciary was perceived to be very important for this aspect of proceedings, as was early planning by the local authority. Parallel planning – the process of pursuing both care and placement plans concurrently – was also described as being ‘very much on the agenda’ in one area. This involved earlier liaison between key practitioners and earlier planning for the child.

## **5.10 Case outcomes – initial responses**

This research was undertaken in the early stages of the implementation of the revised PLO so few practitioners had seen a case through to completion under the new timeframes. However, on reflecting on their understanding of how local authorities approach cases, a

number of practitioners suggested that the nature of the revised PLO may have, and in some cases has had, an influence on case outcomes, in particular the type of order being issued at the final hearing by the court. These perceptions are based on early impressions that may not be borne out by evidence on the actual pattern of orders made.

For those who believed that there may be or had already been a change in case outcomes, this stemmed, on the whole, from a perception that the new timeframes do not allow adequate time for assessments of parents and potential alternative carers. In particular, some practitioners voiced concern that 26 weeks may not provide enough time for parents to demonstrate that they had made sufficient improvements to their parenting.

All of the issues have not been dealt with entirely and they remain at the end of proceedings and have not been addressed in full. The local authority are slightly cautious about a final definitive order.

*(Cafcass representative)*

Practitioners also felt that there was not always enough time available to conduct thorough assessments of potential carers and to prepare them for the new responsibility. Consequently, practitioners discussed a lack of confidence in making final orders.

*[I have a] concern that the timescales mean that potential carers are being rushed into a decision about coming forward to care for a child before they have had time to consider the enormity of what they are agreeing to. As such there is now a greater risk of this relationship breaking down.*

*(Local authority solicitor)*

The perceptions of the likely effect on final orders varied. However, two clear views on the order type emerged: care orders and Special Guardianship Orders.

### **Care orders**

As a result of the perception that it may not be possible to complete thorough assessments within the new timeframes, many practitioners felt the court may increasingly turn to applying for care orders (especially care orders at home) as the final order. This was discussed as a likely alternative for both placement orders and supervision orders. Care orders were described as a 'compromise' where the court might be more reluctant to return the child home without an order, or apply for a placement order if there was less time to consider the evidence. By issuing a care order, the local authority retained parental responsibility, allowing

the local authority to continue to monitor and supervise the child and the parent(s). It was noted that this was a practice that had largely been discontinued (and negatively viewed) until recently, but some practitioners suggested that they were already seeing a rise in the number of care orders being made where the child remains at home.

Issuing such orders was seen as problematic by many because they felt that they were being used as temporary measures while the local authority finished their assessment of parents. As such, practitioners felt it was likely that additional court time might be required if the local authority decided a placement order was required to ultimately remove the child from parents' care at a later stage, or if parents were to apply for the order to be discharged. There were concerns that this may increase the numbers of 'repeated' cases in court. It was also noted that without judicial or Cafcass oversight or a clear deadline for monitoring delays could occur once the child was back at home after court proceedings had finished. .

The implication for local authorities, which are obliged to continually monitor the situation, was noted. Practitioners considered that having more children at home on care orders would be a significant drain on resource. It was suggested that this situation would have been unusual before the implementation of the revised PLO.

### **Special Guardianship Orders**

Some practitioners felt there had been an increased use of Special Guardianship Orders<sup>41</sup> (SGOs), and/or residence orders made to relatives. Many practitioners believed that increased pressure on local authorities to find suitable carers at the outset of proceedings may lead to SGOs becoming more commonplace. A number of concerns were raised in relation to this.

Firstly, practitioners suggested that the timescale to conduct full assessments of potential carers and prepare them for their new parental responsibility was limited. As a result some social workers, and Guardians in particular, suggested that the process was rushed and carers had not been given adequate time to prepare for such a responsibility.

Another concern was the feasibility of being able to discharge or amend the orders once care proceedings had been completed. This might happen, for example, in the case of a birth parent wishing to have a care order discharged, or a carer seeking more robust parental

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<sup>41</sup> A Special Guardianship Order is a legal order which states that a child will be cared for by a person other than their parents on a long-term basis and that this person will have parental control over the child.

rights by becoming an adoptive parent. Indeed, a number of practitioners expressed concern that such cases would be more likely to be treated as private law as opposed to public law cases. Such arrangements might also leave legal 'loose ends', where there was an expectation that the case would be brought back to court at some stage and subsequently increase pressure on the system. This could be to discharge a care order to apply for a placement order (if rehabilitation with parents failed), or to progress from a residence order to an SGO.

## 5.11 Possible challenges to the 26-week timeline

### Complex cases

'Complex' cases were cited by a range of practitioners as typically being those that were most likely to exceed the 26-week limit. The vast majority of practitioners defined these as cases involving non-accidental injury (NAI), sexual abuse or parallel criminal proceedings. A number of practitioners said that such cases may extend over the timeline due to the need for separate fact finding hearings,<sup>42</sup> which require further court time and often involve a range of experts who are all expected to produce reports. These reports, it was felt, could take two to three months to obtain.

The minute you have a physical/sexual injury and you require a fact finding hearing you will be out of the 26 weeks as you have to put in an extra hearing which will require the evidence of paediatricians or radiologists etc.

(Social worker)

A number of practitioners also referred to complex cases as those which involve multiple children. For these practitioners, typically social workers and Cafcass representatives, the larger number of children often means having to consider competing needs and undertake multiple assessments and care plans which adds time to proceedings. Producing care plans can be particularly difficult in situations where age differences are wide and needs differ significantly.

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<sup>42</sup> A fact finding hearing is a tool designed to help the judiciary in making decisions regarding the case. It should only be ordered where the court 'takes the view that the case cannot properly be decided without such a hearing'. Its purpose is to narrow and determine issues, inform expert assessments (where relevant) and assist effective case management.

## Disability and capacity issues

Cases where parties have some form of disability were perceived to tend to cause delays and challenge the 26-week timescale. A number of practitioners suggested that the new timelines did not take these issues into account and that greater flexibility will be required. For example, additional time may be required for parents with learning disabilities to assist them to participate fully and in an informed way throughout their case. Furthermore, they may require additional time to demonstrate change. However, it was noted that this implies a direct tension with the principle that the child's needs are paramount in determining the timetable for the case.

Many practitioners suggested that the perceived delays linked to disability could be avoided if the right processes were employed. This included the need to identify disability-related issues at an earlier stage and to conduct appropriate assessments, for example in relation to capacity, during pre-proceedings. It was suggested that such processes could enable the Official Solicitor<sup>43</sup> to be appointed at the outset of proceedings and subsequently accommodate any disability-related issues.

However, appointing the Official Solicitor was often described as a lengthy process which tended to cause delays. Responses from the online survey referred to the difficulties in promptly appointing the Official Solicitor, getting them to complete their assessments, and then communicating the parent's wishes to the court in a timely manner. These were all perceived to be significant barriers to the requirements of the revised PLO being met.

## Potential carers

As mentioned above, many practitioners acknowledged that the local authorities were gradually reforming their processes to maximise the number of assessments conducted during pre-proceedings and to minimise the number of relatives 'coming out of the woodwork late in the day'. However, there was also an acknowledgement that this issue could never be fully resolved and would inevitably continue to cause delays. Practitioners felt that potential carers will continue to be typically discovered late in the process or only come forward once the seriousness of the case becomes apparent. In such instances, the potential carers require further time to undertake assessments and for carers to fully comprehend what they are agreeing to. Consequently, many practitioners suggested that this would often require additional time that may push proceedings over the 26 weeks.

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<sup>43</sup> The Official Solicitor acts for parents who lack mental capacity (within the meaning of the Mental Capacity Act 2005) to instruct their own solicitor (or are under 18).

Whatever is in the best interests of the child. If a viable family member comes forward, you have to delay.

(Independent Reviewing Officer)

## Parents

The majority of private practice solicitors had concerns over their ability to help parents understand the seriousness of their situation and to cooperate with the process, for example by giving clear instructions to their advocate.

Practitioners again voiced concerns that the revised timelines would not allow some parents sufficient time to make meaningful changes to their lifestyle and demonstrate that they are competent to care for their children. As such, some felt that the court would have to make exceptions in these cases and extend the timelines to allow for Article 6 of the Human Rights Act<sup>44</sup> to be met. Some practitioners were concerned that courts would not allow the flexibility for these extensions.

Sometimes 26 weeks doesn't work. Previously you could try and do rehab work with parents or carers which we haven't the time to do now. A final order is now made at 26 weeks.

(Local authority solicitor)

## 5.12 Feedback on the prescribed forms

Practitioners on balance felt that the prescribed forms<sup>45</sup> were working well. The notable exception was the Case Management Order (CMO)<sup>46</sup> document, which elicited considerable criticism. It was perceived to be unwieldy, repetitive and lacking a logical order. Practitioners were unhappy with the length of time taken to complete the form and many expressed a wish for it to be made more 'user friendly' and easier to navigate. Unlike the current format, previous versions of the form were seen as setting out a sequence, where dates were in order and a logical flow. The CMO was also felt to be causing problems for court administrators.

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<sup>44</sup> The right to a fair trial.

<sup>45</sup> These are the forms prescribed in relation to applications and orders and must be submitted at certain stages during the court process. See Appendix B.

<sup>46</sup> The CMO is a form completed by the local authority and submitted to the court on application. This document is used to set the timetable for proceedings.

The key information that you need to put your finger on straight away to drive the case forward is lost in the midst of recitals and repetition ... It's not helpful as it's not in a logical order. It's repetitive. It doesn't flow. Historically you could see the pattern of the case in a logical order. It now jumps around.

(Local authority solicitor)

Overall, there was little consistency across areas in their use of the CMO. While some practitioners were working with the form in its original format, others had made their own specific amendments or significantly re-worked the document.

The allocation form (PLO4)<sup>47</sup> was also described as slightly repetitive. Additionally, practitioners suggested that the C110a application or the allocation form could include a question which asks if a hearing before Day 12 is likely to be required, for example for contested Interim Care Orders (ICOs), and the reason for this.

Maybe you could have a write in box at the top of the C110a form to identify urgent cases ... along with a prompt for why that particular case needs fast tracking. It needs to be obvious as soon as you pick up a file that it is going to be 'urgent'.

(Workshop practitioner)

### 5.13 Court proceedings: good practice

As with the local working practices that had been identified to support the pre-proceedings process, practitioners tended to focus on improved communications and partnership working between agencies with regular review and feedback meetings. In addition, strong judicial leadership and robust case management were also cited as beneficial in implementing the relevant court proceedings sections of the revised PLO.

Other examples of good local practice included the following:

- **Protocols being agreed with police** regarding the disclosure of evidence that the court may require. This includes the production of a letter of intent to be delivered to the parties at the outset, which details the procedural requirements

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<sup>47</sup> To be filed by the local authority with its application to issue proceedings. It sets out an allocation proposal regarding the appropriate tier of court. It will also be used to record the court's allocation decision and reasons. See Appendix B for further information.

expected of them. This may be particularly important given that the police may only play a small role in proceedings, but can potentially have a noteworthy impact upon the timeliness.

- One team of local authority solicitors had created an **application tracker** which had assisted the management of cases. Once the case application is signed off, the details are then entered into an Excel spreadsheet that automatically populates the key dates for the solicitors. The tracker is used to monitor the progress of cases and issues alerts if dates are not met. Practitioners also felt that it may help to detect patterns as more cases are issued.
- Some areas are appointing **Case Progression or Case Management Officers** to halt drift between the CMH and the IRH.

## 5.14 Potential areas for further consideration

In light of the findings within this chapter, consideration could be given to the following improvements to the revised PLO proposed by practitioners:

- **Additional flexibility to extend the CMH beyond Day 12 for agreed ‘complex cases’.** This could include considering whether this flexibility, e.g. up to Day 15, could be adopted for standard case types given the pressures on private practice solicitors, parents and Cafcass representatives;
- **Further clarification may also be required on whether more complex cases can be extended beyond the 26-week timeframe.** In particular, those cases where parents have drug and alcohol issues to work through and those where parties have a disability or capacity issue;
- **Amendment of the Case Management Order** to ensure that it flows in a logical order and is more ‘user friendly’. In addition, it was recommended that either the C110a application or the allocation form (PLO4) includes a question which asks if a hearing before Day 12 is likely to be required and the reason for this.
- Consideration of whether a **birth father without parental responsibility could be given party status earlier in proceedings** to ensure that his eligibility for legal funding is triggered before Day 12.

