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MAIN SECTION

Access to Justice for families? Legal advocacy for parents where children are on the ‘edge of care’: an English case study

Kim Holt*, Karen Broadhurst, Paula Doherty and Nancy Kelly

This paper examines the issue of professional advocacy for parents in England following the local authority issuing the Letter Before Proceedings when the concerns about the welfare of a child are so serious the local authority are considering applying for a care order. We explore the tensions of providing a legal advocacy service for parents – drawing on a study of 57 cases, scrutinised as part of the Coventry and Warwickshire Cafcass Pre-Proceedings Pilot (Broadhurst *et al.* 2012) and explores the contribution of legal representation for parents.

The pre-proceedings meeting can be pivotal in terms of the direction of the case, the impression created at the meeting, and the action parties take afterwards. The importance of advocacy for parents was highlighted in the study both to facilitate parents’ understanding of the issues, and to afford a level of protection of their rights. It is noteworthy that in 16 out of 82 pre-proceedings meetings no advocate was present, and in general fathers were less likely to be represented (although as reported the exact pattern appears more complex). Where advocates were present, contributions to the pre proceedings meeting varied from no input, to seeking points of clarification, and in 4 cases there was evidence of active ‘brokering’ on behalf of their clients.

Keywords: Legal advocacy; pre-proceedings; justice; child protection

Introduction

‘To return to the 26-week pathway in public law proceedings: the pathway is likely to describe the case in which the threshold is agreed or is plain at the end of the first contested interim care order hearing by reason of the decision made at that hearing. Of necessity, the interim threshold upon which an interim care order relies must in its reasoning have identified *prima facie* evidence in support.’ (Ryder 2012)

This paper examines the issue of legal representation for parents within the formal pre-proceedings process. As family justice reforms move to reduce the length of care proceedings (Ryder 2012), effective advocacy within *pre-proceedings* will be essential because parents will have less time to retrieve their position within the court arena. As proposals for the Children and Families Bill take shape this Autumn, it is clear that there will be a shift away from re-assessment of parents during court proceedings in a bid to reduce delay in the family court and to give far more weight to a child-centred timetable for case resolution. In this context, effective advocacy for parents within pre-proceedings will be critical to facilitate their engagement with local authority concerns and to maximise opportunities for rehabilitation. The direction of travel set in train by the Family Justice Review has been broadly welcomed because there is a substantive body of

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evidence that has identified the negative impact of delay for children who wait in interim placements where judicial practice is indecisive (Ministry of Justice 2011). As our opening epigraph suggests, the modernisation programme calls for a reduction in the current court timetable for the child of 52 weeks to a 26 week pathway for care proceedings with case trajectories determined early in proceedings. Following the testing of evidence at the first interim care order hearing, a decision will be made as to whether cases are to be timetabled according to a 'standard' or 'exceptional' pathway (Ryder 2012). Whether the proposed 26 week standard pathway does become routine is yet to be seen, but the implications for parents in pre-proceedings need little rehearsal. In respect of parents who lack capacity or are otherwise disoriented by acute personal difficulties and a history of trauma, effective legal representation will be critical in this quasi-judicial space to enable their engagement with local authority concerns. Moves to shorten legal proceedings need to be coupled with efforts to improve the quality and consistency of pre-proceedings practice, which should include an analysis of legal advocacy for parents.

The quality and organisation of legal representation for parents in pre-proceedings has been subject to insufficient critical analysis. Whilst anecdotal evidence suggests that local authorities have made improvements in regard to facilitating parents' access to independent representation, it is not enough to simply ask: was a legal representative present? Rather, we need to consider what kind of representation for parents is offered and to what effect. Where vulnerable parents face compulsory removal of children they are unlikely to know how to initiate a legal process, and will certainly have no benchmarks against which they can appraise the quality of their representation. We write in the context of an increasing downward trend in legal aid funding. Anecdotal evidence suggests that fixed fees for pre-proceedings practice are insufficient to cover the cost of this work and this mediates against best practice. In a study of legal representation of parents within care proceedings, Pearce *et al.* (2011) noted a tendency for lawyers to increase their caseloads to meet business targets, with paralegals employed to help manage the volume of work. To-date, research offers few insights about whether or how such strategies impact on lawyers' *pre-proceedings* practice.

