

GUIDANCE FOR WRITING COURT REPORTS IN LINE WITH THE GUIDE TO CASE MANAGEMENT IN PUBLIC LAW PROCEEDING, THE PRINCIPLES OF EARLY AUTHORITATIVE INTERVENTION AND TACKLING DELAY

Introduction

The Public Law Outline (PLO) introduced in England and Wales in 2008 was essentially a re-ordering of the way care proceedings were instigated, structured and conducted. The impact was significant in that it revised expectations on how Local Authorities, Courts and Guardians Ad Litem practiced at both the stages of *pre-proceedings* and *on issue* of *proceedings*. This placed the focus on front-loading while also redefining how Guardian's reported to court.

The *Guide to Case Management in Public Law Proceedings* was introduced into Northern Ireland on 1/10/09. While a very different document to that of the PLO it was based on the same principles, encouraging **early intervention** and a **refocusing of the role of both the Trusts and Guardians**.

The importance attached to Case Management is fully recognized under the Norgrove review of '*Family Justice*' in England and Wales (2011) and Access to Justice Review (2011) as part of the broader issue of managing delay in public law proceedings.

Under the *Guide to Case Management in Public Law Proceedings (2009)* and the Children Order Advisory Committee (COAC), Best Practice Guidance (second edition, 2010), the core objective is to deal with cases in public law proceedings justly having regard to Article 3 of the Children (NI) Order 1995, focusing on the child's needs and timetable, thereby improving outcomes for the child.

Statistics show that on average care proceedings continue to take a year to conclude. Notwithstanding initiatives to reduce delay in proceedings which can be prejudicial to the child, quite often there appears to be difficulties in aligning decision making at the point of intervention by social workers with court timescales and that of a child's timeframe.

A number of initiatives to address the issues of '*delay*' and '*making the lives of children safer*' in association with a robust system of Family Justice are currently at different stages of progress.

While it has been reported that significant progress has been made in making the lives of children safer through the provision of effective multi-professional working ¹ there is evidence that for some children and young people the system is not working. There is a clear message about the importance of **timely and thorough assessments** with regard to

¹ Sean Holland, Chief Social Services Officer, Early Authoritative Intervention (May 2013)

children who come into contact with Social Services and the family justice system. The assessments to determine parental capacity need to be child focused and should present a clear picture of parental behaviours, properly analysed to understand the 'risks' posed to children in the face of presenting problems.

As part of an assessment of parenting capacity, risk factors should be clearly identified (parental mental health, alcohol/substance abuse, domestic violence etc) including the relationship between these factors. In this context 'Risk assessments' should be a dynamic rather than a static (one off) process, regularly reviewed in the face of changing circumstances and emerging evidence.

The Social Work Practice Continuum² sets out 5 key social work roles and presents a continuum of practice reflecting the diverse needs of individuals and families. The following areas align with the presenting issues and required social work response;

- **Prevention:** Early interventions to prevent difficulties arising and to address as they emerge and prevent situations getting worse;
- **Support:** Early interventions to support families;
- **Intervention:** Early authoritative interventions to support families in meeting the assessed needs of their children, to minimize the exposure and impact of adversity on a child's life, to effect positive and sustained change;
- **Protection:** Early authoritative interventions to **protect children** who have been **harmed or are at risk of harm**, to remove the risks to the child;
- **Care and Control:** Early Authoritative interventions to provide care, safety and stability for children who require alternative care and to minimize or redress the impact of adversities in their lives.

The work of the DHSSPS and DoJ on adopting a strategic approach, through progressing a 'Tackling Delay Pilot' which is to be taken forward in conjunction with other initiatives such as the 'Access to Justice Review (2)', *Early Authoritative Intervention* (EAI) and the roll out of the *Early Intervention Transformation Programme* (EITP) places the emphasis on early and decisive intervention when making decisions about children involved in public law applications. A better understanding of the impact on children exposed to adversities and to ensure that effective early interventions are taken to minimize both the short-term and longer term negative impact of these on their development, childhood and future life chances is crucial.

²Improving and Safeguarding Social Wellbeing: A strategy of Social Work in Northern Ireland, 2012 -2022 (DHSSPS), April 2012.

In the context of safeguarding and promoting children's interests, primarily safety and well being, it is recognized that social workers have a dual mandate to support families and protect children. The Guardian's statutory obligation is clear, to safeguard the interests of the child and to have regard to the child's welfare being paramount. In the context of increasing demand NIGALA is mindful of the challenges of reduced timescales for determining cases in a climate of financial austerity.

In the event that proceedings are foreshortened as a consequence of the anticipated Tackling Delay Pilot scheduled for 2015, decision making for children, taking account of the '*child's time-frame*', those of the Courts and the Trust's capacity to intervene is likely to be significantly impacted. In this changing context, prioritizing the child's needs and safety will take on a new, more pressing imperative but no less challenging.

