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Practice and procedure; The impact on parents

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1. **Pre-proceedings process**

First introduced in 2008 and revised in 2014 the pre-proceedings process sets out steps that local authorities should take prior to issuing care proceedings.

The letter before proceedings must be sent to parents inviting them to a pre-proceedings meeting. The letter must contain a summary of the local authority's concerns, what parents need to do and what support will be provided for them, to avoid proceeding, including time scales and information on how to obtain legal advice.

The parents will be entitled to legal representation and advice or the pre-proceedings process.

The local authority lawyer should prepare and send the following to the parents' solicitors –

- experts CVs, time scales for assessments and draft LOI
- evidence the local authority is relying on
- details of support services/agencies that the parents need to engage with

2. **Assessments and treatment**

If a psychiatric or psychological report is prepared at this stage then hopefully any therapy that is recommended can commence. This may mean that the issue of proceedings may be averted, but if proceedings are issued then at least there is a prospect of a parent having made some progress in therapy before a decision has to be made as to the child's future.

If parenting assessments are required they should be commenced as soon as possible in order to avoid delay.

3. **Self-referral for therapy for anxiety and depression**

In most parts of England people can now self-refer to their local IAPT (Improving Access to Psychological Therapies) treatment service without the need to go through their GP. To find out if this is available you need to go to the local IAPT website. Alternatively a referral can be made through a GP.

4. **Local alcohol and drug services**

Engaging with local services will offer the prospect of monitoring and support for parents with substance abuse problems.

5. **FDAC courts**

The first FDAC was set up in London in 2008 as a 3 year pilot. Research published by Brunel University in 2014 indicated that the FDAC model was promising, showing

- a higher proportion of parents had ceased misusing substances by the end of proceedings;
- more families were reunited with their children
- fewer children experienced new neglect or abuse in the first year following reunification.

This led to the establishment of a Family Drug and Alcohol Court National Unit in 2015. The long term goals of the Unit are

- Better justice
- Improved outcomes for children and families
- Better value for money

The Unit was originally commissioned to support 4 new sites to set up FDACs but this increased to 9 in the first year. Recent research (2016) has found evidence of the sustained benefits of FDAC. There are now 13 FDAC teams linked to 16 courts and 21 local authorities.

See also article in October [2017] Fam Law 1119

6. **Vulnerable Witnesses**

See the *16th View from the President's Chambers 19 January 2017*.

There was a consultation on the new draft Part 3A Family Procedure Rule and PD3AA which closed on 17 March 2017. The draft rules provide

3A4 (1) The court must consider whether a party's participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

2. Before making such participation directions, the court must consider any views expressed by the party about participating in the proceedings.

3A.5 (1) The court must consider whether the quality of evidence given by a party or witness is likely to be diminished by reason of vulnerability and, if so whether it is necessary to make one or more participation directions.

2. Before making such participation directions, the court must consider any views expressed by the party or witness about giving evidence.

3A.7 sets out the matters that the court must have regard to and draft rule 3A.8 the measures that can be taken to assist a party or witness to participate or to give evidence.

An application for directions may be made on issue or during the proceedings.

PD3AA 1.3 places a duty on the court and on all parties to the proceedings to identify any party or witness who is a vulnerable person at the earliest possible stage of any family proceedings.

When the court has decided that a vulnerable party or witness should give evidence there should be a 'ground rules hearing' prior to the trial at which any necessary directions will be given.

4.7 provides that all advocates are expected to be familiar with and to use the techniques employed by the toolkits and approach of the Advocacy Training Council. The toolkits are available at www.theadvocatesgateway.org/toolkits.

The toolkit for vulnerable witnesses and parties in the Family Courts is Toolkit 13. It dates back to 8 November 2014. It provides useful examples of how normal court procedure can be adapted to enable vulnerable witnesses to give evidence.

7. Translation of documents

Many parents do not have English as their first language and need interpreters at court and at key meetings. They also need key documents translated. The Court of Appeal recently considered who should have to pay for the translation when a local authority appealed its local DFJ's guidance to the effect that the party presenting and relying on the documents should bear the costs of translation. In the Court of Appeal Macur LJ held that this approach was too simplistic. There are many cases where a party produces documents which are disclosed in the public interest and do not 'benefit' that party's case at all. S 51 Senior Courts Act 1981 places the costs of and incidental to family proceedings in the discretion of the court. The court has a broad discretion in relation to the costs of translation and the decision will depend on the facts of the case. Sometimes the party bearing the burden of proof will have to pay; sometimes the party requiring translation will have to pay; sometimes costs will be shared. It is a matter to be determined on a case by case basis. *Re Z (A child)*[2017] EWCA Civ 157

8. Advice and information

Legal advice and representation is available for parents in care proceedings.