In this paper we draw on 57 cases, scrutinised as part of the Coventry and Warwickshire Cafcass Pre-Proceedings Pilot (Broadhurst *et al.* 2012) and focus specifically on the consistency and organisation of legal representation for parents. This pilot study was initiated by the participating agencies to shore up the robustness of the pre-proceedings process. At the interim stage of our analysis (Broadhurst *et al.* 2012), we were struck by accounts from research participants who reported problems of variability in legal representation for parents. Prompted by these reports, we then directed part of our work to probe this discrete issue. In the sections that follow we confirm this variability and note that in a number of cases parents (particularly fathers) lacked legal representation altogether despite their entitlement under the Public Law Outline. We further highlight the wide variation in *approach* to legal advocacy taken in these meetings and draw out empirically grounded recommendations for policy and practice. Whilst findings are drawn from an English case study, they will resonate with broader international debates about the position of those dependent on legal aid in regard to the social and geographic divide between a poor citizenry and those who would be the legal guardians of their rights (Nelson 2000; Healy and Darlington 2009)

Access to justice: Pre-proceedings representation for parents

The Public Law Outline (Ministry of Justice 2008) (PLO) replaced the Protocol for Judicial Case Management (2003), providing a new approach to care proceedings through

the formalisation of a pre-proceedings process (Broadhurst and Holt 2010; Masson 2011). The PLO was a response to both the Thematic Review published by the Judicial Review Team (JRT 2005) and the Review of Child Care Proceedings in England and Wales commissioned by the former Department for Constitutional Affairs (DCA 2006). These analytic reviews sought to identify the causes of delay/inefficiencies in child-care proceedings and of the many findings, identified parents' lack of understanding and engagement with care proceedings as a key factor. As a consequence, and under a formalised pre-proceedings process, parents were to be entitled to legal representation *prior to* the local authority making an application to the court, in order to facilitate their engagement. National graduated fees were introduced by the Legal Services Commission (LSC 2007) to enable parents to access Level 2 legal aid funding. This move to shore up parents' rights at a critical point in cases of child protection was much welcomed by commentators (Broadhurst and Holt 2010; Masson 2012) as it clearly held out the promise of a more equitable process. Where parents face the real possibility of either a reduction in or severance of their parental rights, access to independent support is vital (Lindley 1994; Freeman and Hunt 1998; Lindley *et al.* 2001; Masson 2012).

The pre-proceedings meeting (PPM) is a quasi-judicial space, which reflects a setting by definition, that has rules which lie both in social work/legal language, but which lie *outside* the formal scrutiny of the court (Broadhurst *et al.* 2011). Though governed by statute and practice guidance, this is a discretionary space, subject to the vagaries of local institutional practices, resource constraints and the like (Swain 2009). The consensual language of The Children Act Guidance (2008) holds out the promise of an inquisitorial approach to pre-proceedings practice, but at the same time carries risks for families as highly consequential decisions can be taken with limited external scrutiny. For example, the use of s.20 CA 1989 has again been debated in the case of *Re CA (A Baby)* (EWHC 2190 (Fam) 30 July 2012) which highlighted key ethical issues in regard to parental consent. In this case Mr Justice Munby underscored the difference between informed consent and acquiescence in the face of a compulsory course of action. He drew attention to a number of key issues, not least questions of parents' mental capacity:

... the use of Section 20 is not unrestricted and must not be compulsion in disguise. In order for such an agreement to be lawful, the parent must have the requisite capacity to make that agreement. All consents given under Section 20 must be considered in the light of Sections 1-3 of the Mental Capacity Act 2005. Moreover, even where there is capacity, it is essential that any consent so obtained is properly informed and, at least where it results in detriment to the giver's personal interest, is fairly obtained. That is implicit in a due regard for the giver's rights under Articles 6 and 8 of the European Convention on Human Rights. Having made those observations, it is necessary specifically to consider how that may operate in respect of the separation of mother and child at the time of birth. The balance of this judgment is essentially limited to that situation, the one that arose in this case, though some observations will have a more general application. (Paragraphs 27-29)

Decisions and required actions recorded at the formal pre-proceedings meeting serve as a reference point for review of parental progress – this is a pivotal point in case trajectory for parent and child alike. It is important that parents' engagement with this process is maximised such that they are clear, feel ownership and can argue their support needs. Plans must be realistic for parent and child and not simply designed to provide the local authority with a further opportunity for assembling evidence while parents and children carry the risk of poor assessment and care planning. It is important that actions agreed at this point are based on a revision rather than simply re-statement of a child protection plan and that revised actions are based on a clear understanding of why plans, to date, have failed and how parents and agencies might now respond.