## 6. The impact of the revised Public Law Outline (PLO) on the wider family justice system

### 6.1 Chapter summary

#### Key requirements under the revised PLO (see section 2.2)

- The revised PLO aims to ensure earlier identification of cases and to streamline processes for allocation. A new Annex form, the Allocation Proposal, has been introduced to be filed with the court application. The allocation and gatekeeping team must use this to allocate proceedings to the correct tier of the judiciary within 24 hours of issue.
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- Allocation of cases to the correct tier of the judiciary was felt to be working well overall. District Judges and Legal Advisers felt that, while there was an increase in the amount of work required, they had adopted effective processes to ensure cases were allocated promptly and correctly. There were, however, concerns from some magistrates that the changes to the allocation process had led to more public law cases being allocated to senior tiers of the judiciary. Some felt that this had led to them seeing fewer public law cases and a perception that they were being 'deskilled' in this area.
  - All practitioners felt that the changes outlined within the revised PLO were impacting on their workloads while they adapted to the new requirements during the early stages of implementation. This was particularly true for local authority solicitors and social workers, in light of the increased emphasis on the front-loading of assessments and documentation. This was described as a change that will take time to embed, but practitioners did not feel that the challenges were insurmountable.
  - Many magistrates told us they had received training only after the revised PLO had been implemented in their area, and this delay was problematic. A number suggested that ongoing support and guidance would be required.
  - There was mixed feedback on the effect of the revised PLO on private law cases. Some practitioners felt that the need to adhere to the new timescales was 'pushing private law cases down the list' while public law cases were being given priority, although there was no evidence for this.

## 6.2 Introduction

This chapter explores the impact of the revised PLO on the wider family justice system, including the impact on allocation practices and practitioners' workloads.

## 6.3 Allocation of cases

Under the revised PLO, an allocation and gatekeeping team must use a new Allocation Proposal form to allocate proceedings to the correct tier of the judiciary within 24 hours of issue. The majority of practitioners working with the Allocation Proposal forms felt that they were appropriate and enabled cases to be allocated to the correct tier of the judiciary. This position was reflected in the wider feedback survey where 82% of practitioners agreed that **the majority of cases are being allocated/transferred to the correct level of court at the outset of proceedings**. Members of the judiciary were significantly more likely to 'strongly agree' with this statement (49% versus 22% of non-judicial practitioners). Furthermore, the same percentage of practitioners (82%) also agreed that the **appointment of the case management judge is routinely addressed by Day 2 of the case**.

The revised PLO stipulates that the court considers allocation of the case and, if appropriate, transfers proceedings in accordance with the President's Guidance on Allocation and Gatekeeping, by Day 2. The majority of practitioners in the online survey (80%) agreed that the transfer of proceedings was routinely addressed by Day 2. Members of the judiciary were significantly more likely to 'strongly agree' with this statement (53% versus 33% of non-judicial practitioners).

## Resourcing and listings

Practitioners typically noted challenges with adequate resourcing whilst discussing the allocation and scheduling of cases during the early implementation of the revised PLO. This primarily included a lack of judicial and Legal Adviser availability. Many suggested that this could, and has been, a key factor in preventing cases being concluded within the 26 weeks.

Sometimes court availability is difficult and frustrating. We had a judge who couldn't hear anything until next January as their diary was so full. If you are wanting *[sic]* to conclude something much quicker that can be a frustration.

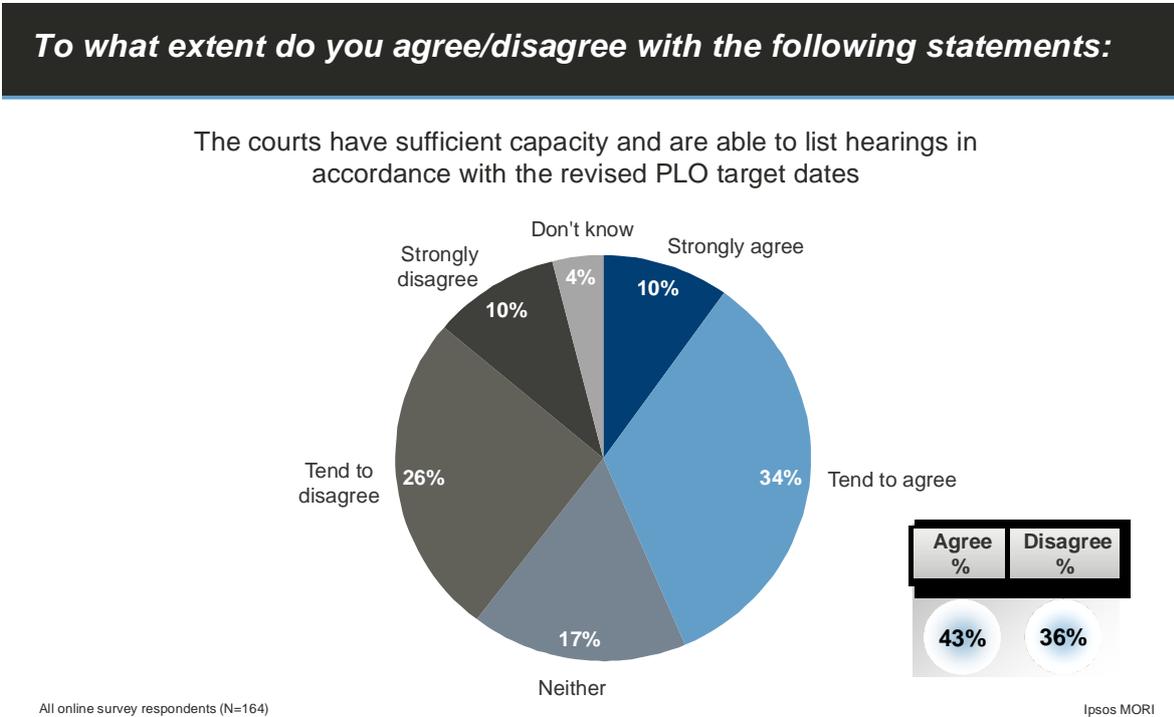
(Social worker)

Further to this, a number of practitioners raised concerns about cases being heard before magistrates at the Family Proceedings Court (FPC). Some felt that the 26-week timescale, with its designated hearing dates, would cause issues relating to the consistency and availability of magistrates, particularly in more rural areas with smaller court centres. Some practitioners noted that magistrates only sit on certain days of the week in the FPC. This limited availability has the potential to cause delays when it comes to listing cases.

Some practitioners said they had experienced a lack of available Legal Advisers to act as gatekeepers and successfully list hearings early enough to meet the new PLO timeframe. Some practitioners expressed concern that some cases were being inappropriately allocated to other members of the judiciary to avoid the problems of listing cases with magistrates to ensure the completion of cases within the new timescales. There was concern that this was not the most efficient use of judicial time.

The wider feedback survey echoed these concerns, with fewer than half of practitioners (43%) agreeing that **courts have sufficient capacity to list hearings in accordance with the revised PLO target dates.**

**Figure 6.1: Court capacity – wider feedback survey**



## Impact on magistrates

A number of magistrates taking part in qualitative interviews expressed concerns that the changes to the PLO (in combination with the President's Guidance on Allocation and Gatekeeping [1 July 2013]),<sup>48</sup> were resulting in their profession becoming 'deskkilled' in public law cases. A number believed that more cases are now being allocated to the County Court and, as a consequence, they are seeing a reduction in the volume and complexity of cases brought before them. They typically felt that the new allocation guidance had removed the flexibility of the previous system. Whereas before they had shown themselves to be competent and able to receive more complex cases, stringent compliance with the new guidance would mean that these cases would now exclusively go to the District Judge and beyond.

## 6.4 Impact on workloads

Practitioner views varied on the extent to which the revised PLO had impacted on their workloads during the early stages of the implementation. Overall, despite some concerns, very few practitioners felt that meeting the new requirements of the revised PLO would be impossible. Many practitioners felt that workloads had not necessarily increased overall, but the frontloading of pre-proceedings and the squeeze between days one and 12 meant that their workloads were more concentrated.

### Local authority staff and social workers

For the majority of practitioners, local authority staff and social workers were the most frequently cited as experiencing (or likely to experience) an increased workload as a result of the revisions to the PLO. Social workers felt the main reasons for this were, firstly, the requirement to have all relevant documentation completed prior to issue. Some local authorities required social workers to undertake assessments and complete documentation regardless of whether proceedings are issued or not. Secondly, social workers felt that the reduction in reliance on expert evidence meant that they were having to complete more detailed assessments for court, particularly following recent rulings in the Court of Appeal<sup>49</sup> (which noted the need for very thorough analysis of the possible placement options for the child). These challenges were often coupled with the perception of a high turnover of social workers.

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<sup>48</sup> <http://flba.co.uk/wp-content/uploads/2013/06/ploggallocationf.pdf>

<sup>49</sup> Re B-S (Children) [2013] EWCA Civ 1146 and Re B (A Child) [2013] UKSC 33.

It's increased the workload in the team because it's so front ended. Normally you would go to court and then the work was undertaken throughout the proceedings, now it's being done ahead of proceedings and now we're busier.

(Social worker)

However, social workers and local authority solicitors predicted that workloads would become more balanced once practitioners had adapted their working practices to meet the new requirements.

### **Legal Advisers and District Judges**

Many District Judges and Legal Advisers expressed concern that there had been an increase in their workload. The requirement that District Judges and Legal Advisers set aside time to gatekeep and allocate cases was deemed to have added considerably to their duties; particularly for those covering a large geographic area with high volumes of cases. It was noted that this is especially problematic for Legal Advisers in under-resourced areas where it was felt that they were increasingly being placed under too much strain. Although, as mentioned previously, most practitioners believed that the majority of cases were allocated to the correct tier of the judiciary, it was noted that if the case is allocated incorrectly then delays may occur. This could be the case, for example, if a further hearing has to be scheduled (with the potential for the new court to have a different approach) or members of the judiciary have to 'get up to speed'.

### **Cafcass representatives, private practice solicitors and barristers**

These practitioners attributed the perceived increase in their workloads to the shorter period in which they now have to comply with the new PLO timescales. This relates to Cafcass providing their initial analysis prior to the CMH and solicitors having to take instructions to file the Response Document,<sup>50</sup> instructing experts and gather Rule 25 information<sup>51</sup> before convening and attending the advocates' meeting and the CMH.

Cafcass representatives and private practice solicitors also expressed a wider concern that a number of local authorities are currently delaying issuing cases while they prepare the additional pre-proceedings documentation that is now required. While they feel they are

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<sup>50</sup> The Response Document is an opportunity for the parents' solicitor to provide a position statement for their client and outline any connected persons they would wish to be assessed. Under the revised PLO, by Day 2, the court gives standard direction as to when the Parents' Response must be filed and served. See Appendix B.

currently experiencing a reduced workload, they predicted that subsequent months would see a surge of cases being issued and their workload subsequently increasing. They further expressed concerns relating to the balance to be achieved between complying with the new PLO timescales and maintaining a high standard of work.

We have had a decrease but we hear on the grapevine that certain local authorities have a whole stash of PLO proceedings waiting to come, so I think we are going to be deluged ... I think it will [*increase workloads*] because you have to run with each case as soon as you get it so it is going to feel very pressurised. We don't have that luxury of time anymore.

(Cafcass representative)

## 6.5 Impact on private law cases

The boundary between public law and private law is not always clear-cut and changes to one are likely to have an impact on the other. A variety of practitioners discussed the potential impact that changing the timelines for care proceedings would have on private law cases. There was a perception that the revised PLO timescales, along with a strong determination to make it work, could mean that public law cases are being given priority over private law cases in terms of allocation and listings, although there was no evidence to bear this out.

Conversely, some practitioners suggested that the perceived increasing numbers of litigants in person<sup>52</sup> in private law cases had meant that many private law cases are now monopolising hearing time, with the consequence that there is even greater pressure to find hearing time for public law cases.

Finally, it was suggested that the perceived increase in the granting of Special Guardianship Orders to alternative family carers (with contact provision to the parents), risks further litigation in private law cases as issues arise in relation to contact or the care of children. As such, practitioners said they expect a rise in private law applications as a result of what they describe as 'unfinished' family issues. They felt this will require further involvement of certain practitioners such as Cafcass and may impact upon workloads. It could also result in further public law proceedings if placements break down.

