

Curriculum guide for continuing professional development (CPD) on pre-proceedings and court-related skills in cases concerning the care and protection of children

**Alison Brammer and Jane Boylan, Keele University,
with Sally Dowding, Birmingham Civil and Family Justice Centre**

1. Introduction

In 2012, in the context of the family justice reforms, the Government committed to working with local authorities and other bodies to help strengthen social work practice prior to and during public law care and supervision cases. Its aim is to ensure speedier, more efficient cases that deliver better outcomes for children.

Every professional social worker involved in these proceedings requires a range of court skills which include good record-keeping skills; understanding the rules for oral and written evidence; producing statements, reports and care plans; and working with key professionals in the legal arena. Practitioners should also be aware of when to seek legal advice and be confident in making evidence-based decisions and in dealing with the aftermath and outcomes of court decisions. While social workers are involved in a diverse range of court proceedings and must be mindful of the interface between public and private law, the focus of this guide is on public law proceedings for children.

The core aim of this guide is to assist training providers in equipping social workers to play a full, timely and constructive part in care proceedings and the work that precedes care proceedings. It reflects the Professional Capabilities Framework (PCF) recognised stages of career progression: some baseline knowledge is assumed, and the guide builds on skills developed at qualifying level.

2. Key areas for learning and development

The promotion of the child's welfare should permeate and inform all aspects of social work procedure. Knowledge of the following key areas is of central importance to the development of good practice in pre-proceedings work and in court-related skills:

- Law: the legal framework, consisting of primary and secondary legislation, statutory guidance, case law, Public Law Outline (PLO), court rules and associated practice directions, and other guidance bearing directly on the local authority's and social worker's responsibilities in relation to safeguarding children and initiating proceedings.
- Impact of abuse/neglect or inadequate parenting on the child's developmental needs.
- Roles of the social worker and others involved in proceedings, and a commitment to working within an inter-disciplinary context.
- Preparation for court: collating evidence, including evidence-based assessments; preparation of oral evidence, preparation of care application and associated documentation.

- Attending court: understanding what happens in court, behaviour, etiquette, courtroom and case progression, processes and rules of evidence.
- After court: understanding and responding to different outcomes; managing transitions at the end of the court process.
- Skills: effective work with families in the pre-proceedings stage; decision making including around threshold/parental capacity; record keeping; report writing; assessments including commissioning expert assessments; progressing cases through the legal gateway; collating court applications and related documentation to the standards required by the PLO; giving evidence; partnership working with the family and other agencies throughout the court process.

3. Curriculum content

Legal framework

- Overview of the family justice system: key agencies, their roles within the process, and mechanisms for collaboration and improvement, including local Family Justice Boards.
- Key provisions of the Children Act 1989, (for example, s.1 key principles, including the welfare checklist and avoidance of delay, s.31 threshold criteria), the Adoption and Children Act 2002 and the Human Rights Act 1998, and keeping abreast of legal developments (including case law).
- Issue identification and consideration of the evidence required to resolve such issues.
- The PLO, the timetable for the child, social work statement, chronology, genogram, threshold and other required supporting documentation.
- Evidence: rules as to admissibility, relevance and weight, hearsay, fact and opinion. Types of evidence, including medical, psychological and the difference between expert evidence of fact and independent, forensic expert evidence.
- Legal advice, conferences with counsel and legal planning meetings.
- Representation of the child.
- The public/private law interface and the use of private law orders (for example, special guardianship and residence orders as a solution to a child protection dilemma), and s.7 and s.37 reports.

The social worker's role pre-proceedings

- Deciding when to start proceedings, including prior work with the family; considering whether intervention is required; legal planning meetings and letter before proceedings; preparation of a robust care application and s.31A care plan in consultation with the local authority legal department; following the pre-proceedings checklist and flow chart.
- Considering the welfare checklist, including the extended Adoption and Children Act 2002 checklist in placement proceedings.