What kind of advocacy is needed in pre-proceedings?

Research evidence suggests that effective advocacy can greatly assist parents to engage with child protection plans and this is critical to good outcomes for children (Lindley 1994; Freeman and Hunt 1998). Entrenched conflict and problems of engagement can mean that parents struggle to 'hear' or understand the local authority concerns about their children, and of course, improvements in parenting capacity cannot be achieved without this mutual understanding (Featherstone *et al.* 2010). Moreover, we know from research evidence that parents can feel disadvantaged in formal administrative settings such as the child protection core group or case conference (Corby *et al.* 1996; Hall and Slembrouck 2001; Harlow and Shardlow 2006). In a related study we have highlighted the asymmetries of power and entitlement in the pre-proceedings meeting from detailed qualitative analysis of parent-professional interaction (Broadhurst *et al.* 2011). In this context, the introduction of entitlement to legal aid funding, which allows parents to routinely access independent representation does not just add value; rather it is critical. However, legal representation will only make this critical difference where it is effective and to date, research offers very few insights that debate what kind of good practice model(s) would be suited to this setting.

The work of the London based Family Rights Group (FRG) has done much to delineate how good practice in regard to independent professional advocacy for families involved with child protection services might be organised (FRG 2009). In a detailed evaluative study, the impact of professional advocacy was clear - 97% of parents and family members felt the advocacy service had been helpful and 46% felt it had made a difference to the outcome of their case (Featherstone *et al.* 2011). Evaluative findings indicate what can be done, when advocacy is done *well*. The following extract from the Code for Professional Advocates (2009) drawn up by the Family Rights Group is pertinent:

Advocacy means assisting people to make informed choices, not making decisions for them. The advocate's role is to enable the service user to have their voice heard, to participate, as far as practicable, in the decisions being made about their child and to have their viewpoint taken into account, whilst avoiding any action which may or may be seen to collude with potentially placing a child at risk of harm (FRG 2009, p. 3).

The stress in this statement is in 'enabling' the service user to have their voice heard and in 'participation'. The pre-proceedings process offers parents the opportunity of limited, but nevertheless some scope, for *active* negotiation both in regard to expectations of themselves but also for further support and assessment. In an earlier study we drew attention to the institutional organisation of child protection practice, providing further empirical evidence to support conclusions that child protection practice is inherently asymmetric (Broadhurst *et al.* 2011). However, effective advocacy that enables parental participation can to some degree, moderate imbalances of knowledge and entitlement. However, this is dependent upon advocates having both skill and expertise – a parent will not necessarily have the knowledge to understand the difference between a qualified and experienced lawyer/advocate and a trainee/paralegal, but the availability and quality of advice is likely to be significantly different dependent upon who is representing the parent. In this context, legal representation is not just about attendance at the pre-proceedings meeting - rather a more active role is required. If parents are to benefit from their entitlement to legal representation, then it will be critical the issues presented at the pre-proceedings meeting are clarified, that a remedial plan is negotiated rather than simply imposed and that the necessary resource commitments from the local authority are identified and agreed.

The case study sites: The PPM

The research materials that have provided the empirical data for this analysis were drawn from the Cafcass Pre-Proceedings Pilot that took place in the local authority sites of Coventry and Warwickshire. The findings from the first interim stage of this pilot project have been reported elsewhere in relation to the role of the Children's Guardian (Broadhurst *et al.* 2012). The two local authorities demonstrated comparable processes in regard to a formal pre-proceedings process. Parents were issued with a Letter Before Proceedings which set out the agency's concerns and with that letter were also advised to appoint and instruct a solicitor. The letter called parents to a formal PPM, in which a set of actions for both parents and the local authority were agreed, that aimed to prevent immediate compulsory action to remove children. Meetings were chaired by a member of the local authority legal department with detailed minutes taken of agreements made in those meetings. In regard to legal representation, both local authorities were highly committed to ensuring representation for parents at the PPM and good practice determined that if a parent arrived at a formal PPM without a legal representative, they would always be offered an adjournment. In addition, we noted that parents would routinely be provided with further advice and telephone access if they arrived unrepresented. In some instances the local authority took the decision to adjourn on account of serious concerns regarding mental capacity. PPMs were held in prisons with fathers, efforts were made to protect and keep apart vulnerable mothers in cases of domestic violence, through holding separate meetings. Inevitably in some cases on account of resource constraints or intractable obstacles, meetings went ahead without legal representation.