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<sup>51</sup> This rule relates to the requirement for the parents' solicitors to file a request to the court for any expert evidence on a date prior to the advocates' meeting for the CMH. Under the revised PLO, by Day 2, the court gives standard direction as to when the application must be filed and served. See Appendix B.

We are seeing an increasing amount of private law applications for public law children who are subject to Special Guardianship Orders (SGO) with relatives. A lot of parents don't feel the case has concluded and they have got to 26 weeks. Children are placed with the kinship carers and then the parents say 'well actually I would like to see the child every weekend' so they make a private law application.

(Social worker)

## 6.6 Additional training needs

Overall, the majority of practitioners had received some training relating to the revised PLO. This was typically conducted by their Local Family Judge (or DFJ), within their teams or through external providers. On balance, most felt that the training they had received was sufficient and that their understanding of the revisions to the PLO was good. However, training was highlighted as problematic for magistrates, who said their training had been scheduled too late in the year and after the revised PLO had been implemented in their area. As a result, many magistrates talked about having to learn 'on the hoof' and feeling that they had been 'vastly overlooked'. Indeed, many felt that their working practices had been affected by the lack of training and a number suggested that ongoing training and support would be required.

The training under the new PLO was ridiculous in that magistrates who are key players in the system received their training three months after the new system was introduced.

(Circuit Judge)

### Social workers

While social workers generally believed that they had been given sufficient training in the new requirements of the revised PLO, some social workers, and others more widely, believed that further training was required. Practitioners highlighted a general concern that due to what they described as a past 'deskilling' of social workers (as a result of increased reliance on expert evidence), many are now underprepared for the new expectations on them as the key local authority expert. As mentioned previously, some participants said that social work university degrees were not adequately preparing them, particularly in relation to drafting analytical documentation and presenting evidence in court. Many talked about a

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<sup>52</sup> The term 'litigant in person' is used to describe individuals who do not have legal representation during legal proceedings which may proceed to court.

need for ongoing training and feedback on these skills. In some areas, action has been taken to address the need for additional training. Where this has been happening it has been well received and perceived to be effective.

Newly qualified social workers are leaving university with a social worker qualification but no understanding of the PLO, court processes, skills in giving evidence, no analytical skills. There is a fundamental change needed to this initial introduction to the profession ... core skills need building at this level. ... We need to ensure that training and support is ongoing, and not just a 'one-off' course.

(Workshop practitioner)

## References

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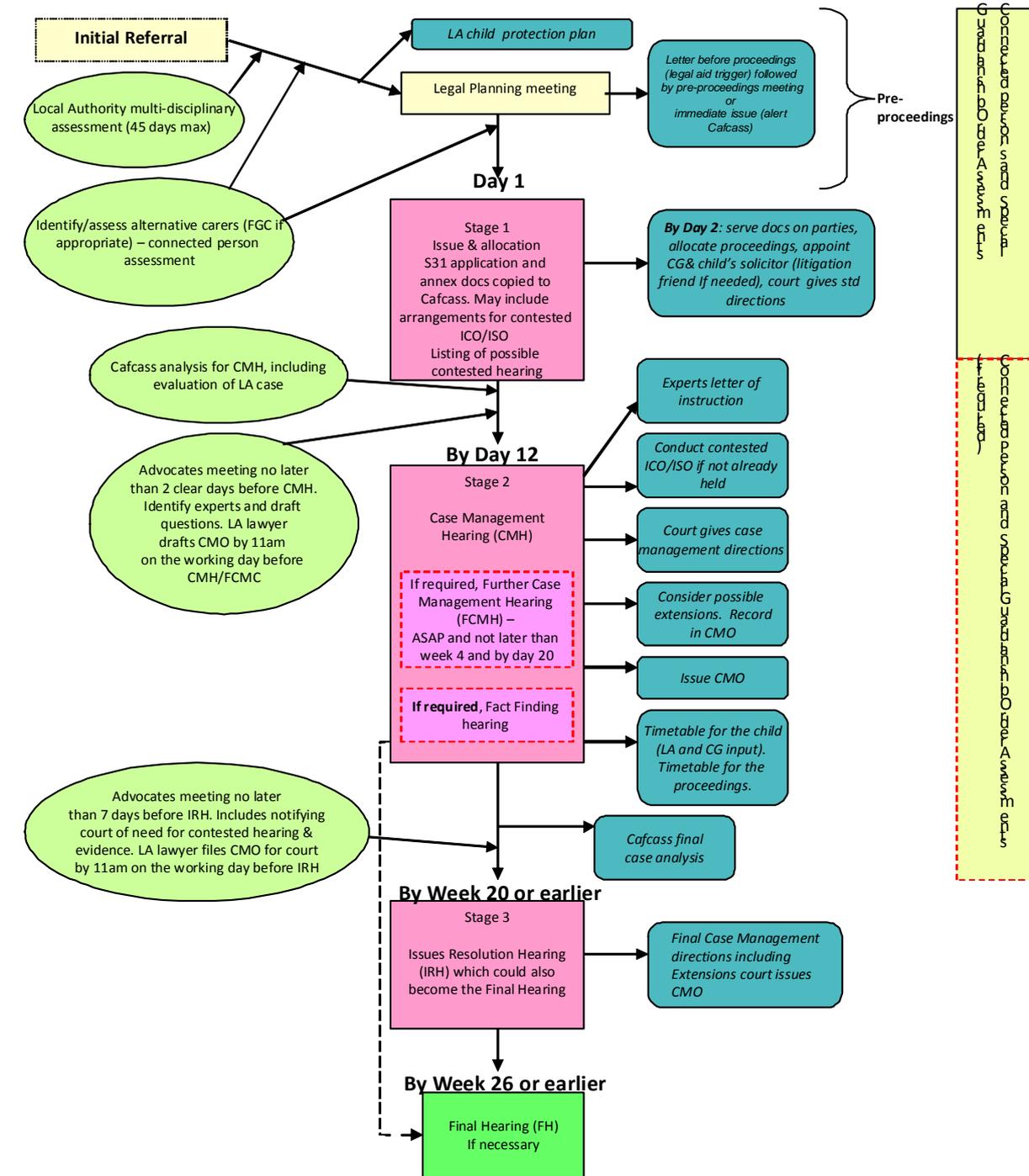
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The President of the Family Division (1 July 2013) *President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Part 4 proceeding*. Retrieved December 2013 from: <http://www.familylaw.co.uk/system/uploads/attachments/0007/2905/PLO-PG-ALLOCATION.pdf>

# Appendix A

## Workshop Materials: Flowchart of the Revised PLO

### Public Law Outline (26 weeks)



Input   
 Output   
 PLO stage

FGC: Family Group Conference    CG: Children's Guardian  
 CMO: Case management order    ICO: Interim Care Order    ISO: Interim Supervision Order  
 Note: The court may give directions without a hearing, including setting a date or period for the FH.  
 Reference to Cafcass includes CAFCASS CYMRU

## Appendix B

### Workshop Materials: Annex to Practice Direction 36C

#### PILOT PRACTICE DIRECTION 12A

#### CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT

##### 1. THE KEY STAGES OF THE COURT PROCESS

1.1 The Public Law Outline set out in the Table below contains an outline of—

- (1) the order of the different stages of the process;
- (2) the matters to be considered at the main case management hearings;
- (3) the latest timescales within which the main stages of the process should take place in order to achieve the aim of resolving the proceedings within 26 weeks.

1.2 In the Public Law Outline—

- (1) 'CMH' means the Case Management Hearing;
- (2) 'FCMH' means Further Case Management Hearing;
- (3) 'ICO' means interim care order;
- (4) 'IRH' means the Issues Resolution Hearing;
- (5) 'LA' means the Local Authority which is applying for a care or supervision order or a final order in other Part 4 Proceedings;
- (6) 'OS' means the Official Solicitor.

1.3 In applying the provisions of FPR Part 12 and the Public Law Outline the court and the parties must also have regard to-

- (1) all other relevant rules and Practice Directions and in particular-
  - FPR Part 1 (Overriding Objective);
  - FPR Part 4 ( General Case Management Powers);
  - FPR Part 15 (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);
  - FPR Part 22 (Evidence);
  - FPR Part 25 (Experts) and the Experts Practice Directions;
  - FPR 27.6 and Practice Direction 27A (Court Bundles);
- (2) President's Guidance issued from time to time on
  - Allocation and Gatekeeping;

- Judicial continuity and deployment;
  - Prescribed templates and orders;
- (3) Justices' Clerks Rules 2005 and FPR Practice Direction 2A (Functions of the Court In The Family Procedure Rules 2010 And Practice Directions Which May Be Performed By a Single Justice of the Peace).

## PUBLIC LAW OUTLINE

<b>PRE-PROCEEDINGS</b>	
PRE-PROCEEDINGS CHECKLIST	
<p><u>Annex Documents</u> are the documents specified in the Annex to the Application Form which are to be attached to that form and filed with the court:</p> <ul style="list-style-type: none"> <li>• Social Work Chronology</li> <li>• Social Work Statement and genogram</li> <li>• The current assessments relating to the child and/or the family and friends of the child to which the Social Work Statement refers and on which the LA relies</li> <li>• Threshold Statement</li> <li>• Care Plan</li> <li>• Allocation Proposal Form</li> <li>• Index of Checklist Documents</li> </ul>	<p>Checklist Documents (already existing on the LA's files) are –</p> <p>(a) Evidential documents including-</p> <ul style="list-style-type: none"> <li>• Previous court orders and judgments/reasons</li> <li>• Any assessment materials relevant to the key issues including Section 7 and 37 reports</li> <li>• Single, joint or inter-agency materials (e.g., health &amp; education/Home Office and Immigration Tribunal documents);</li> </ul> <p>(b) Decision-making records including-</p> <ul style="list-style-type: none"> <li>• Records of key discussions with the family</li> <li>• Key LA minutes and records for the child</li> <li>• Pre-existing care plans (e.g., child in need plan, looked after child plan and child protection plan)</li> <li>• Letters Before Proceedings</li> </ul> <p>Only Checklist Documents in (a) <i>are to be served</i> with the application form</p> <p>Checklist Documents <i>in (b) are to be disclosed on request</i> by any party</p> <p>Checklist Documents are <i>not</i> to be–</p> <ul style="list-style-type: none"> <li>• filed with the court unless the court directs otherwise; and</li> <li>• older than 2 years before the date of issue of the proceedings unless reliance is placed on the same in the LA's evidence</li> </ul>

## STAGE 1 ISSUE AND ALLOCATION

### DAY 1 AND DAY 2

On Day 1 (Day of issue):

- The LA files the Application Form and Annex Documents and sends copies to Cafcass/CAFCASS CYMRU
- The LA notifies the court of the need for a contested ICO hearing where this is known or expected
- Court officer issues application

Within a day of issue (Day 2):

- Court considers allocation, and if appropriate, transfers proceedings in accordance with the President's Guidance on Allocation and Gatekeeping
- LA serves the Application Form, Annex Documents and evidential Checklist Documents on the parties together with the notice of date and time of CMH
- Court gives standard directions on Issue and Allocation including:
  - Checking compliance with Pre-Proceedings Checklist including service of any missing Annex Documents
  - Appointing Children's Guardian (to be allocated by Cafcass/CAFCASS CYMRU)
  - Appointing solicitor for the child only if necessary
  - Appointing (if the person to be appointed consents) a litigation friend for any protected party or any non subject child who is a party, including the OS where appropriate
  - Filing and service of a LA Case Summary
  - Filing and service of a Case Analysis by the Children's Guardian
  - Making arrangements for a contested ICO hearing (if necessary)
  - Filing and Serving the Parents' Response
  - Sending a request for disclosure to, e.g., the police
  - Filing and serving an application for permission relating to experts under Part 25 on a date prior to the advocates meeting for the CMH
  - Directing the solicitor for the child to arrange an advocates' meeting 2 days before the CMH
  - Listing the CMH
- Court officer sends copy Notice of Hearing of the CMH by email to Cafcass/ CAFCASS CYMRU