- Consideration of the timetable for the child and the impact of abuse suffered; ensuring cases are carefully tracked and systematically reviewed to avoid drift and delay.
- Balancing further assessment against delay for the child; determining when no further assessment is appropriate because there is sufficient information available to enable final plans to be made for the child; alternatively, commissioning new or updated expert assessments.
- Understanding which assessments are within the competence of the social worker and when specialist external assessment may be necessary.
- Convening family group conferences where appropriate to ascertain sources of family support and timely identification of alternative kinship carers; undertaking kinship carer assessments.
- Understanding and working with internal departmental processes, including in-house funding panels and quality assurance.
- Awareness of available internal and external resources, such as assessment centres or mother and baby foster placements; understanding their potential relevance to the case and whether assessments derived from such resources are necessary to the resolution of the issues in the case.
- Skills in working with the Children's Guardian and understanding the role of other professionals in the family justice system; understanding how to work collaboratively to progress care cases quickly and effectively.
- Duty of care and practice standards.
- Principles of good record keeping and file maintenance, understanding IT systems, objective recording, keeping chronologies, maintaining communication with partner agencies and seeking and recording information from them.
- Preparing statements and clear, focused reports and assessments: content, style, form and achieving an appropriate balance between information and analysis, especially analysis of changes required in parental behaviour and capacity to effect such change within the timetable for the child.
- Learning from the history of the case, including what interventions were previously undertaken and with what result.
- Considering the need to balance the human rights of all concerned against the imperative of minimising delay and the need to protect the child from harm.
- Dealing with conflicts of interest.
- Dealing with conflicting evidence.

What happens in court

- Key players: the parties, their advocates and other witnesses.
- The role of the court clerk (County Court) and legal adviser to the magistrates (Family Proceedings Court).
- Discussions before the hearing: participation in achieving consensus, subject to the court's approval.
- Procedure in court: adversarial nature of care proceedings within a quasi-inquisitorial process; the impact of a unified Family Court.
- The social worker as witness.

- What happens at the first appointment, case management conference, issues resolution hearing, interim, fact-finding and final hearings.
- Courtroom behaviour: dress, body language, demeanour and etiquette.
- Giving evidence: examination in chief; cross-examination; re-examination; responding to advocacy techniques and tactics, including those of self-represented litigants; how to address and respond to questions from the judge (or magistrate).
- Responding to directions.
- The role of the Children's Guardian.
- Responding to media interest.
- Noting actions required before the next hearing, including dates for compliance with the court's directions.
- Appreciating the menu of orders available to the court.

Post-proceedings

- Understanding orders made and the implications for the child and for the adult parties.
- Preparing for all outcomes and the implementation of the court's orders.
- Skills in working with families in implementing the decisions and in providing appropriate post-proceedings support.
- Reflection: how could the local authority's own processes be improved.
- Reflection: what lessons can be learned from post-proceedings discussion with all agencies involved with the family?

4. Delivery of CPD

This guide is intended for use by higher education institutions, independent sector training organisations and in-house local authority training. Delivery may be within modules of employer and university partnership post-qualifying awards. Delivery will need to be tailored to the appropriate career level (see section 6). Team-based training may also be useful.

Suggested modes of delivery include:

- Lectures and discussion of details on legal issues, child development and parenting.
- Case reviews and discussion.
- Developing checklists or a toolkit.
- Using examples of good practice, such as chronologies, statements and care plans.
- Peer reviewing records and statements (subject to respecting client confidentiality).
- Analysis of best practice in all areas, for example evidence-based interventions to assess capacity to change.
- Court simulation, to include practising court presentation and cross-examination through role-play.
- Mentoring/coaching/observation and shadowing.

It is recommended that some of these activities should be undertaken in inter-professional or inter-disciplinary groups, to enhance understanding and communication between the different professionals involved in court proceedings (e.g. medical, legal, court personnel

etc). This may link to inter-disciplinary training priorities set by the local Family Justice Board.

5. Levels

The curriculum outlined above will be relevant to all four levels of social work career progression. Appropriate adjustment will be required in relation to detail and complexity, as well as recognising prior learning and experience and the focus of respective roles.