Methodology

Ethical clearance for the project was obtained from Cafcass, the two participating local authorities, Her Majesty's Court and Tribunal Service (HMCTS) and Lancaster University. For the purposes of examining the conduct and issues of representation at the PPM, the research team collected the minutes of PPMs and undertook a series of qualitative interviews. The study comprised in total 57 cases, but because PPMs were often held separately for estranged parents, the research team were able to examine a total of 82 meetings (see table 1). Data collected pertained to two datasets, which were: i) a sample of 27 cases in which the Guardian attended the PPM (Cafcass Plus) and ii) a further sample of 30 comparator cases (Comparator). Access to personal records was also granted in full by parents, in regard to the 27 Cafcass Plus cases. In regard to the comparator cases, the team worked with redacted minutes that were fully anonymised and the local authority legal department staff supplied information in a similar format where details were either missing or ambiguous. Informed consent was sought from all interview participants. Data was stored by team members electronically on non-networked, password protected computers. All hard drives were encrypted to ensure the highest levels of security.

A set of 82 PPM minutes were drawn from meetings held after the 1st of June 2010, but before the end of December 2011. It was important to establish that the minutes provided a sufficiently detailed account of the contribution of various parties to the meeting, so local authority legal staff who routinely chaired the PPMs were interviewed and they confirmed this fact. Minutes ran to some eight pages and were very detailed, noting when parents' legal representatives sought to withdraw clients, what kinds of questions they posed to the local authority and what kinds of brokering were in evidence. We noted that approximately ten firms were representing parents in the region. Two members of the

Table 1. Legal representation: mothers, fathers, solicitors and paralegals – a profile of the pre-proceedings meetings.

Sub-sample	No. of cases	No. of PPMs	Fathers' legal representative present	Mothers' legal representative present	Legal rep for both parents at joint meetings	Total No legal rep not in attendance
Cafcass Plus Cases	27	44	12/21	18/21	2/2 single rep for both parents	11/44
Comparator* cases	30	38	7/9	18/20	8/9 mother's rep present 5/9 father's rep present 1/9 neither	5/38
Total combined	57	82	19/30	37/41	10/11 (combined figure)	16/82**

*In the comparator cases, there were more joint PPM meetings for parents, even where mothers and fathers were separately represented.
**This total figure is based on a consideration of whether there was a rep present (either for father or mother) at the PPM in joint meetings.

research team coded the PPM minutes separately before comparing notes, in order to confirm emergent themes.

In addition, analysis of the minutes was supplemented by qualitative interview work with a range of stakeholders (local authority social workers and legal representatives, private practice solicitors, social workers and children's guardians) at both the interim and in the final stages of the project, totalling 65 interviews. We found that all stakeholders were willing to offer their varied perspectives on the potential role of the legal representatives, but were also candid about the negative impact of resource constraints in maximising the potential of this role. The research team worked from interview transcripts and audios to code and identify key themes within the data, using methods of standard content analysis. Whilst our research materials fall short of a gold standard of in situ, audio recording and transcription of parents' legal advocacy as it unfolds, access to these settings by proxy (post hoc interviews and documentary analysis) provides a next best approach to understanding advocacy. Rules of legal privilege may mean that legal advice giving is only ever partially revealed.

In the absence of a literature focused on legal advocacy in pre-proceedings, our initial engagement with the research materials enabled us to address and distil the following research questions:

- Was legal representation available and to whom?
- How did approaches to legal advocacy differ?
- What was the opinion of various stakeholders on legal advocacy for parents within the PPM?