In line with the changing context, NIGALA revised its court report templates in order to promote—

- The making of Guardian reports more analytical, focused and where possible, shorter avoiding lengthy description;
- The making of Guardian reports less repetitive to guard against duplicating what is contained within Trust/expert court reports;
- To ensure there is information available to court at the earliest stages of a case and to provide an early/preliminary analysis of the child's circumstances, needs and what is safe for the child; it is recognized that the Guardian's analysis will change as the case develops.

NIGALA is mindful of the Ofsted inspection reports (2007/08) in which the following comments were made –

- Many reports contained unnecessary material;
- There was often too much description and not enough evaluation;
- Insufficient differentiation between fact and opinion;
- Significant facts not verified;
- Opinions not linked to evidence;
- Reports not given a reasoned assessment;
- Important to link information to the child's welfare;

- The strong areas of reports were on assessing children's needs, issues of harm and reporting children's wishes and feelings;
- Good reports represented the voice of children and based on evidence of children's needs using the welfare checklist.

NIGALA is also mindful of the views of the judiciary in respect of what information the court requires, taking account of the following –

- Any harm or risk of harm;
- The child's views;
- The family context including advice relating to ethnicity, language, religion, denomination and culture of the child and other significant others;
- The Trust work and proposed care plan;
- Advice about the court process including timetable;
- Identification of work that remains to be done for the child in the short and longer term;
- Recommendations for outcomes in order to safeguard and promote the best interests of the child in the proceedings.

Report Templates and General Guidance

The emphasis is on the Guardian providing an '*analysis*' to court relying on the relevant facts and evidence. There is a statutory requirement that that the '*welfare checklist*' (see Appendix?) set out in the Children (NI) order 1995 has to be the paramount consideration in determining the child's upbringing. The NIGALA report templates do not set out the welfare checklist in full, but if required, the Guardian may include the relevant sections in their '*analysis*' and therefore while not set out in detail in every report, does underlie each analysis.

Analytical writing while not relying on lengthy descriptive content, does not displace the requirement to provide a narrative of the child(ren) and family circumstances which adequately tells the '*child's story*'.

There are attached two court report templates **(A) Initial Analysis Report (for the 45 day + stages)** and a **Final Analysis Report (with an options appraisal for the child (ren))**

It is recognized that with shorter court timescales (in anticipation of the Tackling Delay Pilot) the Guardian may be asked to provide an initial view to court by way of oral evidence or a shorter /synopsis type report;

It is to be expected that a full overview/analysis of the case will only develop the longer the Guardian is involved. It is envisaged that the Guardian's **Initial Analysis Report** will be used for reporting to court at the 45 day + stage and any subsequent reports **will build** on this information, not repeating what has already been reported. The **Final Analysis Report** is likely to be a substantive report based on extensive enquiries.

It is recognized that the Guardian's analysis will change and develop over time once in depth enquiries have been completed.

By way of synopsis, the Guardian's report should reflect the following themes;

- **Evidence Based Analysis** - the aim is for the court to receive the Guardian's analysis as it develops through the life of the case, building up cumulatively relying on evidence.
- The court report templates **do not** set out the welfare checklist in full but each section of the report are designed to take account of the welfare checklist; where necessary. For final and/or contested hearings there may be a requirement to set out in full the Welfare Checklist or alternatively reference to specific sections depending on the areas the Guardian wishes to underline;
- The templates are **child focused** and all information should be considered from the child(rens) perspective including a '**child impact analysis**';
- The Guardian's '*analysis*' relies on the Guardian's enquiries and on evidence produced to court (both oral and written) and depends on a sound knowledge of relevant research together with an ability to critically appraise the research literature, collect and appraise relevant evidence and formulate judgments and recommendations, to **support robust judicial decision making**.

Principles in Report Writing

The following key principles, which underlie NIGALA's approach to completing reports has been identified by Guardians. These provide a useful point of reference when undertaking the report writing task. These principles apply alongside any changes in how public law proceedings are managed.

Reports and evidence to the court should be:-

- Child-focused;

- Evidence based;
- Balanced;
- Analytical;
- Avoid too much description, unless to evidence a point;
- Independent;
- Well organized;
- Clear, well argued and accurate;
- Succinct and avoid unnecessary repetition;
- Informed by research and other literature linking information to the child's welfare;
- The guardian's report should maximize the welfare of the child.

The Practice Guide to Case Management in Public Law Proceedings

Paragraph 4.5 of the Guide states that both a Guardian and solicitor for the child should be appointed a sufficient time in advance of the first directions hearing to ensure that they are able to provide the court with a view of the best interests of the child.