ASYE: All involvement with the courts through observation, co-working, supported practice and basic preparation of evidence should be mentored and supported by a more experienced social worker. By the end of the ASYE, social workers should be familiar with all stages of court procedures and should know how to access appropriate guidance and advice.

Social worker: Beyond ASYE, social workers should be able to practise effectively, exercising higher quality judgements in case situations of increasing complexity, risk and uncertainty. They should be able to apply legal reasoning to the facts of a case and use professional legal expertise and advice appropriately. Social workers should be able to manage, with supervision, and have a thorough understanding of most aspects of court proceedings for cases that are not overly complex. They should also possess a thorough understanding of the roles of other professionals and of mechanisms for collaboration to endeavour to ensure timely progression of cases.

Experienced social worker: ESWs should be able to manage complex cases where there are higher levels of identified risk, and work effectively through the court proceedings to obtain appropriate outcomes for children. They will also offer support and mentoring to less experienced social workers and take some responsibility for practice review and system improvements.

Advanced social worker: ASWs provide leadership and professional wisdom and make use of sophisticated, critical reasoning and model and facilitate reflective, evidence-based practice. ASWs should be able to manage the most complex cases, support colleagues, and offer expert consultation to others for court proceedings. They should have excellent working relationships with all relevant disciplines and professionals involved and be able to make suggestions for (and contribute to) training to enhance provision, as well as contributing to improvements to relevant agency policy and procedures. They should be aware of local improvement mechanisms (including those promoted by local Family Justice Boards) to look at practice in the round, suggesting ways to accelerate case progression, improve quality and reduce delay.

Social work managers: SWMs are accountable for the practice of social workers within the team they manage, and provide or ensure effective professional and practice supervision in relation to court work. SWMs are likely to have a direct relationship with local authority lawyers and identify cases requiring direct legal input.

Principal social worker: PSWs will be responsible for promoting the adoption of best practice within the agency and for appropriate collaboration with other agencies, with the judiciary and with HM Court and Tribunal Service.

6. Training outcomes

The curriculum outlined in section 3 above details the required knowledge and skills necessary to ensure competence in understanding the legal framework and enabling social workers to fulfil their public law protection responsibilities in a manner appropriate to their level of qualification, experience and expertise.

By the conclusion of the training programme, all participants should understand:

- a) The legal framework underpinning child protection.
- b) The steps required before commencement of proceedings (and when and how these may be truncated in response to an emergency situation).
- c) The requirements for delivery and presentation of a high-quality evidence-based application.
- d) How to work constructively with the court and other relevant agencies.
- e) The court process.
- f) Supporting the child and family after proceedings, including implementation of the court's orders.

7. Resources

Specific court skills books

Bogg, D. (2012) *Report Writing (Social Work Pocketbooks)*. OUP.

Butler, I. and Hickman, C. (2011) *Social Work with Children and Families: Getting into Practice*. London: Jessica Kingsley Publishers.

Cooper, P. (2006) *Reporting to Court under the Children Act: A Handbook for Social Services*. London: The Stationery Office.

Cooper, P. (forthcoming – spring 2014) *Focus on Social Work Law: Legal Skills*. Basingstoke: Palgrave Macmillan.

Davis, L. (2007) *See You in Court: A Social Worker's Guide to Presenting Evidence in Care Proceedings*. London: Jessica Kingsley Publishers.

Seymour, C. and Seymour, R. (2011) *Courtroom Skills and Report Writing for Social Workers*. Exeter: Learning Matters.

Watt, J. (2013) *Report Writing for Social Workers*. Exeter: Learning Matters.

Articles and books

Brammer, A. and Cooper, P. (2011) Still waiting for a meeting of minds: Child witnesses in the criminal and family justice systems. *Criminal Law Review*, 12:925.

Brophy, J., Owen, C., Sidaway, J. and Johal, J.J. (2012) *The Contribution of Experts in Care Proceedings: Evaluation of Independent Social Work Reports in Care Proceedings*. Oxford: Department of Social Policy and Intervention, University of Oxford.