Findings

Findings are divided into three sections. The first section provides a description of the PPM as evidenced in the minutes and depicted in interview accounts. The second profiles the two samples in regard to how many parents were represented at the PPM, considering mothers and fathers separately. In addition, the balance between qualified solicitors and paralegals is described. In the third section, approaches to advocacy are detailed categorising approaches into a) legal representative is in attendance only; b) legal representative seeks a point(s) of clarification; and c) legal representative is active throughout, serving to mediate and broker plans on behalf of the parent. Disparities in orientation to role are very clear, confirming anecdotal evidence that has suggested a wide variation in approach and that active advocacy within the PPM is not frequently manifest.

a) Conduct of the PPM and contribution from parents' legal representative

The meetings in both local authorities progressed according to a similar format. The local authority legal representative chaired the PPM and the aim was to detail and re-state the concerns of the local authority as documented in the Letter Before Proceedings, and to indicate to parents the changes that were required of them, such that the local authority could be assured of the safety and well-being of children. Actions listed tended to be divided into those for parents (such as engaging with drug misuse services) and those for the local authority (such as organising a cognitive functioning assessment). After actions were agreed and minutes taken, a date was then set for a further review meeting so as to appraise progress.

From our interviews with local authority representatives it was clear that the local authority tended to set the agenda in advance for these meetings and was, to a large extent,

seeking parental compliance with a pre-formulated plan. Scope for negotiation appeared to vary across meetings, although the format was largely asymmetric with the local authority making clear an explicit set of expectations for parents (Broadhurst *et al.* 2011). Working agreements were often drawn up and reflected a contractual approach to the PPM. In all instances, it was clear that the local authority was moving into a more intensive period of assessment, although in a high number of cases, the assessments suggested at this point might, arguably, have been more useful at an earlier point in the family's service career. Resource constraints were a major consideration for both local authorities in the study, with fieldwork taking place during a period of unprecedented fiscal constraint in the context of the Comprehensive Spending Review of 2010.

From the above table, it is clear that in the majority but not every case, mothers were represented by their legal advocates at the PPM meeting (37/41 cases). Taken as an aggregate, fathers appeared less likely to be represented than mothers where meetings were held separately (19/30) in the Cafcass Plus sample. In the Comparator Sample, more meetings were held jointly for mothers and fathers and when this is taken into account, again in more cases than for mothers, fathers were not represented. In a total of 16 meetings, there was no legal representative at all.

To try to understand why a minority of mothers were not represented we further probed the detail of cases. In three of the Cafcass Plus cases where mothers were *not* represented, two were young care leavers leading lives characterised by homelessness/temporary accommodation who were presenting in acute need in regard to money and food. A significant number of young women in the study were pregnant, facing immediate crisis, and hard to reach which may explain why they were unable to prioritise seeking legal advice. In the third case, the mother of a number of children was struggling with very serious alcohol addiction and again, may have lacked the capacity or motivation to instruct a solicitor. In a single case, in the comparator group, a mother had instructed a solicitor, but the solicitor had not attended. Patterns of non-representation for fathers are interesting as they appeared at *greater* risk of non-representation when compared with mothers and in more cases than for mothers, fathers had instructed a solicitor, but the solicitor had not attended (5 cases):

Dad not represented but had instructed Mr X to represent him. Dad advised in the meeting that he had given solicitor his letter but rep could not attend. Dad happy to go ahead and was advised he could stop meeting if needed at any point.

(Excerpt from PPM minutes)

The under-representation of fathers clearly reflects findings within the extant literature concerning the lack of engagement of men within child protection processes (see O'Hagan 1997; Featherstone 2010; Goff 2012). Knowledge about gender and help seeking is also relevant (Broadhurst 2003). Men can be reluctant to seek help and/or professionals may avoid them. This dynamic may explain something of the gendered nature of representation in this study.

In approximately half of all cases a paralegal (legal assistant or trainee) attended the PPM as the legal representative for parents, rather than a qualified solicitor. Whilst we would not want to dismiss *a priori*, the abilities or confidence of paralegals, the analysis of the data highlights important questions about the quality of service provided by paralegals to parents. This issue is discussed more fully in the sections that follow.

Patterns of legal representation/advocacy

The findings in this section clearly illustrate the tension that we hint at in the above subtitle - is the role of the legal advocate simply to attend – or is a more active role suggested? As stated, the detail of actions agreed at these meetings are critical and we would argue that an active role is absolutely vital to enable parents' participation. Whilst room for manoeuvre at this stage in the child protection process will be, by necessity, constrained, there is certainly scope for some very effective intervention on the part of the parents' legal advocate to ensure parents understand and can commit to plans and that the detail of the local authority's support is clear.