The first directions hearing is designed to ensure that the court puts in place the necessary directions to enable the Case Management Hearing to deal with all case management issues.

Paragraph 5.2 of the Guide represents the core of the first directions hearing and is intended to be used as a checklist subject to the circumstances of the individual case.

Paragraph 5.3 sets out a check-list for the Guardian's *initial analysis*. It sets out in summary form the issues which the Guardian should be considering in most cases. This new form of reporting allows the Guardian to focus on those matters of most interest to the court.

In the Guardian's '*initial analysis*' (paragraph 5.3) the Guardian is asked to include consideration of the following matters (unless any is inapplicable);

1. the adequacy or otherwise of each of the threshold criteria proposed by the applicant;
2. all possible placement options;

3. any family members who might care for the child if rehabilitation were not to be considered a viable option whether for the present or at all;
4. the views of the child;
5. risk issues and safety planning;
6. analysis of key issues;
7. applicant's social work and plans including any further work or planning needed;
8. recommendations for next steps in the conduct of the application (including timetable);
9. any need for expert evidence/advice, and, if there is such a need, the identities of relevant available experts and advice as to the time within which each expert could report.

In the Guardian's *Initial Analysis Report* these matters should be commented on within the body of the report (see Guardian Initial analysis court report template provided at the end of this guidance).

These matters should act as a checklist for Guardians to ensure they have covered all matters as identified within the Guide; this is not however an exhaustive list and there are likely to be other matters the Guardian may wish to make comment.

Revised guidance for the **use of Experts** in Public Law Cases (2014) focuses on developing a collaborative and child focused approach to the instruction of experts in public law proceedings. With expert evidence restricted to that which in the opinion of the court is **necessary** to assist the court, the Guardian retains a level of responsibility for taking a lead role in identifying the need for expert witness, the identity of available experts and time-scales within which each expert can report (5.3(9)). This role is however specific to the child and any coordinating function is retained only in so far as the Guardian is to comment on matters pertaining to an expert for the child. This role is one which should be shared with the solicitor i.e. communicating with other parties, agreeing and drafting joint letters of instruction etc. Clearly all parties have a responsibility for commenting on the need for expert witness.

In the context of taking a lead role in identifying the need for expert witness, both the Guardian and solicitor should have regard and promote paragraph 1.5 of the Guide:

'The parties are expected to co-operate with each other and with the court in achieving the Object'.

Briefing Notes in Respect of Re B and Re B-S

BAAF Briefing Note on Evaluation of Permanence Options for a Child in Care Proceedings (2014) (Re B (a Child) (2013) UKSC 33 and Re B-S (Children) (2013) EWCA, Civ 1146.

The above cases are significant in that they have challenged social workers, Guardian's and courts to examine their standards of analysis of different permanence options available for the child involved in proceedings.

The **key learning points** are, by way of synopsis:

- In a '*final report*' it must be assumed that all necessary assessments have been completed in respect of the parents (including any possible carers from within the family) and their care and capacity to parent the child, but where the '*necessary evidence*' is not available the case must be adjourned for it to be obtained (Re: B-S). Where the **care plan is not rehabilitation** the Trust and Guardian must present their assessment to court, drawing together the relevant information and an '*analysis*' of how each available placement option would meet the needs of the particular child.
- Each option for the child should be considered as a standalone possibility on its own merits rather than a linear dismissal of less draconian orders which leads inevitably to adoption (outlining the pros and cons of each option);
- Social workers and Guardians should be able to explain the '*thought process*' that leads to each option rather than relying on a '*set of standard statements or assumptions*' (**the importance of the Guardian's challenge function**);
- Any **services needed** to enable reunification must be identified in collaboration with the parents; the court will be alert to any possibility that resource implications might play any part in a placement decision, as to is the '*willingness and ability*' of parents to accept ongoing intervention;
- The legal framework under which a **placement with relatives** is effected can have practical, particularly financial, implications for the child and carer as well as interfering with parent's right to family life. The level of interference must be **proportionate** to **the risk and nature of the harm** that the child has suffered or is likely to suffer;
- In practice it may be that only two or three options are realistic and possible placement options for a child (complexity is linked to number of children, ages and competing/individual needs) and it will only be these that need to be considered in detail. But, it will **extremely important for the courts, for the parents and ultimately the child, that they understand precisely why one placement option has been preferred to another, that each option has been carefully considered with the positives and negatives balanced in a way that puts the child's welfare at the centre of the decision making process.**

National Adoption Leadership Board – Impact of Court Judgments on Adoption (Re and Re B-S) (November 2014)