Brown, R. and Ward, H. (2012) *Decision-making within a Child's Timeframe: An overview of current research evidence for family justice professionals concerning child development and the impact of maltreatment. Working Paper 16*. London: Childhood Well-being Research Centre.

Cleaver, H., Unell, I. and Aldgate, J. (2011) *Children's Needs – Parenting Capacity: Child Abuse: Parental Mental Illness, Learning Disability, Substance Misuse and Domestic Violence*. (2nd ed.) London: The Stationery Office.

Cooper, P. (2012) Jones v Kaney and other disincentives: Why the Supreme Court's decisions should prompt a Law Commission review of the law in relation to expert witness evidence in family cases. *Child and Family Law Quarterly*, 24:2, p.234.

Dickens, J. (2004) Risks and responsibilities: the role of the local authority lawyer in child care cases. *Child and Family Law Quarterly*, 16:1, p.17.

Eccles, C. and Erlen, N. (2008) *Evidence Matters: Social Work Expertise in the Family Court, a Handbook*. Totnes: Research in Practice.

Geddes, G. and Walsh, E. (2010) *Working in the Family Justice System: The Official Handbook of the Family Justice Council*. Bristol: Family Law, Jordan Publishing.

Masson, J. and Dickens, J. with Bader, K. and Young, J. (2013) *Partnership by Law? The Pre-proceedings Process for Families on the Edge of Care Proceedings*. School of Law, Bristol University and Centre for Research on Children and families, University of East Anglia.

Solebo, C., Sidebotham, P. and Watson, C. (2012) Preparing paediatricians for court: Evaluation of a court skills training programme. *Child Abuse Review*, 21:2, p.131.

Essential case law

In the matter of A (A Child) [2012] UKSC 60

Re A (Children) (Care Proceedings: Threshold Criteria) [2010] EWCA Civ 853

Re B (Children) (Sexual Abuse: Standard of Proof) [2008] UKHL 35

Re H (Children) (Summary Determination of Issues) [2002] EWCA Civ 1692

In the matter of J (Children) [2013] UKSC 9

L-A (Children) [2009] EWCA Civ 822

R v Momodou and Limani [2005] EWCA Civ 177

Re O (A Child) (Supervision Order: Future harm) [2001] EWCA Civ 16

Oldham Metropolitan Borough Council v GW and PW [2007] EWHC 136 (Fam)

Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12

X Council v B (Emergency Protection Orders) [2004] EWHC 2015 (Fam)

Official publications

DCSF (2008) Children Act 1989 Guidance and Regulations, vol 1: Court Orders. London: DCSF.

DCSF (2010) Children Act 1989 Guidance and Regulations, vol 2: Care Planning, Placement and Case Review. London: DCSF.

Family Justice Review Panel (2011) Family Justice Review: Final Report. London: MoJ.

HM Government (2013) Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children. London: TSO version.

LAC (99) 29 Care Plans and Care Proceedings under the Children Act 1989.

Ministry of Justice (2008, 2010) The Public Law Outline: Guide to Case Management in Public Law Proceedings. London: MoJ.

The Family Procedure Rules 2010 (the Public Law Practice Direction cited above accompanies these).

Ministry of Justice (2009) Preparing for Care and Supervision Proceedings. A best practice guide for use by all professionals involved with children and families pre-proceedings and in preparation for applications made under section 31 of the Children Act 1989. London: MoJ.

Ministry of Justice (2010) Public Law Practice Direction. London: Ministry of Justice.

Ministry of Justice and Department for Education (2012) The Government Response to the Family Justice Review: A system with children and families at its heart. London: The Stationery Office.

Ministry of Justice (2013) The Practice Direction 36C (Pilot scheme: Care and Supervision proceedings and other proceedings under Part 4 of the Children Act 1989)
<http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform>

Ministry of Justice (2013) Revised Public Law Outline (annex to the Practice Direction 36C)

Munro, E. (2011) The Munro Review of Child Protection: Final Report – A Child-centred System, Cm 8062. London: DfE.