<b>STAGE 2 – CASE MANAGEMENT HEARING</b>	
ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5)))	CASE MANAGEMENT HEARING
No later than 2 clear days before CMH (or FCMH if it is necessary)	CMH : by Day 12 A FCMH is to be held only if necessary, it is to be listed as soon as possible and in any event no later than day 20 (week 4)
<ul style="list-style-type: none"> <li>• Consider information on the Application Form and Annex documents, the LA Case Summary, and the Case Analysis</li> <li>• Identify the parties' positions to be recited in the draft Case Management Order</li> <li>• If necessary, identify proposed experts and draft questions in accordance with Part 25 and the Experts Practice Directions</li> <li>• Identify any disclosure that in the advocates' views is necessary</li> <li>• Immediately notify the court of the need for a contested ICO hearing</li> <li>• LA advocate to file a draft Case Management Order in prescribed form with court by 11a.m. on the working day before the CMH and/or FCMH</li> </ul>	<ul style="list-style-type: none"> <li>• Court gives detailed case management directions, including: <ul style="list-style-type: none"> <li>– Confirming allocation and/or considering transfer</li> <li>– Drawing up the timetable for the child and the timetable for the proceedings and considering if an extension is necessary</li> <li>– Identifying additional parties and representation (including confirming that Cafcass/CAFCASS CYMRU have allocated a Children's Guardian)</li> <li>– Identifying the key issues</li> <li>– Identifying the evidence necessary to enable the court to resolve the key issues</li> <li>– Deciding whether there is a real issue about threshold to be resolved</li> <li>– Determining any application made under Part 25 and otherwise ensuring compliance with Part 25 where it is necessary for expert(s) to be instructed</li> <li>– Identifying any necessary 3<sup>rd</sup> party disclosure and if appropriate giving directions</li> <li>– Giving directions for any concurrent or proposed placement order proceedings</li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>- Ensuring compliance with the court's directions</li><li>- If a FCMH is necessary, directing an advocates' meeting and Case Analysis if required ;</li><li>- Directing filing of any threshold agreement, final evidence and Care Plan and responses to those documents for the IRH</li><li>- Directing a Case Analysis for the IRH</li><li>- Directing an advocates' meeting for the IRH</li><li>- Listing (any FCMH) IRH, Final Hearing (including early Final Hearing)</li><li>- Giving directions for special measures and/or interpreters</li><li>- Issuing the Case Management Order</li></ul>
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<b>STAGE 3 – ISSUES RESOLUTION HEARING</b>	
ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5)))	IRH
No later than 7 days before the IRH	As directed by the court, in accordance with the timetable for the proceedings
<ul style="list-style-type: none"> <li>• Review evidence and the positions of the parties</li> <li>• Identify the advocates' views of- <ul style="list-style-type: none"> <li>– the remaining key issues and how the issues may be resolved or narrowed at the IRH including by the making of final orders</li> <li>– the further evidence which is required to be heard to enable the key issues to be resolved or narrowed at the IRH</li> <li>– the evidence that is relevant and the witnesses that are required at the final hearing</li> <li>– the need for a contested hearing and/or time for oral evidence to be given at the IRH</li> </ul> </li> <li>• LA advocate to- <ul style="list-style-type: none"> <li>– notify the court immediately of the outcome of the discussion at the meeting</li> <li>– file a draft Case Management Order with the court by 11a.m. on the working day before the IRH</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Court identifies the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the IRH</li> <li>• Court considers whether the IRH can be used as a final hearing</li> <li>• Court resolves or narrows the issues by hearing evidence</li> <li>• Court identifies the evidence to be heard on the issues which remain to be resolved at the final hearing</li> <li>• Court gives final case management directions including: <ul style="list-style-type: none"> <li>– Any extension of the timetable for the proceedings which is necessary</li> <li>– Filing of the threshold agreement or a statement of facts/issues remaining to be determined</li> <li>– Filing of: <ul style="list-style-type: none"> <li>– final evidence &amp; Care Plan <ul style="list-style-type: none"> <li>• Case Analysis for Final Hearing (if required)</li> <li>• Witness templates</li> <li>• Skeleton arguments</li> </ul> </li> </ul> </li> <li>– Judicial reading list/reading time, including time estimate and an estimate for judgment writing time</li> <li>– Ensuring Compliance with PD27A (the Bundles Practice Direction)</li> <li>– Listing the Final Hearing</li> </ul> </li> <li>• Court issues Case Management Order</li> </ul>

## **2. FLEXIBLE POWERS OF THE COURT**

- 2.1** Attention is drawn to the flexible powers of the court either following the issue of the application in that court, the transfer of the case to that court or at any other stage in the proceedings.
- 2.2** The court may give directions without a hearing including setting a date for the Final Hearing or a period within which the Final Hearing will take place. The steps, which the court will ordinarily take at the various stages of the proceedings provided for in the Public Law Outline, may be taken by the court at another stage in the proceedings if the circumstances of the case merit this approach.
- 2.3** The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing. For example, if the issue on which the case turns can with reasonable practicability be crystallised and resolved by taking evidence at an IRH then such a flexible approach must be taken in accordance with the overriding objective and to secure compliance with section 1(2) of the 1989 Act and achieving the aim of resolving the proceedings within 26 weeks or the period for the time being specified by the court.
- 2.4** Where it is anticipated that oral evidence may be required at the CMH, FCMH or IRH, the court must be notified in accordance with Stages 2 and 3 of the Public Law Outline well in advance and directions sought for the conduct of the hearing.
- 2.5** It is expected that full case management will take place at the CMH. It follows that the parties must be prepared to deal with all relevant case management issues, as identified in Stage 2 of the Public Law Outline. A FCMH should only be directed where necessary and must not be regarded as a routine step in proceedings.

## **3. COMPLIANCE WITH PRE-PROCEEDINGS CHECKLIST**

- 3.1** It is recognised that in a small minority of cases the circumstances are such that the safety and welfare of the child may be jeopardised if the start of proceedings is delayed until all of the documents appropriate to the case and referred to in the Pre-proceedings Checklist are available. The safety and welfare of the child should never be put in jeopardy because of lack of documentation. (Nothing in this Practice Direction affects an application for an emergency protection order under section 44 of the 1989 Act).

**3.2** The court recognises that the preparation may need to be varied to suit the circumstances of the case. In cases where any of the Annex Documents required to be attached to the Application Form are not available at the time of issue of the application, the court will consider making directions on issue about when any missing documentation is to be filed. The expectation is that there must be a good reason why one or more of the documents are not available. Further directions relating to any missing documentation will also be made at the Case Management Hearing.

#### **4. ALLOCATION**

**4.1** The court considers the allocation of proceedings in accordance with the Allocation Order and whether transfer is appropriate in accordance with this Order and the Guidance issued by the President on Allocation and Gatekeeping. When proceedings are issued in the magistrates' court the justices' clerk or assistant justices' clerk (with responsibility for gatekeeping and allocation of proceedings) will discuss allocation and transfer with a district judge of the county court (with responsibility for allocation and gatekeeping of proceedings as provided for in the Guidance issued by the President on Allocation and Gatekeeping) and will, where appropriate, transfer the case.

#### **5. THE TIMETABLE FOR THE CHILD AND THE TIMETABLE FOR PROCEEDINGS**

**5.1** The timetable for the proceedings:

- (1) The court will draw up a timetable for the proceedings with a view to disposing of the application—
  - (a) without delay; and
  - (b) in any event with the aim of doing so within 26 weeks beginning with the day on which the application was issued.
- (2) The court, when drawing up or revising a timetable under paragraph (1), will in particular have regard to—
  - (a) the impact which the timetable or any revised timetable would have on the welfare of the child to whom the application relates; and
  - (b) the impact which the timetable or any revised timetable would have on the duration and conduct of the proceedings.

**5.2** The impact which the timetable for the proceedings, any revision or extension of that timetable would have on the welfare of the child to whom the application relates are matters to which the court is to have particular regard. The court will use the

Timetable for the Child to assess the impact of these matters on the welfare of the child and to draw up and revise the timetable for the proceedings.

- 5.3** The 'Timetable for the Child' is the timetable set by the court which takes into account dates which are important to the child's welfare and development.
- 5.4** The timetable for the proceedings is set having particular regard to the Timetable for the Child and the Timetable for the Child needs to be reviewed regularly. Where adjustments are made to the Timetable for the Child, the timetable for the proceedings will have to be reviewed consistently with the aim of resolving the proceedings within 26 weeks or the period for the time being specified by the court.
- 5.5** Examples of the dates the court will record and take into account when setting the Timetable for the Child are the dates of—
- (1) any formal review by the Local Authority of the case of a looked after child (within the meaning of section 22(1) of the 1989 Act);
  - (2) any significant educational steps, including the child taking up a place at a new school and, where applicable, any review by the Local Authority of a statement of the child's special educational needs;
  - (3) any health care steps, including assessment by a paediatrician or other specialist;
  - (4) any review of Local Authority plans for the child, including any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;
  - (5) any change or proposed change of the child's placement; or
  - (6) any significant change in the child's social or family circumstances.
- 5.6** To identify the Timetable for the Child, the applicant is required to provide the information needed about the significant steps in the child's life in the Application Form and the social work statement and to update this information regularly taking into account information received from others involved in the child's life such as the parties, members of the child's family, the person who is caring for the child, the children's guardian and the child's key social worker.
- 5.7** Where more than one child is the subject of the proceedings, the court should consider and will set a Timetable for the Child for each child. The children may not all have the same timetable, and the court will consider the appropriate progress of the proceedings in relation to each child.

**5.8** Where there are parallel care proceedings and criminal proceedings against a person connected with the child for a serious offence against the child, linked directions hearings should where practicable take place as the case progresses. The timing of the proceedings in a linked care and criminal case should appear in the Timetable for the Child. The aim of resolving the proceedings within 26 weeks applies unless a longer timetable has been set by the court in order to resolve the proceedings justly. In these proceedings, early disclosure and listing of hearings is necessary.

## **6. EXTENSIONS TO THE TIMETABLE FOR PROCEEDINGS**

**6.1** The court is required to draw up a timetable for proceedings with a view to disposing of the application without delay and with the aim of doing so within 26 weeks. If proceedings can be resolved earlier, then they should be. A standard timetable and process is expected to be followed in respect of the giving of standard directions on issue and allocation and other matters which should be carried out by the court on issue, including setting and giving directions for the Case Management Hearing.

**6.2** Having regard to the circumstances of the particular case, the court may consider that it is necessary to extend the time by which the proceedings are intended to be resolved beyond 26 weeks to enable the court to resolve the proceedings justly. When making this decision, the court is to take account of the guidance that extensions are not to be granted routinely and are to be seen as requiring specific justification. The decision and reason(s) for extending a case should be recorded in writing (in the Case Management Order) and orally stated in court, so that all parties are aware of the reasons for delay in the case. The Case Management Orders must contain a record of this information, as well as the impact of the court's decision on the welfare of the child.

**6.3** The court may extend the period within which proceedings are intended to be resolved on its own initiative or on application. Applications for an extension should, wherever possible, only be made so that they are considered at any hearing for which a date has been fixed or for which a date is about to be fixed. Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if possible, the other parties of the nature of the application and the reason for it. The party should then make the application orally at the hearing.

- 6.4** If the court agrees an extension is necessary, the intention is that an initial extension to the time limit may be granted for up to eight weeks (or less if directed) in order to resolve the case justly, meaning that the maximum time limit for proceedings will be 34 weeks. If more time is necessary, in order to resolve the proceedings justly, a further extension of up to eight weeks may be agreed by the court. There is no limit on the number of extensions that may be granted in a particular case.
- 6.5** If the court considers that the timetable for the proceedings will require an extension beyond the next eight week period in order to resolve the proceedings justly, the Case Management Order should—
- (1) state the reason(s) why it is necessary to have a further extension;
  - (2) fix the date of the next effective hearing (which might be in a period shorter than a further eight weeks); and
  - (3) indicate whether it is appropriate for the next application for an extension of the timetable to be considered on paper.
- 6.6** The expectation is that, subject to paragraph 6.5, extensions should be considered at a hearing and that a court will not approve proposals for the management of a case under FPR 12.15 where the consequence of those proposals is that the case is unlikely to be resolved within 26 weeks or other period for the time being allowed for resolution of the proceedings. In accordance with FPR 4.1(3)(e), the court may hold a hearing and receive evidence by telephone or by using any other method of direct oral communication. When deciding whether to extend the timetable, the court must have regard to the impact of any ensuing timetable revision on the welfare of the child.