- Courts must be provided with expert, high quality, evidenced based analysis of all **realistic options**;
- A court needs to be satisfied that no other realistic course/option will be in the interests of the child;
- The court does **not** need to see in-depth analysis of options which **are not** realistic for the child concerned;
- Nothing else will do i.e. adoption, does **not mean** settling for an option which will not meet the child's physical and emotional needs;
- The benefits of adoption should therefore be weighed up against the loss created by severing the legal link with birth family; this requires an evidenced based balancing of the gains and losses in terms of the child's welfare and takes into account the '*enhanced welfare checklist*' set out in the Adoption and Children Act 2002;
- This means that if the appropriate analysis has demonstrated that adoption is plainly better than any other option in the sense that it is the only and best option of meeting a child's needs, adoption should be pursued;
- The child has the right to live in their extended family and realistic options must be properly considered; but living in their extended family should not be at the cost of having their physical and emotional needs met;
- Children should only be placed with a connected person where the court is satisfied that the assessments reveal no real likelihood of the child coming to significant harm;
- High quality, reflective, evidence-based assessment is essential to underpin all social work and ensure that every decision is taken in the best interest of the child;
- Good quality evidence needs to be **more than** just history and narrative, but **provide clear assessment and analysis**;
- Expert analysis from the Social Worker and Guardian needs to be **evidenced based** and **focused on the factors in the case**, which analyses all the **realistic possible options** and which provides **clear conclusions** and recommendations, **adequately reasoned and based on evidence**;
- The Law is clear that the child's welfare is paramount and overrides parent's rights e.g. the welfare of the child might require a child to remain in an adoptive placement even though the circumstances of the birth parents have changed significantly, such as

where a child is likely to suffer significant harm (emotional or psychological) as opposed to short term distress, in the event of an adoptive placement being disrupted.

Factors Associated with Future Harm³

Items in *italics* most strongly associated with recurrent maltreatment.

Factors	Future significant harm more likely	Future significant harm less likely
Abuse type	Severe physical abuse including burns/scalds; <i>Neglect</i> ; Severe growth failure; Mixed abuse; <i>Previous maltreatment</i> ; Sexual abuse with penetration of a long duration; sadistic abuse; High continuing perpetrator access.	Less severe forms of abuse; If severe, yet compliance and lack of denial, success still possible.
Child	Developmental delay with special needs; Mental illness; <i>Very young – requiring rapid parental change</i> Low child visibility.	Healthy child; Attributions (in sexual abuse); Later age of onset; One good corrective relationship.
Parent	Personality disorder (anti-social, sadistic, aggressive); Lack of compliance; Denial of problem; Learning disabilities <i>plus mental illness</i> ; <i>Parental mental health difficulties</i> ; <i>Substance misuse</i> ; <i>Paranoid psychosis</i> ; Abuse in childhood – not recognized as a problem; Parental stress; History of assaultive behavior.	Non abusive partner; Willingness to engage with services; Recognition of problem; Mental disorder responsive to treatment; Adaption to childhood abuse.

³ Table taken from 'Decision making within a child's timeframe' (Ward and Brown (2012))

Parenting and parent/child interaction.	Disordered attachment; Lack of empathy for child; Own needs before child's; <i>Impaired positive interaction between parents and child.</i>	Normal attachment; Empathy for child; Competence in some areas.
Family	<i>Inter-parental conflict and violence;</i> Family stress; Power problems; poor negotiation, autonomy and affect expression; Large family size; Poor home conditions; Housing instability.	Absence of domestic violence; Non-abusive partner; Capacity for change; Supportive extended family.
Professional	Lack of resources; Ineptitude.	Therapeutic relationship with child; Outreach to family; Partnership with parents.
Social setting	Social isolation; <i>Lack of social and family support networks and lone parenthood;</i> Violent, supportive neighborhood.	Social support More local child care facilities; Volunteer network; Involvement of legal or medical services.

The mitigating value of protective factors⁴

- The presence of an non abusive partner;
- The presence of a supportive extended family;
- Parents adaptation to their own experience of childhood abuse;
- Parent's recognition that there is a problem and their willingness to take responsibility for it;
- Parent's willingness to engage with services.

⁴ Jones, Hindley and Ramchandani (2006)

Legislative Framework

Part 2 of the Children (NI) Order 1995.

'Child's welfare shall be the court's paramount consideration'

The Welfare Checklist

Under Section 3 (3) of the Children (NI) Order 1995, the court shall have regard in particular to –

1. The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding);
2. His physical, emotional and educational needs;
3. The likely effect of any change in his circumstances;
4. His age, sex, background and any characteristics of his which the court considers relevant;
5. Any harm which he has suffered or is at risk of suffering;
6. How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
7. The range of powers available to the court under this Order in the proceedings in question.

