

**Preparation of Evidence**

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**The revised Public Law Outline: A Reminder of the Principles**

**View from the President’s Chambers (2)**

**The process of reform : the revised PLO and the local authority**

Sir James Munby, President of the Family Division

The PLO and the Role of the Social Worker

“*One of the problems is that in recent years too many social workers have come to feel undervalued, disempowered and de-skilled. In part at least this is an unhappy consequence of the way in which care proceedings have come to be dealt with by the courts. If the revised PLO is properly implemented one of its outcomes will, I hope, be to re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts.*

*Social workers are experts. In just the same way, I might add, CAFCASS officers are experts. In every care case we have at least two experts – a social worker and a guardian – yet we have grown up with a culture of believing that they are not really experts and we therefore need experts with a capital E. The plain fact is that much of the time we do not.*

*Social workers may not be experts for the purposes of Part 25 of the Family Procedure Rules 2010, but that does not mean that they are not experts in every other sense of the word. They are, and we must recognise them and treat them as such.”*

The Importance of Pre Proceedings

“*Work done by the local authority in the period pre-proceedings – front loading – is vital for two quite different reasons. Often it can divert a case along a route which avoids the need for proceedings. When that is not possible, and proceedings have to be commenced, work done beforehand will pay rich dividends later on. A case presented in proper shape on Day 1 will proceed much more quickly and smoothly than a case which reaches the court in an unsatisfactory state. A week, two weeks, four weeks, spent productively before proceedings are commenced will usually produce greater savings of time later on. On occasions urgency will necessarily trump readiness, but very often it need not.*”

Key Messages About Evidence

“*What, after all, does the court need? It needs to know what the nature of the local authority’s case is; what the essential factual basis of the case is; what the evidence is upon which the local authority relies to establish its case; what the local authority is asking of the court, and why.*”

“*The social work chronology must contain a succinct summary of the significant dates and events in the child’s life.*”

“The significance of assessment and analysis will be apparent.”

“*We need to distinguish clearly between what is fact and what is professional evaluation, assessment, analysis and opinion. We need to distinguish between the general background and the specific matters relied on to establish ‘threshold’.*”

“*In short, the local authority materials must be succinct and analytical. But they must also of course be evidence based.*”

**Evidence Based Analysis**

**Re A (A Child) [2015] EWFC 11**

“*The present case is an object lesson in, almost a textbook example of, how not to embark upon and pursue a care case.*”

In Re A (‘the Darlington Case’) the President of the Family Division sought to remind practitioners of a number of fundamental principles relevant to care proceedings which social workers will have to have in mind when preparing their evidence.

The First Principle

“*The first fundamentally important point relates to the matter of fact-finding and proof. I emphasise, as I have already said, that it is for the local authority to prove, on a balance of probabilities, the facts upon which it seeks to rely. I draw attention to what, in Re A (A Child) (No 2) [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26, I described as:*

*"the elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation."*

*This carries with it two important practical and procedural consequences*.”

“*The first is that the local authority, if its case is challenged on some factual point, must adduce proper evidence to establish what it seeks to prove.”*

“*It is a common feature of care cases that a local authority asserts that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority's concern about something. If the 'thing' is put in issue, the local authority must both prove the 'thing' and establish that it has the significance attributed to it by the local authority.*”

“*The second practical and procedural point goes to the formulation of threshold and proposed findings of fact. The schedule of findings in the present case contains, as we shall see, allegations in relation to the father that "he appears to have" lied or colluded, that various people have "stated" or "reported" things, and that "there is an allegation". With all respect to counsel, this form of allegation, which one sees far too often in such documents, is wrong and should never be used.*”

“*Failure to understand these principles and to analyse the case accordingly can lead, as here, to the unwelcome realisation that a seemingly impressive case is, in truth, a tottering edifice built on inadequate foundations*.”

The Second Principle

“*The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts. Here, as we shall see, the local authority conspicuously failed to do so.*”

The Third Principle

“*The third fundamentally important point is even more crucial. It is vital always to bear in mind in these cases, and too often they are overlooked, the wise and powerful words of Hedley J in Re L (Care: Threshold Criteria) [2007] 1 FLR 2050, para 50:*

*"society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."*”

**Other Tips**

Lawyers and Judges can use Google too

If you are going to rely on research or other materials make sure you are clear about what it says and that it is relevant to what you are trying to say.

Be Careful of Mud-Slinging

More from the President in Re A:

“*there is repeated reference to the "immoral" nature of some of the father's behaviour, a characterisation that is neither appropriate nor relevant.*”

“*what is the relevance of the assertion that the offence he committed was "immoral"? The city fathers of Darlington and Darlington's Director of Social Services are not guardians of morality. Nor is this court.*”

Jargon is not always your friend

“*There were passages in* [ISW X’s] *report which were written in language which made their meaning quite opaque. I suspect as far as SH was concerned, these passages might just as well have been written in a foreign language. Thus by way of just one example, at para. 3.113* [ISW X] *writes as follows when referring to the relationship between CK and HH:*

*" I do not intend to address the couple's relationship suffice it to say it is imbued with ambivalence : both having many commonalities emanating from their histories that create what could be a long lasting connection or alternative relationship that are a reflection of this. Such is this connection they may collude to undermine the placement."*”

…

“*I give one more example of what I mean: (para 3.61) " due to [SH]s' apparent difficulties identifying the concerns , I asked her to convey a narrative about her observations in respect of [KH]'s and [CK]'s relationship." What would be wrong in saying "I asked her to tell me" ?*”

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| Pre-proceedings | |
| **Pre-proceedings Checklist** | |
| Annex Documents are the documents specified in the Annex to the Application Form which are to be attached to that form and filed with the court:   * Social Work Chronology * Social Work Statement and Genogram * 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 * Care Plan * Index of Checklist Documents | Checklist documents (already existing on the LA's files) are –  a. Evidential documents including –   * Previous court orders including foreign orders and judgments/reasons * Any assessment materials relevant to the key issues including capacity to litigate, section 7 and 37 reports * Single, joint or inter-agency materials (e.g., health and education/Home Office and Immigration Tribunal documents);   b. Decision-making records including –   * Records of key discussions with the family * Key LA minutes and records for the child * Pre-existing care plans (e.g., child in need plan, looked after child plan and child protection plan) * Letters Before Proceedings |
| Only Checklist documents in (a) are to be served with the application form |
| Checklist Documents in (b) are to be disclosed on request by any party |
| Checklist documents are not to be –   * filed with the court unless the court directs otherwise; and * older than 2 years before the date of issue of the proceedings unless reliance is placed on the same in the LA's evidence |