## **7. INTERPRETATION**

- 7.1** In this Practice Direction—
- ‘Allocation Proposal Form’ is the proposal in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;
- ‘Care Plan’ means a ‘section 31A plan’ referred to in section 31A of the 1989 Act;
- ‘Case Analysis’ means a written or, if there is insufficient time for a written, an oral outline of the case from the perspective of the child’s best interests prepared by the children’s guardian or Welsh family proceedings officer for the CMH or FCMH (where one is necessary) and IRH

or as otherwise directed by the court, incorporating an analysis of the key issues that need to be resolved in the case

Including-

- (a) a threshold analysis;
- (b) a case management analysis, including an analysis of the timetable for the proceedings, an analysis of the Timetable for the Child and the evidence which any party proposes is necessary to resolve the issues;
- (c) a parenting capacity analysis;
- (d) a child impact analysis, including an analysis of the ascertainable wishes and feelings of the child and the impact on the welfare of the child of any application to adjourn a hearing or extend the timetable for the proceedings; and
- (e) an early permanence analysis including an analysis of the proposed placements and contact framework;

'Case Management Order' is the prescribed form of order referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

'Day' means 'business day';

'Experts Practice Directions' mean-

- (a) Practice Direction 25A (Experts – Emergencies and Pre-Proceedings Instructions);
- (b) Practice Direction 25B (The Duties of An Expert, The Expert's Report and Arrangements For An Expert To Attend Court);
- (c) Practice Direction 25C (Children's Proceedings – The Use Of Single Joint Experts and The Process Leading to An Expert Being Instructed or Expert Evidence Being Put Before the Court);
- (d) Practice Direction 25E (Discussions Between Experts in Family Proceedings).

'Genogram' means a family tree, setting out in diagrammatic form the child's family and extended family members and their relationship with the child;

'Index of Checklist Documents' means a list of Checklist Documents referred to in the Public Law Outline Pre-Proceedings Checklist which is divided into two parts with Part A being the documents referred to in column 2, paragraph (a) of the Pre-Proceedings Checklist and Part B being those referred to in column 2, paragraph (b) of the Pre-proceedings Checklist;

'Letter Before Proceedings' means any letter from the Local Authority containing written notification to the parents and others with parental responsibility for the child of the Local Authority's plan to apply to court for a care or supervision order and any related subsequent correspondence confirming the Local Authority's position;

'Local Authority Case Summary' means a document prepared by the Local Authority legal representative for each case management hearing in the form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

'Parents' Response' means a document from either or both of the parents containing  
(a) in no more than two pages, the parents' response to the Threshold Statement, and  
(b) the parents' placement proposals including the identity of all relatives and friends they propose be considered by the court;

'Section 7 report' means any report under section 7 of the 1989 Act;

'Section 37 report' means any report by the Local Authority to the court as a result of a direction under section 37 of the 1989 Act;

'Social Work Chronology' means a schedule containing—

- (a) a succinct summary of the significant dates and events in the child's life in chronological order – a running record up to the issue of the proceedings;
- (b) information under the following headings—
  - (i) serial number;
  - (ii) date;
  - (iii) event-detail;
  - (iv) witness or document reference (where applicable);

'Social Work Statement' means a statement prepared by the Local Authority limited to the following evidence—

Summary

- (a) The order sought;
- (b) Succinct summary of reasons with reference as appropriate to the Welfare Checklist;

Family

- (c) Family members and relationships especially the primary carers and significant adults/other children;
- (d) Genogram;

### Threshold

- (e) Precipitating events;
- (f) Background circumstances;
  - (i) summary of children's services involvement cross-referenced to the chronology;
  - (ii) previous court orders and emergency steps;
  - (iii) previous assessments;
- (g) Summary of significant harm and or likelihood of significant harm which the LA will seek to establish by evidence or concession;

### Parenting capacity

- (h) Assessment of child's needs;
- (i) Assessment of parental capacity to meet needs;
- (j) Analysis of why there is a gap between parental capacity and the child's needs;
- (k) Assessment of other significant adults who may be carers;

### Child impact

- (l) Wishes and feelings of the child(ren);
- (m) Timetable for the Child;
- (n) Delay and timetable for the proceedings;

### Early permanence and contact

- (o) Parallel planning;
- (p) Placement options;
- (q) Contact framework;

### Case Management

- (r) Evidence and assessments necessary and outstanding;
- (s) Case management proposals;

'Standard Directions on Issue and Allocation' means directions given by the court on issue and upon allocation and/or transfer in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

'Threshold Statement' means a written outline by the legal representative of the LA of the facts which the LA will seek to establish by evidence or concession to satisfy the threshold criteria under s31(2) of the 1989 Act limited to no more than 2 pages;

'Welfare Checklist' means the list of matters which is set out in section 1(3) of the 1989 Act and to which the court is to have particular regard in accordance with section (1)(3) and (4)

## Appendix C

### Detailed methodology

A multi-site, mixed methods approach was designed to engage key audiences and meet the objectives of the research. The method involved a series of workshops with eight Local Family Justice Boards (LFJBs), qualitative interviews and discussion groups with wider family justice practitioners working within the eight LFJB areas and an online survey available to be completed by all members of LFJBs in England and Wales. The ‘action research’ approach adopted and details of the three elements of this study are described below.

#### The Action Research approach

Part of the overall objective of this study was to identify any additional amendments to further enhance the Practice Direction and inform the ‘final’ version of the PLO that will support the planned introduction of the 26-week time limit. An action research approach was specifically developed in order to address this objective. This approach enabled:

- ‘Live findings’ and feedback to be provided to the Ministry of Justice research and policy teams on a continual and timely basis throughout the course of the project.
- Early and emerging findings to be presented to the Family Justice Board PLO Steering Group (which has responsibility for advising on the revised and final PLO).
- Early lessons and views on the practices perceived to be important in supporting effective implementation to be shared with all LFJBs in England and Wales.
- The research team to identify unforeseen topics as they arose during the fieldwork process and adapt the discussion materials for the qualitative research accordingly.

#### Stage A: Workshops with Local Family Justice Board members

A workshop with Local Family Justice Board (LFJB) members was held in each of the selected eight LFJB areas. The purpose of these workshops was to allow the research team to gain an understanding of how practitioners collectively viewed and understood the revised PLO and to hear key debates they were having as to how the revised PLO has been implemented and experienced. These workshops were selected as the preferred methodology to ensure that views of board members could be explored and deliberated together and to enable the research team to observe the interaction between individuals.

A further benefit of the workshops was that it enabled feedback to be provided promptly to the Ministry of Justice. A summary of early findings from each workshop was provided to the Ministry of Justice within a week of the workshop taking place. This enabled provisional findings to inform ongoing discussions with MoJ policy and the PLO Steering Group on the implementation of the revised PLO in a timely manner. Providing feedback from individual qualitative interviews would have been a more lengthy process and would not have allowed such timely input.

The eight LFJB areas where workshops took place were selected by the Ministry of Justice in collaboration with the PLO Steering Group and the research team. The participating areas were chosen using a set of selection criteria to include a mix of geographical locations, a range in case duration, and varying implementation dates. This approach aimed to ensure that the study reflected the various perceptions and experiences of different types of LFJBs. The specific criteria were:

- A mix of operational types (county, rural and conurbation)
- A geographical spread of practitioners from England and Wales
- A range in average public law case duration (short, mid-range and longer case durations)<sup>53</sup>
- A range in the number of 'feeder' local authorities<sup>54</sup>
- A range in the dates of implementation of the revised PLO, i.e. from July to October 2013

Workshops were held in HMCTS or local authority venues between 22 August and 31 October 2013. In total, 108 LFJB members took part, with an average of 14 members attending each workshop (attendance ranging from six to over 20 attendees within a workshop). Key practitioner groups involved in the implementation of the revised PLO were represented at the workshops, including the judiciary, local authority solicitors, social workers and their representatives, Cafcass/CAFCASS CYMRU, Legal Advisers, HMCTS staff and private practice solicitors. Workshops were facilitated by two senior researchers from the research team. The workshops addressed each of the specific objectives detailed in the methodology and utilised the revised practice direction (see Appendix B) and Ministry of Justice Public Law Outline flowchart (see Appendix A) as stimulus materials. These materials

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<sup>53</sup> Short case duration can be considered anything less than 26 weeks; mid-range case duration can be considered anything between 26 and 51 weeks; and longer case duration can be understood as anything running over 51 weeks. Data was based on average case duration of care and supervision cases from January to March 2013. (Provisional management information, not published.)

<sup>54</sup> 'Feeder' local authorities are those which issue proceedings within a specific Local Family Justice Board area.

helped prompt discussion and were used as reference materials throughout the workshops and discussion groups. The workshops and discussion groups used the same discussion guide and followed the same format (see Appendix D).

## **Stage B: Qualitative interviews and discussion groups with local family justice practitioners**

In-depth qualitative interviews and discussion groups were organised with family justice practitioners in each of the eight LFJB areas. These interviews were selected as the preferred methodology as they allowed for a more detailed insight into individual practitioner views on the revised PLO and helped to create a richer understanding of any differences between practitioner groups. Furthermore, this method avoided the scheduling difficulties of asking busy professionals to meet together as a group.

A target of 15 interviews was set for each of the eight LFJB areas (120 in total) with a range of practitioner types across each one. Recruitment of practitioner groups across the three stages of the research was closely monitored. Due to the low number of responses from social workers and Cafcass representatives to the online survey (see Table C.2) a decision was taken at the halfway point to boost the recruitment of interviews with these practitioner groups. The final breakdown of practitioner groups broadly reflected the core membership of LFJBs. A full breakdown of the completed interviews by profession can be found in Table C.1.

Contact details for all practitioners were provided by the LFJB chair and fellow LFJB members. Interviews were conducted either by telephone or face-to-face, depending on the practitioner's preference. For logistical reasons, and in order to boost numbers, two discussion groups with social workers and Cafcass/CAFCASS CYMRU representatives were held.

Qualitative interviews were also carried out with LFJB members unable to attend the workshops and those who requested a follow up interview with the research team. All interviews were conducted by a member of the research team. The discussion guides used to structure the discussions within workshops and qualitative interviews can be found in Appendix D.

**Table C.1: Breakdown of completed qualitative interviews by profession**

<b>Profession</b>	<b>Number of interviews</b>
Representatives from Cafcass/CAFCASS CYMRU	23 <sup>55</sup>
Solicitors (local authority)	19
Social workers	17 <sup>56</sup>
Legal Advisers/Justices' Clerks	13
Solicitors (private practice)	13
Magistrates	11
Local authority representatives	10
Independent Reviewing Officers	6
Circuit Judges	5
Independent experts	4
District Judges	2
<b>Total</b>	<b>123</b>

**Stage C: Wider Feedback Survey of LFJB Members across England and Wales**

The online survey gave LFJB members across all 46 areas in England and Wales (including the eight included in the main research) the opportunity to provide feedback on their perceptions and experiences of working with the revised PLO. An online approach was particularly suited to this strand of the research given the geographical reach required. This approach also placed less of a burden on LFJB members because it could be completed in their own time at a convenient location.

LFJB members were invited to take part via an online survey link. This link was emailed to all LFJB administrators by the Ministry of Justice, which requested that the invitation be cascaded to all members of their Board. The practitioners were asked as part of the survey to confirm that they were an LFJB member and that they had not taken part in stages A or B of the research. As with all surveys this relied on self-reporting methods.

The questionnaire contained a series of agree/disagree attitudinal questions relating to the revised PLO. It also encompassed a number of ‘open-ended’ questions where members could type in unstructured, spontaneous responses (see Appendix D). These were analysed with the findings from the workshops, qualitative interviews and discussion groups.

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<sup>55</sup> Includes two practitioners interviewed together in a discussion group.

Fieldwork for the online survey ran from 29 August to 24 November 2013. In total, 164 LFJB members responded. A full breakdown of the completed online surveys by practitioner group can be found in Table C.2.

**Table C.2: Breakdown of completed online surveys by profession**

<b>Profession</b>	<b>Number</b>	<b>Percentage</b>
Judiciary	49	30%
Solicitors (local authority)	31	19%
Solicitors (private practice)	14	9%
Local authority – other	13	8%
Cafcass	12	7%
Social workers	11	7%
HMCTS (excluding Legal Advisers/Justices' Clerks)	11	7%
Bar/barristers	7	4%
Legal Adviser/Justices' Clerk	5	3%
CAFCASS CYMRU	3	2%
Police	3	2%
Mediators	2	1%
Health professionals	1	1%
Legal aid representatives	1	1%
Other	1	1%
<b>Total</b>	<b>164</b>	<b>100%</b>

Please note, this breakdown is rounded to the nearest percentage.