From thematic analysis of the sub-set of 66 PPM minutes where a legal representative was present (in 16/82 meetings no representative attended), we were able to identify and categorise three distinctly different patterns of advocacy.

- i. **Attendance only** (e.g. note taking)
- ii. **Seeking clarification** (e.g. posing questions that sought clarity on the detail of plans)
- iii. **Active brokering** (withdrawing client to seek instructions, intervening when a client became distressed, speaking on behalf of clients at their request, mediating, brokering arrangements in favour of client's perspective).

i. Attendance only

Scrutiny of PPM minutes suggested that in 39/66 cases, there was little or no evidence of an active role on the part of the legal representative. In some cases where parents had different legal representatives one made contributions whilst the other did not. We further probed this observation through interview work and participants consistently confirmed, that in some cases, on account of very limited preparation time, the meeting was simply seen as an opportunity for note-taking and '*catching up*' with the case. Interview participants talked of private practice firms holding large caseloads in order to ensure this work was financially viable, which meant that contact time with clients was often limited to a short half hour meeting prior to the PPM. We noted that in some meetings, the minutes indicated that legal representatives requested child protection conference reports and plans at the end of the PPM meeting, suggesting that they were not fully prepared prior to the meeting with relevant background to the case.

This pattern of representation was more evident, although not exclusive to, meetings in which parents were represented by paralegals¹. Interview data, from a range of stakeholders, confirmed that paralegals were acting as note takers in meetings to report back to the instructing solicitor: '*I am just there to take notes - it seems to me a hopeless case, but I will report back*'. Lack of experience/training in some cases served to silence paralegal advocates and they expressed a lack of confidence about '*welfare issues*' and '*knowledge of local services*', which were seen to be the substance of the PPMs. In some cases, paralegals appeared to feel that the PPM was simply a formality and that there was little scope for negotiation with the demands of the local authority – to raise challenge would risk parents losing their children:

... by this stage the situation is so serious, the local authority have all the evidence and you have to advise parents to do what they are told by the local authority otherwise they will lose their children. What more can you do?

(Interview, Para-legal acting for parents)

From the perspective of local authority lawyers, the lack of active advocacy was seen as problematic because they were not always able to ascertain whether parents were genuinely engaged with plans - inconsistency in legal advocacy for parents was frustrating:

Representation at meetings is another soap box moment for me!! My experience (and that of the team as a whole) is that private law firms will frequently send a legal assistant or a secretary to these meetings and they rarely speak or take a part in the meeting other than to take notes (which they don't really need to do as we send out minutes!). We do feel that this often doesn't give the parents proper representation. There are exceptions to this . . .

(Interview, local authority legal advisor).

Stakeholders made much reference to the wide variety of skills and experience within local legal practices and noted that whilst legal firms were generally very committed to supporting parents, in practice, reduction in legal aid fees for this work meant that it was now less of a priority.

ii. Seeking clarification

In 23 cases there was clear evidence that, whilst their actions fell short of a more active role, legal advocates did seek clarification in regard to discrete issues. The skill and expertise of the advocate cannot be underestimated in a context where the local authority take control with a list of requirements, but the detail was not always specified. For example, statements about the requirement that mothers attend a domestic violence programme did not always specify when such a programme would start or the expected outcomes of such programmes. In the following excerpt taken from PPM minutes, we see that there is a clear attempt on the part of the local authority to co-ordinate a detailed plan of actions with a mother expecting her third child. The mother in question has learning difficulties and previous children have been placed for adoption:

Actions required of the Mother:

- To abide by all parts of the child protection plan,
- To attend meetings concerning the child,
- To allow Social Care, their representatives and other professionals involved with the family access to the home,
- To keep Social Care informed about any significant incidents,
- To cooperate with assessments
- To undergo a hair and/or blood test for alcohol consumption
- To attend a Family Group conference
- To work with a worker in respect of her parenting
- To attend for DV counselling

(Excerpt from PPM minutes)

Scrutiny of the PPM minutes found that frequency and timescales were not always made explicit by the local authority in regard to required actions, nor was a timetable for progress made clear. Statements such as to '*abide by all sections of the child protection plan*' are rather broad ranging. Thus, questions from the mother's legal representative that sought clarification were highly pertinent in the above case:

When will the domestic violence counselling start and how will the mother be supported with childcare, following the birth of her baby, so that she can attend for this work? . . . What does the local authority agree to do to support Mum?