The Bristol Family Court has established a 'Family Court Information' website for families who find themselves involved in court proceedings. It has useful advice and links to other local services. Lord Justice McFarlane gave it his seal of approval and said that with a set up cost of less than £1,000 he could not understand why it has not been replicated by each and every family hearing centre in the country.

9. Advicenow website has guides and videos designed to help people attending court.

10. Family Rights Group

They provide a free and confidential advice service to help families to understand the law and child welfare processes, as well as better understanding the concerns of social workers. Free advice sheets, telephone advice line and online discussion boards.

11. Judgements

Judgements are the means by which judges communicate not only with lawyers, but with litigants and with the public at large (subject to confidentiality restrictions). They must be understood by parents and older children in care proceedings.

Publication of Family Court Judgements. A guidance note for families and professionals which sets out the pros and cons of publication and how that might be achieved.

The Transparency Project. July 2017

Re A (Letter to a Young Person)[2017] EWFC 48 Jackson J

Lancashire County Council v M [2016] EWFC 9 Jackson J

12. Settlement Conferences

'In a settlement conference, a family judge adopts an inquisitorial approach in order to encourage cooperation between parties with a view to helping them identify solutions and reaching an agreement that is in their children's best interests. Settlement conferences take place with the consent of all the parties. The judge hearing a settlement conference will be different to that of the judge that may hear the final hearing. They will be specially trained in facilitating settlement conferences. The judge will not impose any duress or pressure on any parties. Settlement implies that all parties will be in agreement to fully resolve some or all the issues'.

13. The pilot started in June 2016. Settlement Conferences pilot and evaluation: information and guidance for professional parties (July 2017) is available on the MoJ website.

14. The Association of Lawyers for Children have published a document setting out their concerns about the project. 7 July 2016 Their advice to members is to consider very carefully whether it is possible for the to discharge their professional duty to their parent clients by taking part in such conferences. They raise 13 different concerns.

15. **Remedies**

16. **Judicial Review**

Judicial Review is a discretionary remedy and is a remedy of last resort. If there are care proceedings then the court will expect a parent to raise any issue that they have within those proceedings rather than commence separate proceeding for JR. If there are no care proceedings then the local authority complaints procedure should be considered.

An application must be made promptly and within three months of the decision that is challenged. Permission is required. Judicial review proceedings normally proceed on the basis of agreed facts.

17. New regulations introduced on 27 March 2015 made amendments to the provisions governing public funding for applications for judicial review.

18. *The Queen on the application of EL v Essex County Council v DL [2017] EWHC 1041 (Admin)* Charles J heard an application by a mother in which she sought to challenge the decision of the local authority to place a child for adoption. A care order and placement order had been made in May 2016 in relation to the girl aged 6. On 8 July the mother was informed that prospective adopters had been identified. The mother's application for permission to appeal against those orders was dismissed in August 2016 and a final contact took place. The panel approved the match of the child with the adopters on 15 September 2016. The mother told the social worker she would be seeking a judicial review. On 26 September the mother was informed of the match and an intention to place the child. An initial meeting took place on 28 September. On 29 September the mother attended the Family Court to fill in the forms and on 30 September the local authority were informed that the mother had attended to issue her application for leave to apply to revoke the placement order but had not lodged the application correctly. The child was placed for adoption on 5 October 2016. The judge decided that the local authority acted unfairly and therefore unlawfully and quashed their decision to place the child and declared that the child had not been lawfully placed for adoption and gave directions for the Family Court to consider the mother's application.

19. **Breach of Human Rights**

There have been a number of recent claims for declarations and damages for breaches of a parent's (and children's) human rights. Two decisions of Mr Justice Cobb provide guidance for practitioners to avoid pitfalls.

CZ v Kirklees Council [2017] EWFC 11

SW v TW (Human Rights Claim Procedure) No 1 [2017] EWHC 450 (Fam)

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