## Interpretation of the qualitative data

In order to allow for interpretation of the data produced in the qualitative elements of the research, all workshops, discussion groups and interviews were digitally recorded (with practitioners' permission). These were supplemented with notes made in the field by the interviewers. The research team produced a feedback template based on the key themes of the research and key questions in the discussion guides. As the Ministry of Justice research team required feedback from the workshops as it emerged, these 'pro-forma' documents were completed and submitted within a week of the workshops taking place.

<sup>56</sup> Includes four practitioners interviewed together in a discussion group.

Throughout the course of fieldwork, the project team met for regular analysis sessions to discuss key themes and ideas that were emerging from the research. Further meetings were held to refine and hone these findings. Members of the project team used the pro-forma documents, and notes from the workshops, discussion groups and interviews to create the content for an analysis database organised by theme (e.g. pre-proceedings) and by question. The information in this database was supplemented by interviewees listening to the audio files and recording further detailed information and verbatim quotes. The key findings were then drawn out and triangulated with the results from the online survey.

A qualitative approach was ideal for this research as it allowed an insight into the range of views and experiences of those practitioners interviewed. It is also intended to shed light on *why* people have particular opinions.

Verbatim comments from the qualitative interviews, workshops and discussion groups are included throughout this report. In most cases, these have been selected to support and illustrate consistent themes emerging from the research. In some cases, verbatim comments are included to represent a unique perception and this is noted accordingly.

## Interpreting the survey data

In collecting the data for the quantitative survey, the key administrative contacts for all LFJBs were asked to cascade the online link to the survey to other members of their board. Almost one in four (164 respondents) of the estimated population of 690 LFJB members in England and Wales<sup>57</sup> took part in the survey. As such, the respondents represent a sample of, and not all, LFJB members. For this reason we cannot be certain that the figures obtained are exactly those we would have found if all LFJB members had taken part (i.e. the 'true values'). However, we can predict the variation between the sample results and the true values from knowledge of the size of the samples on which results are based and the number of times a particular answer is given. The confidence with which we make this prediction is usually chosen to be 95% – that is, the chances are 95 in 100 that the true value will fall within a specified range (95% confidence interval).

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<sup>57</sup> The membership of each LFJB varies, from 12 to as many as 34 members in some areas, although this information is not systematically recorded. The total population of LFJB members has been estimated based on an assumption of an average membership of 15 for each LFJB. This equates to an approximate 'population' of 690 LFJB members across England & Wales of (46\*15 = 690). As this is an estimate, the assumptions with regard to statistical reliability upon which it is based should be viewed as indicative rather than statistically representative.

Based on the estimated population of 690 LFJB members in England and Wales we would expect the following confidence intervals:

**Table C.3: Confidence intervals for the wider feedback survey**

Size of sample on which survey results are based Sample size	Approximate sampling tolerances applicable to percentages at or near these levels		
	10% or 90%	30% or 70%	50%
	+/-	+/-	+/-
164	4	6	7

As such, for a question where the result from our survey is 90%, we can be 95% confident that had we received responses from all LFJB members, the ‘true answer’ would be in the range 86% to 94%. Similarly, should the answer to a particular response be 50% from our sample, we can be 95% confident that the answer lies within the range of 43% to 57%.

The online survey practitioner breakdown in Table C.2 shows a high number of responses from the judicial observers of the LFJBs. Due to this high level of engagement, they are over-represented in the wider feedback survey. For this reason, when reviewing the results of the feedback survey readers should take into account that percentages may be skewed towards the views of the judiciary. Statistically significant differences between judicial members and non-judicial members have been highlighted in the report where relevant. The small base sizes recorded for all other practitioner groups (ranging from 1 to 31) means that it was not possible to test for any statistically significance differences between other practitioner groups or one practitioner group against the overall total for all respondents. Furthermore, significance testing across geographical regions was not possible for the same reason.

Some totals in the tables and charts may not sum to 100% due to computer rounding. For example, the sum of ‘strongly agree’ and ‘tend to agree’ may not be identical to the net ‘agree’ figure displayed in the wider feedback survey charts.

# Appendix D

## Fieldwork Materials

### Discussion guide for workshops, discussion groups and interviews<sup>58</sup>

#### MoJ: Evaluating interim arrangements for completion of public law cases within the proposed 26-week limit

##### 1. Background

In February 2010, an independently chaired review panel (the Family Justice Review) was set up to examine aspects of the family justice system. A key issue, highlighted in the final report, was the extent of delays in care cases, meaning that the average duration for such cases was 55 weeks. Such delays are both costly and have the potential to impact negatively on vulnerable children's outcomes and their chances of finding a stable home. The Children and Families Bill, currently being considered by Parliament, seeks to introduce new legislation in relation to public law cases – most notably introducing a 26-week time limit for all care, supervision and other Part 4 proceedings in England and Wales. In light of this, a revised Public Law Outline (PLO), which will support the proposed 26-week time limit, is being piloted. This is being implemented on a phased basis, dependent on local readiness, between July and October 2013. The Ministry of Justice (MoJ) have commissioned research to explore how the changes to the Public Law Outline (PLO) are being **understood** and **implemented in practice** and to **identify any additional amendments** that could be made to enhance the secondary legislation.

##### 2. Aims and research questions

The aim of the research is to gain a detailed understanding of how relevant agencies and organisations have implemented the revised PLO and any challenges they expect to face or have experienced in implementing it. In detail the key aims outlined by the MoJ are:

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<sup>58</sup> Some wording in the qualitative interview guide differs slightly, for example, in the introduction and conclusions.

1. To explore how the changes to the PLO are perceived to be impacting on **pre-proceedings work** and to identify any further changes to the PLO requirements that may assist in strengthening processes to prepare for the planned introduction of the 26-week statutory timeframe.
2. To explore in detail how the changes to the PLO are impacting on **court proceedings** and identify any further changes that may assist in the delivery of cases within the planned 26 weeks. This will include consideration of, but not be limited to, what makes an effective Case Management Hearing.
3. To explore whether the changes to the PLO are impacting on the pattern and timing of applications made to the court, on the orders made once the application is received, or on the wider family justice system.

### 3. Structure of the discussion

Notes	Guide Sections	Guide Timings
1. Introductions and background	Sets the scene, reassures participants about the interview, confidentiality. Discuss the general work and aims and also develop an understanding of what role in care proceedings participants play. This will provide useful background and also establish rapport.	10 mins
2. Strategic Questions	In this section participants will provide an overview of the local context. We shall be looking to obtain an overview of the type, volume and length of cases.	10 mins
3. Aim 1: Pre-proceedings	This section examines the impact of the revised PLO on the pre-proceedings process, e.g. by exploring potential issues surrounding documentation. It also aims to identify any potential changes or best practice that could enhance the process.	35 mins
4. Aim 2: Court Proceedings	Section 4 examines the impact of the PLO changes on court proceedings, with a particular focus on the Case Management Hearing by day 12. As before, it also aims to identify any potential changes or best practice that could enhance the process.	35 mins
5. Aim 3: Wider family justice impact	Here there is a move to explore more general perceptions among participants on the effect of the revised PLO in terms of the family justice system as a whole. Focus here is largely on unintentional impacts including changes to workloads and effects on timelines.	15 mins
6. Conclusions	This final discussion section identifies key learning points and messages for each of the three core aims and sums up the discussion.	15 mins
<b>Total time</b>		<b>2 hours</b>

Welcome and introduction	Notes/Comments	Time
<ul style="list-style-type: none"> <li>○ Thank participants for taking part</li> <li>○ Introduce self, Ipsos MORI</li> <li>○ Confidentiality: reassure that all responses are anonymous and that information about individuals will not be passed on to anyone, including the Ministry of Justice or any other government department.</li> <li>○ Explain outline of the research – MoJ have asked Ipsos MORI to consult with the Family Justice System within the England and Wales to explore their experience of implementing the adjustments made to the Public Law Outline, particularly the planned 26-week time limit. In doing this the MoJ hope to discover the effects of the changes and identify any additional amendments needed to further enhance the practice direction.</li> <li>○ Please refer all participants to the stimulus material, check if participants have reviewed the documents before the discussion. Explain that the reference material outlines the specific amendments to the PLO and is to be used as a reference guide throughout the discussion if required.</li> <li>○ Role of Ipsos MORI – independent research organisation (i.e. independent of the government), gather all opinions: all opinions valid. Remind that there are no right or wrong answers. Commissioned by MoJ to conduct the research.</li> <li>○ Get permission to digitally record – transcribe for quotes, no detailed attribution. <ul style="list-style-type: none"> <li>● <b>Ask participants to briefly introduce themselves, discuss their professional role and how long they have been working in that role.</b></li> </ul> </li> </ul> <p>MODERATOR TO ASK ALL IN TURN.</p>	<p>Welcome: orientates participants, gets them prepared to take part in the discussion.</p> <p>Outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines).</p> <p>We ask these questions to confirm the recruitment details and to create rapport/ease the participant into the interview.</p>	<p>10 mins</p>
1. Strategic Questions	Notes/Comments	Time
<p><b>To get us started, it would be useful for us to have a feel for the work that you are all involved in here;</b></p> <p><b>And roughly how many cases are you seeing on a monthly basis?</b></p> <ul style="list-style-type: none"> <li>○ What are the volumes?</li> </ul> <p><b>And in terms of your ability as professionals to adapt to the new timescales, have you received any pre-implementation training?</b></p> <ul style="list-style-type: none"> <li>○ What did this involve?</li> <li>○ Who was it with? In house/external?</li> <li>○ Within organisations or multidisciplinary?</li> <li>○ How sufficient was the training? Any gaps/thinks you need more information on?</li> </ul> <p>If no training received to date, will you be receiving any?</p>	<p>This section will get the group thinking about the bigger picture of what they’re all there to do and give us a feel for the local context and types/volumes of work they are dealing with.</p> <p>For this section and the whole discussion: ensure that the debate does not focus on why 26 weeks has been chosen as a time period. This is not the focus.</p>	<p>10 mins</p>

2. Aim 1: Pre-proceedings	Notes/Comments	Time
<p><b>The next few questions focus on the extent to which changes to the PLO have impacted on pre-proceedings work. We understand there have been changes to the amount of local authority documentation required for the pre-proceedings. What are your thoughts on those changes?</b></p> <ul style="list-style-type: none"> <li>○ What is different?</li> <li>○ Has this streamlined the process at all? How/why not?</li> </ul> <p><b>What impact have these changes had on the quality/effectiveness of the case management hearing?</b></p> <ul style="list-style-type: none"> <li>○ Are the case management hearings any more or less effective?</li> <li>○ In what way(s)?</li> <li>○ Is there anything more that could be done with this documentation that could further improve the process?</li> </ul> <p><b>There have also been some changes to the guidance on the presentation of evidence – what are your thoughts on these changes?</b></p> <ul style="list-style-type: none"> <li>○ Has this made the process any clearer? In what ways/why not?</li> <li>○ Are there any further changes you would suggest to the guidance that could further improve the process?</li> </ul> <p><b>How, if at all have these changes to the guidance on presentation of evidence impacted on the case management hearing?</b></p> <ul style="list-style-type: none"> <li>○ Are the case management hearings any more or less effective?</li> <li>○ In what way(s)?</li> </ul> <p><b>Are local authorities routinely delivering all the required documentation on application, for example, the list of documents for disclosure?</b></p> <ul style="list-style-type: none"> <li>○ If not – could you provide me with specific examples of documentation they are failing to provide? Why do you think there is a problem providing these documents on time?</li> <li>○ Are the documents being produced of the nature and quality you would expect?</li> <li>○ (FOR LOCAL AUTHORITY REPRESENTATIVES) Does a separate form for the allocation proposal (PLO4) add value to the gatekeeping and allocation process (or is this unnecessary duplication)?</li> </ul> <p><b>Where cases have to be brought swiftly in children’s interest – is the documentation provided sufficient to enable the court to give initial directions?</b></p> <ul style="list-style-type: none"> <li>○ If no, what is lacking/holding the process up?</li> <li>○ What additional documentation is needed?</li> </ul> <p><b>Is the documentation provided sufficient to enable the court to issue an Interim Care Order?</b></p> <ul style="list-style-type: none"> <li>○ If no, what is lacking, what additional documentation is needed?</li> </ul> <p><b>What has been the impact of the changes on the timeliness of connected person’s assessments?</b></p> <ul style="list-style-type: none"> <li>○ When are potential carers coming forward in the process?</li> <li>○ Does it feel like the local authority is being more proactive in seeking potential carers?</li> </ul>	<p>Care needs to be exercised in ensuring that this discussion does not focus solely on the LAs.</p>	<p>35 mins</p>