(Excerpt from PPM minutes questions raised by mother's legal representative)

Where statements are open ended, they may set parents up to fail. Parental capacity is frequently an issue in child protection casework and it is therefore important that parties to the PPM ensure that parents have understood concerns – this cannot be achieved without appropriate active engagement of parents supported by their legal representatives. Moreover, the details of local authority support should also be firmly established at the PPM as local authorities can struggle to meet their part in PPM working agreements, due to resource constraints. Services may be cut during the course of work with families and plans may need to be revised.

iii. Active brokering

Arguably, in the best examples of parental advocacy, the meeting was used to very good effect by legal representatives to enable parents' active participation, to promote ownership of a plan of action and to enable parties to appraise parents' understanding. Whilst this approach to advocacy was only evident in a minority of cases, (four cases) it is noteworthy in regard to its impact. In one case, a father was withdrawn from the meeting by his solicitor to consider the detail of a working agreement before signing. This was very important as the father had not known that his children were subject to child protection plans until he received the Letter Before Proceedings. To the credit of the local authority this omission was recorded in the PPM minutes and he was given time to work with his solicitor privately at the PPM to enable him to achieve at least a level of orientation to the issues. The working agreement committed him to putting forward names of potential carers in his family who might offer long-term care and to a parenting assessment in his own right, with a clear indication given that his children would not likely stay for much longer with their mother. Such information served to overwhelm the father and actions on the part of his legal representative to withdraw him again, offer further advice and then return to negotiate the detail of the father's commitment, served to mediate against some of the difficulty that the father was experiencing. On account of effective mediation on the part of the advocate, the father's understanding and co-operation was elicited to good effect, where the local authority urgently needed to mobilise resources within the extended family network.

In another example, an experienced solicitor, well known in the area for her excellent skills in advocacy and her commitment to families, intervened throughout the PPM to question local authority plans and to mediate between a very distressed young mother and the local authority in what might otherwise have been an unproductive meeting. The young mother's infant Ben was already in foster care subject to s.20 of the CA 1989, but there had been concerns about her ability to understand the needs of her young child during unsupervised contact. She was also struggling to attend contact consistently and was sometimes late returning Ben, which was causing anxiety. The solicitor was able to 'hold the line' in regard to attempts to reduce her client's contact both in regard to frequency and that supervised contact only would now be permitted. In addition, the solicitor challenged the local authority in regard to plans to move the child to another foster placement. Here are a selected verbatim extracts from the record of the PPM:

The Local Authority proposes to reduce contact sessions to 3x (*sic*) weekly and this is to be supervised by Children's Services. The reasons for the recommendations for supervision, is that the LA are concerned about the safety of Ben in Sarah's [mother] care. The supervised contact sessions will also allow for more focused work with Mum. A new foster carer has been chosen who lives nearer to Sarah and is very experienced in doing work with parents. The foster care will work closely with Mum to help her understand Ben's needs and some contact sessions can take place in the foster carer's home. Sarah [mother] became distressed at this point and Claire [mother's solicitor] asked for a few minutes to withdraw her client and speak alone with her.

When the meeting resumed, Claire spoke on behalf of Sarah and explained that she had been to the doctor's and was now back on anti-depressants, this would help her be more focused and less distracted by her anxiety. She expressed Sarah's concern about moving Ben's placement and that Sarah thought this would be unsettling for him.

(Excerpt from Pre-Proceedings Minutes)

Whilst the solicitor was unable to shift the local authority plans, they were able to broker a commitment from the local authority to review the plan in four weeks time, whereupon the issue of supervised contact would be revisited. The solicitor's actions to withdraw her client enabled the young mother to recover something of her composure such that she could engage with meeting. In addition, the solicitor spoke throughout the meeting on behalf of the young mother – seeking further opportunities to withdraw her client - who, we might infer felt unable to challenge the local authority herself. This example highlights the gravity of issues that are being decided outside the court room – movement of children's placement and reduction in parental contact. Effective advocacy is the very minimum required to assure justice for parents and children alike.