<ul style="list-style-type: none"> <li>○ Use of Family Group Conference?</li> </ul> <p><b>To what extent are relevant experts now being identified pre-proceedings?</b></p> <ul style="list-style-type: none"> <li>○ Have you experienced any issues?</li> <li>○ Are their issues with finding the appropriate experts who can provide reports in the timescale?</li> </ul> <p><b>Is sufficient information being made available for the court to give its directions on Day 2 of the case?</b></p> <ul style="list-style-type: none"> <li>○ If no, what are the problem areas?</li> <li>○ What additional information could assist?</li> </ul> <p><b><u>Additional Questions</u></b></p> <p><b>Which aspects of the pre-proceedings section of the PLO are expected to have the most impact on meeting the planned 26-week time limit?</b></p> <ul style="list-style-type: none"> <li>○ And the least?</li> </ul> <p><b>Are there any examples of good local practice pre-proceedings that could support the operation of the new case management processes?</b></p> <p><b>Are you aware of any unanticipated or unintended consequences of the changes to the pre-proceedings section of the PLO?</b></p>	<p>MODERATOR: CHECK WHETHER THESE ADDITIONAL QUESTIONS HAVE ALREADY BEEN COVERED. IF SO, SKIP TO NEXT SECTION</p>	
<p><b>3. Aim 2: Court Proceedings</b></p>		<p><b>Notes/Comments</b></p>
<p><b>Moving on to court proceedings and the impact of the revised PLO: To what extent are children’s Guardians being appointed by Day 2?</b></p> <ul style="list-style-type: none"> <li>○ How does this impact on the progression of cases?</li> <li>○ If Guardians are not being appointed, why not? What needs to be done?</li> <li>○ Are CAFCASS (Cymru) regularly being informed of the intent to make an application?</li> <li>○ (FOR CAFCASS [CYMRU] REPRESENTATIVES) <b>To what extent are you able to start work on a case as soon as is it allocated (by Day 2)?</b></li> <li>○ Have you experienced difficulties or delays?</li> </ul> <p><b>Are the key issues for resolution by the court, together with the relevant evidence to be called, being clearly identified at the Case Management Hearing?</b></p> <ul style="list-style-type: none"> <li>○ What are the key factors affecting this?</li> </ul> <p><b>Has the need for the Case Management Hearing to be heard by Day 12 impacted on the ability of parties to prepare and be ready for meaningful case management directions?</b></p> <ul style="list-style-type: none"> <li>○ Is this timetable appropriate?</li> <li>○ Could it be improved further?</li> <li>○ Probe on availability of court/judiciary/legal professionals/support staff/Guardians and presence of cooperative parents</li> </ul> <p><b>Is a meaningful Case Management Hearing reducing the need for a Further Case Management Hearing?</b></p> <ul style="list-style-type: none"> <li>○ (Accepting that some cases may not have advanced this far yet. In your future cases do you think it will?)</li> </ul>		<p>35 mins</p>

<p><b>(If not), is the timeframe for the Further Case Management Hearing allowing practitioners adequate time for preparation?</b></p> <ul style="list-style-type: none"> <li>○ What are the factors which are affecting this?</li> <li>○ (Court staff reps) Are you monitoring when further case management hearings are necessary?</li> </ul> <p><b>To what extent, if any, is the filing of an appeal against a case management decision impacting on overall case duration?</b></p> <p><b>How far have the new processes impacted on the handling of adoption placement applications and the speed with which these cases are concluded?</b></p> <p><b>To what extent is expert evidence being filed with the court within the times specified?</b></p> <ul style="list-style-type: none"> <li>○ What are the factors affecting this?</li> </ul> <p><b>To what extent were the prescribed forms useful?</b></p> <ul style="list-style-type: none"> <li>○ And in what way might they be improved?</li> </ul> <p><b>To what extent are orders made at the Issues Resolution Hearing replacing the need for a Final Hearing?</b></p> <ul style="list-style-type: none"> <li>○ What are the main factors which allow matters to be resolved at this early stage/ preventing matters to be resolved at this stage?</li> </ul> <p><b>Have the changes resulted in different types of orders being given at court?</b></p> <ul style="list-style-type: none"> <li>○ If so what are they?</li> <li>○ Why are they being made?</li> </ul> <p><b><u>Additional Questions</u></b></p> <p><b>What changes to the PLO are having the most and least impact during proceedings on meeting the planned 26-week time limit?</b></p> <p><b>Are factors other than those covered by the PLO impacting on case progression?</b></p> <ul style="list-style-type: none"> <li>○ What are the key drivers?</li> <li>○ What are the key barriers?</li> </ul> <p><b>Are there any other changes that could be made to the Rules and PLO during proceedings to help achieve the planned 26-week time limit?</b></p> <p><b>Are there any examples of good local practices during proceedings that could be reflected in the Rules or the PLO? Have you identified any unanticipated or unintended consequences of the changes to the PLO during proceedings?</b></p> <p><b>How frequently will the planned 26-week time limit for care cases need to be extended?</b></p> <ul style="list-style-type: none"> <li>○ In what circumstances?</li> </ul> <p><b>Should the revised PLO give greater consideration to disability/capacity issues and the potential impact on the time limit?</b></p>	<p>For reference: this should be as soon as possible (and no later than Week 4)</p> <p>MODERATOR: CHECK WHETHER THESE ADDITIONAL QUESTIONS HAVE ALREADY BEEN COVERED. IF SO, SKIP TO NEXT SECTION</p>	
<p><b>4. Aim 3: Wider family justice impact</b></p>	<p><b>Notes/Comments</b></p>	<p><b>Time</b></p>
<p><b>In this section, I'd like to discuss your views on the wider impact of the revised PLO...</b></p> <p><b>To what extent are cases being allocated/transferred to the correct tier of the judiciary at the outset of proceedings?</b></p> <ul style="list-style-type: none"> <li>○ How does any incorrect allocation of case impact on their</li> </ul>		<p>15 mins</p>

<p><b>timeliness?</b> Magistrate/Circuit Judge/District Judge distinction.</p> <p><b>Have the changes increased/decreased workloads on other parts of the system?</b></p> <ul style="list-style-type: none"> <li>○ How and why?</li> <li>○ Do you think this is these likely to be permanent or temporary?</li> </ul> <p><b>Have the changes had any other unintended consequences that we haven't covered?</b></p> <ul style="list-style-type: none"> <li>○ If so, what?</li> </ul> <p>Prompt on:</p> <ul style="list-style-type: none"> <li>○ Volume and types of orders being made</li> <li>○ Local Authorities and potential for delaying bringing cases</li> <li>○ Volume of children being placed voluntarily in care?</li> <li>○ Use of ICOs</li> </ul> <p><b>How are practitioners adapting to making decisions about the progression of cases with less expert input?</b></p> <ul style="list-style-type: none"> <li>○ Increased use of research digests as a training tool?</li> </ul> <p><b>Have the changes to the PLO given rise to any additional training needs?</b></p> <ul style="list-style-type: none"> <li>○ Can you give me some examples?</li> </ul>		
<p><b>5. Conclusions</b></p>	<p><b>Notes/Comments</b></p>	<p><b>Time</b></p>
<p><b>We are going to finish by asking you a number of questions which are aimed at providing us with key messages on the PLO. Thinking about everything we have discussed today, what do you think are the key challenges with the practical application of the changes being introduced by the revised PLO?</b></p> <p>Prompt on:</p> <ul style="list-style-type: none"> <li>○ Pre-proceedings</li> <li>○ Court proceedings</li> <li>○ Wider impact</li> </ul> <p><b>Overall, what do you think is the most effective implementation to assist courts in meeting this 26-week limit?</b></p> <p><b>From your own experience of working to the proposed 26-week time limit – what is the most important thing you are doing to make the process more efficient?</b></p> <p><b>And is there any one key change that might assist and improve the aim of the PLO to resolve the matter within the planned 26 weeks?</b></p> <p><b>What would be your key message for us to feedback to the MoJ?</b></p> <p>Thank participants; explain the next steps (e.g. what MoJ will do with the findings). Reassure about confidentiality.</p> <p><b>We are conscious that today's discussion covered a lot of ground relatively quickly, so would be keen to engage in further discussion with any of you who feel there is anything else that it would be worth us considering in the course of this project that we didn't get a chance to touch on today? If you would like to have a follow-up telephone chat with one of us, please let us know and we will arrange a convenient time to talk.</b></p> <p><b>Finally, the evaluation report will be published in the New Year, and we shall also be providing interim feedback from all areas which can feed into this evaluation where relevant, e.g. by sharing examples of best practice.</b></p>	<p>Key messages and sums up.</p> <p>Draws interview to a close.</p>	<p>15 mins</p>

## Wider Feedback Questionnaire

### Questionnaire for Wider Feedback – ONLINE SURVEY

Thank you for agreeing to participate in this research on the revised Public Law Outline (PLO). The survey should take approximately ten minutes to complete.

We would like to reassure you that Ipsos MORI abides strictly by the Market Research Society (MRS) Code of Conduct and will protect your confidentiality for this study by not associating your name with your feedback. All data is presented in aggregated format so that individual responses to questions are not revealed.

#### Q1

Are you currently a member of a Local Family Justice Board (LFJB), or a judicial observer of a LFJB?

- Yes
- No
- Don't know

#### Q2

Have you taken part in any group discussions or interviews with Ipsos MORI in the last six months on the topic of the revised PLO?

- Yes
- No

#### Q3

**Please state which LFJB area you are based in.**

Avon, North Somerset and Gloucestershire  
Bedfordshire  
Berkshire  
Birmingham  
Black Country  
Buckinghamshire  
Cambridgeshire  
Cardiff & the Valleys  
Cheshire and Merseyside  
Cleveland & Middlesbrough  
Cornwall  
Coventry and Warwickshire  
Cumbria  
Derbyshire  
Dorset  
Essex  
Exeter  
Gwent  
Hampshire and IOW  
Hereford & Worcester  
Hertfordshire

Humberside  
Kent  
Lancashire  
Leicester, Leicestershire & Rutland  
Lincolnshire  
London  
Manchester  
Norfolk  
Northampton  
Northumbria and North Durham  
North Wales  
Nottinghamshire  
Oxford  
Plymouth  
Shropshire  
South Yorkshire  
Stoke-on-Trent  
Suffolk  
Surrey  
Sussex  
Swansea & West Wales  
Taunton and Yeovil  
West Yorkshire  
Wiltshire  
York and North Yorkshire

#### Q4

**Please could you select your profession/work area.**

Academic  
Bar/barrister  
Cafcass  
CAFCASS CYMRU  
Children's charity  
Health professional  
HMCTS (excluding Legal Adviser/Justices' Clerk)  
Independent expert, e.g. psychiatrist/psychologist  
Judiciary  
Legal Adviser/Justices' Clerk  
Legal representative – Local Authority  
Legal representative – private practice  
Legal Aid Agency  
Local authority – social worker  
Local authority – other  
Mediator  
Police  
Voluntary agency  
Other

#### Q5

**Please type your profession/job title in the box below:**

## SECTION 1: PRE-PROCEEDINGS

*The first few questions will focus on pre-proceedings work for public law cases.*

Q6

**To what extent, if at all, do you agree, or disagree that local authorities are routinely delivering all the required documentation on application.**

Strongly agree  
Tend to agree  
Neither agree nor disagree  
Tend to disagree  
Strongly disagree  
Don't know

Q7

**To what extent do you agree, or disagree, that the new PLO requirements (relating to Local Authority documentation at the start of a case) are having a positive impact on**

...

... the court's ability to give directions on Day 2 of the case.  
... the quality and effectiveness of the Case Management Hearing.

Strongly agree  
Tend to agree  
Neither agree nor disagree  
Tend to disagree  
Strongly disagree  
Don't know

Q8

**To what extent do you agree, or disagree that expert evidence is being restricted to what is necessary?**

Strongly agree  
Tend to agree  
Neither agree nor disagree  
Tend to disagree  
Strongly disagree  
Don't know

## SECTION 2: COURT PROCEEDINGS

*The next few questions will focus on case management for public law cases.*

Q9

**To what extent do you agree, or disagree that the following are routinely addressed by Day 2 of the case:**

*Local authority serving the Checklist Documents upon the parties*

*Identifying the need for a litigation friend*

*Appointing the case management judge*

*Transfer of proceedings (where necessary)*

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

Q10

**To what extent do you agree, or disagree with the following statements:**

*The key issues for resolution by the court are routinely and clearly identified by the Case Management Hearing (CMH).*

*A Case Management Hearing by Day 12 is appropriate for enabling the parties to prepare and be ready for meaningful case management directions.*

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

Q11

**To what extent do you agree, or disagree that the following are routinely occurring within the timeframes specified in the PLO:**

Court directions (in relation to the filing and service of evidence) are being adhered to

Cafcass/CAFCASS CYMRU filing its case analysis(es) on time

Both sets of advocate meetings

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

### **SECTION 3: WIDER FAMILY JUSTICE IMPACT**

***The final questions will focus on the family justice system and the revised PLO in general.***

**Q12**

**To what extent do you agree, or disagree with the following statements:**

*The majority of cases are being allocated/ transferred to the correct level of court at the outset of proceedings.  
Courts have sufficient capacity and are able to list hearings in accordance with the revised PLO target dates.*

Strongly agree  
Tend to agree  
Neither agree nor disagree  
Tend to disagree  
Strongly disagree  
Don't know

**Q13**

**Are you aware of any particular barriers to the requirements of the new PLO being met?**

Yes  
No  
Don't know

**Q14**

**Please describe these barriers by typing your response in the box below**

**Q15**

**Can you provide any examples of good practice within your geographical area that are particularly important in supporting the new PLO?**

Yes  
No  
Don't know

**Q16**

**Please describe these examples of good practice by typing your response in the box below**

Q17

**Apart from those covered by the PLO, are there any other factors which impact upon case progression?**

Yes

No

Don't know

Q18

**Please describe the factors which impact upon case progression by typing your response in the box below**

Q19

**And finally, are there any other changes that could be made to the PLO to support the 26-week time limit?**

Yes

No

Don't know

Q20

**Please describe the changes that could be made to the PLO (to support the 26-week time limit) by typing your response in the box below.**

## Appendix E

### Glossary of terms and abbreviations

This glossary is not an exhaustive list of the definitions and abbreviations included in this report, but it is designed to help the reader understand some key terms. These definitions are accurate for the processes and documents in place during the period of the revised PLO (July 2013–April 2014). For more detail, readers should refer to source documents (referenced where relevant below).

**Adoption orders:** A child becomes adopted when an adoption order is made. This removes the parental responsibility of the child's birth parents and others with parental responsibility and passes it to the adopter. See ss46–48 of the Adoption and Children Act 2002.

**Advocates' Meeting:** Advocates' Meetings are held prior to the Case Management Hearing and the Issues Resolution Hearing (see below). The revised PLO recommends that the Advocates' Meeting is held no later than two clear days before the CMH (or the Further Case Management Hearing if one is required) and no later than seven clear days before the IRH. This meeting is attended by all legal representatives involved in the case, including any Litigants in Person. The aim of the meeting is to facilitate agreement between the parties and narrow the issues in dispute. See <http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform>

**Agency Decision Maker (ADM):** A senior person with the local authority who is a social worker with at least three years post-qualifying experience in child care social work. The ADM has the authority to make decisions on behalf of the local authority on whether a child should be placed for adoption, prospective adopters are suitable to adopt a child, and whether a child should be placed for adoption with specific prospective adopters.

**Allocation Form (PLO4):** This document is filed by the local authority alongside its care or supervision order application. It sets out the LA's proposal regarding the appropriate tier of court in which the case should be heard. It is also used to record the allocation decision and reasons.

**Allocation Process:** Once a care or supervision application is submitted by the local authority the case will be allocated to the appropriate level of judge (e.g. magistrate, District, Circuit or High Court Judge). The allocation process is typically carried out by a gatekeeping

team, which includes a District Judge and Legal Adviser. See President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Part 4 proceedings.

**Annex Documents:** Annex Documents are the documents which accompany the LA Application Form. See Appendix B.

**Cafcass/CAFCASS CYMRU:** Children and Family Court Advisory and Support Service/Wales. Cafcass is an independent body that represents the voice of the child in care proceedings. Cafcass provides judges with advice to make a safe decision about the child. The organisation works with the child to understand their wishes and feelings. See [www.cafcass.gov.uk](http://www.cafcass.gov.uk)

**Care Order:** This is an order from the court which places the child in the care of an applicant local authority. It requires the local authority to provide accommodation for him, to maintain and safeguard him, to promote his welfare and to give effect to or act in accordance with the other welfare responsibilities set out in the Children Act 1989. It gives the local authority parental responsibility for the child and the power to determine the extent to which the child's parents and others with parental responsibility may meet their responsibility, where this is necessary to safeguard or promote the child's welfare. See s31 Children Act 1989.

**Care Plan:** This written plan sets out the local authority's plans for the child's care once a care order is given. See The Children Act 1989 Guidance and Regulations Volume 2: care planning, placement, case review.

**Case Management Hearing (CMH):** In the revised PLO, the CMH is to be held by Day 12 and if a further Case Management Hearing (FCMH) is necessary, this will be held by Day 20 (week 4). The court will give detailed case management directions at this hearing. See Appendix B.

**Case Management Order (CMO):** This is a form completed by the local authority and submitted to the court on application. Case management judges or case managers will give directions at court hearings which are then outlined in the CMO. This document is used to set the timetable for proceedings. See President's Guidance on the use of Prescribed Documents: <http://flba.co.uk/wp-content/uploads/2013/06/plopgdocuments.pdf>.

**Checklist Documents:** A list of the documents that the local authority must have available on issuing proceedings. See Appendix B.

**Children’s Guardian:** Appointed in public law cases to ensure that the views and interests of children are represented in the court’s deliberations.

**Chronology:** A schedule containing a succinct summary of the significant dates and events in the child’s life in chronological order, giving a running record up to the issue of proceedings.

**Court Order:** This is a decision made by the court, which will be recorded. Copies should be given to all parties involved in the case. It remains in force for a designated amount of time as directed by the case judge. It can only be lifted or amended if it is discharged by the court at a later date.

**Designated Family Judge (DFJ):** DFJs are responsible for leading all levels of the family judiciary within the courts they oversee. They also ensure the efficiency and effectiveness of the discharge of judicial family business at these courts.

**Directions:** These are instructions issued by the court to help all parties prepare their case and ensure that the court can make a decision.

**Emergency Protection Order (EPO):** EPOs enable a child, in an emergency, to be removed where this is necessary to provide immediate short-term protection. The child must be in ‘imminent danger’.

**Family Group Conference (FGC):** Family Group Conferences<sup>59</sup> (also known as Family Group Meetings) are meetings which identify and involve the whole family in making a safe plan for the child.

**Family Procedure Rules (FPR):** These govern the practice and procedures used in family courts in England and Wales and are made by the Family Procedure Rule Committee, an independent statutory body.

**Final Hearing:** This is the last hearing in a court case, when the court makes the final decision or order regarding the application that has been made. In some cases the court may be able to make a final decision prior to this hearing, e.g. at the Issues Resolution Hearing

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<sup>59</sup> See <http://www.frg.org.uk/involving-families/family-group-conferences>. A programme of accreditation for FGC is currently being developed.

(IRH) if they feel that they have already have enough clear evidence before them to decide what is the best plan for the child.

**Gatekeepers:** These are the legal practitioners who supervise the allocation of cases and allocate them to the appropriate tier of judiciary (see Allocation Process).

**Genogram:** A family tree setting out in diagrammatic form the child's family and extended family members and their relationship with the child.

**HMCTS:** Her Majesty's Courts & Tribunals Service.

**Interim and Supervision Orders:** Providing interim thresholds are met, the court, when requested to do so by the local authority, can issue Interim Care Orders (ICOs) and Interim Supervision Orders (ISOs), enabling a child to be placed temporarily under the care or supervision of the local authority while the case progresses.

**Issues Resolution Hearing (IRH):** This is a court hearing, held after the Case Management Hearing, and by week 20 or earlier. See Appendices A and B.

**Justices' Clerk:** Justices' Clerks are responsible for the legal advice given to magistrates and for the overall performance of Legal Advisers. The Justices' Clerk has complete judicial independence when undertaking judicial duties and providing legal advice.

**Legal Adviser:** Legal Advisers are responsible for providing legal advice to magistrates in the magistrates' courts. They advise on the law and procedures, but play no part in decision-making.

**Legal Planning Meeting:** The purpose of this meeting is for the local authority to seek legal advice about a particular case and whether the threshold tests for bringing a care or supervision order are likely to have been met. It should be attended by the child's social worker and social work managers, together with the local authority lawyer. The social work team will usually set out the facts of the case, their concerns and their evidence, and explain what work has been undertaken with the child and his/her family. A decision will be made on whether the threshold criteria have been met, whether there is the potential to work with the family to divert proceedings, or whether court proceedings are necessary at this stage.

**Litigant in Person (self-represented litigant):** Litigants in person are parties who do not have legal representation before or during court proceedings. The term encompasses a wide range of litigants who may have received advice or representation at some point during the course of the case.

**Litigation Friend:** Parents who lack capacity to conduct proceedings must have a litigation friend to conduct proceedings on their behalf. It is the duty of a litigation friend to fairly and competently conduct proceedings on behalf of a protected party (the parent). Either the Official Solicitor (OS) or a person's 'deputy' (another competent person with no adverse interest) can be appointed as litigation friend. The OS will accept an invitation to act as **last resort** litigation friend where there is a finding by the court that the party is a protected party.

**Official Solicitor:** The Official Solicitor acts for parents who lack mental capacity (within the meaning of the Mental Capacity Act 2005) to instruct their own solicitor (or are under 18) (see litigation friend, above).

**Parental Responsibility (PR):** Parental responsibility is defined in law as 'all the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and the administration of his/her property'. In practical terms, this means the responsibility to care for a child and the right to make important decisions concerning the child. See ss2&3 Children Act 1989.

**Parties to Proceedings:** 'Parties' are individuals involved in legal cases before the courts. Parties are allowed in the court room and are permitted to receive copies of all the paperwork, such as reports and other documents.

**Placement orders:** A placement order authorises a local authority to place a looked after child for adoption with any prospective adopters who may be chosen by the local authority. Only a local authority may apply for a placement order and there are a range of circumstances when a placement order must or may be applied for. See ss21&22 Adoption and Children Act 2002.

**Prescribed Forms:** These are the forms prescribed in relation to applications and orders. They are the forms that must be produced at certain stages during the court process. The most common prescribed form is the Case Management Order.

**President of the Family Division:** The current President of the Family Division, and Head of Family Justice, is Sir James Munby.

**Public Law Outline (PLO):** This is guidance issued by the President of the Family Division on how public law care, supervision and other part 4 proceedings should be conducted.

**Response Document:** Once the local authority has submitted its application and produced a Threshold Document (see Threshold Document) the parent's solicitor is given the opportunity to respond to this document via the Response Document. The Response Document is also an opportunity for the parent's solicitor to provide a position statement for their client and outline any connected persons they would wish to be assessed. Under the revised PLO this now has to be filed by Day 2 of the case.

**Rule 25:** This relates to parents' solicitors filing with the court a request for any expert evidence (no later than two clear days after the case has been issued). This covers such points as the discipline, qualification and expertise of the expert and the expert's availability, and outlines why the expert evidence is proposed.

**Section 31 Applications:** Under section 31 of the Children Act 1989, the local authority or any authorised person (the NSPCC) can apply to the court for a child or young person to become the subject of a Care or Supervision Order.

**Special Guardian:** An individual named in a Special Guardianship Order. A special guardian has parental responsibility for the child but a Special Guardianship Order does not remove parental responsibility from the child's parents, though their ability to exercise their parental responsibility is extremely limited. See ss14A-14G Children Act 1989.

**Special Guardianship Order:** An order appointing one or more individuals to be a child's 'special guardian'. See ss14A-14G Children Act 1989

**Supervision Order:** An order which places a child under the supervision of an applicant local authority. Unlike a care order, a supervision order does not give the local authority parental responsibility for the child.

**Threshold Criteria:** A court can only make a care or supervision order where it is satisfied that (a) the child is suffering, or is likely to suffer significant harm (b) making the order will better meet the child's needs than not doing so.

**Threshold Statement:** This document outlines the grounds on which Threshold Criteria (see Threshold Criteria) are met. The document must be produced by the local authority as part of the Annex Documents when the LA submits its care or supervision application to court.