Discussion

The reality of practice is that it is generally characterised by considerable inequity of authority between the client and worker (Jordan 2004). The discretion exercised by social workers is largely broad and vague. With the best will in the world, many clients are likely to feel that the agency or the department in the form of their allocated worker is holding most of the cards and that they have little choice but to comply with what is put to them. (Swain 2009)

In respect of lawyers, the structure and procedure for the application of law are at the heart of, and govern their work. However, the pre-proceedings meeting is a less formal inquisitorial space than the courtroom and requires a different set of skills. The aims of legal practice in regard to care proceedings are relatively narrow: 'It is to utilise the available law to achieve for one's client the most favourable legal outcome possible in these circumstances' (Swain 2009). Referring to the work of Glaser and Strauss (1971) and King (1978), Masson (2012, p. 209) describes lawyers as 'passage agents' facilitating their client to navigate the law rather than 'the agents of change that social workers aspire to be'. In her study lawyers were clear that their role was delimited to advice about the local authority's case and did not include any responsibility for their client's parenting nor support for the local authority's case (ibid). Thus, as Zifcak (2009, p. 429) writes, the lawyer's actual involvement with the client is 'relatively limited'. This is certainly supported by our observations of lawyers within pre-proceedings, given that in only a very small percentage of cases were an active role within the PPM evident. This is not to suggest that lawyers in our study did not meet with clients outside of this formal setting, but it is to suggest that parents' potential to retrieve their position within pre-proceedings may be undermined if actions at the PPM are not effectively negotiated. Zifcak (2009, p. 429) writes that 'Lawyer uses legal rules, techniques and procedures. Once the presenting legal problem has been addressed, the lawyer's relationship with the client ceases'. If this is the case, then it maybe that further debate is needed as to the requisite skills and orientation for effective parental advocacy within pre-proceedings.

Lawyers representing parents are employed in private practice – they are subject to the market and Legal Aid funding, and make their living competitively. It also follows that if clients select their lawyers, they can also dismiss them. It follows then, as Zifcak states, that 'the primary motivation of lawyers will be to act in accordance with their client's

instructions' which may not suggest a more active brokering or counselling role. In our interviews with lawyers from private practice, they articulated all these points, clearly indicating the tensions and limitations in their role. In child protection work, professionals often consider it difficult to balance the rights of parents and children - for parents' lawyers this can be acutely felt and may mean that they take a step back from their client.

If we conceptualise the pre-proceedings meeting as a potential site for alternative dispute resolution, then it is erroneous to conflate attendance with quality legal advocacy. We have only been able to draw on a small sample of examples to illustrate the potential for effective advocacy, but nevertheless the examples illustrate to good effect how parents' consent to highly consequential decisions might be better informed. Although policy and practice texts espouse laudable aspirations regarding parental participation in pre-proceedings meetings it is clear from close observation of practice that in many instances only partial participation is taking place due to the practical difficulties of obtaining an advocate who has the knowledge and skills to navigate the intricacies of this complex, quasi-judicial meeting. It is significant that representation for fathers at the PPM is lower than for mothers. We are reminded of the work of Featherstone 2010 in respect of the importance of engaging fathers and promoting gender equality in respect of child welfare practices. The enactment of legislative protocol is far from straight forward with 'actions on the ground' diverging significantly from those envisaged by legislators (De Certeau 1984). The impetus to move decision making outside of the court is persuasive; engaging with families to achieve consensual solutions in an attempt to divert cases away from court is desirable in achieving positive outcomes for children and reducing delay. However, whilst the rhetoric is laudable there are tensions and dilemmas in relation to the quality and availability of professional advocacy within pre-proceedings meetings which resemble quasi-judicial spaces, but largely owned and controlled by the local authority. These meetings are pivotal for both parents and their children; yet rather than providing the most experienced and skilled legal advocates to navigate this complex terrain we have observed that in the majority of cases legal representatives appear at best to seek clarification for their clients. We have described elsewhere the conduct of the PPM which will inevitably be dominated by, organisational goals, which can result in professionals suppressing the views of parents' (Broadhurst *et al.* 2012).

Note

1. Here we would not want to straightforwardly claim that these professionals are less skilled, rather they were simply represented in our study. In several cases due to the volume of work solicitors were instructing junior counsel to attend the pre-proceedings meeting due to financial constraints on the service and instructing counsel in this manner was considered to be a more viable option financially

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