

**CHESHIRE AND MERSEYSIDE LOCAL AUTHORITY PRE-COURT
PROCEEDINGS PROTOCOL**

(Being an identified part of the Public Law Outline)

Introduction

1. A decision to intervene legally in a child's life and family is a significant one which will have major consequences for that child. It is crucial that any decision to do so is based on clear, evidenced-based assessment and care planning which demonstrates what attempts have been made to manage the risks and support the child to remain in their family.
2. The Family Justice Review (November 2011) has stated that care proceeding cases take far too long, taking on average 52 weeks. In Cheshire and Merseyside the average time taken for care proceedings cases (between April – September 2011) was 65 weeks. The Review has recommended that this timescale be reduced to 26 weeks and that the system should become more child-focussed.
3. In the light of such recommendations, Her Honour Judge de Haas QC and the Directors of Children's Services have requested that a regional pre-court protocol is developed for social workers outlining the focus of work to be completed prior to and / or in conjunction with the PLO being initiated in 'slow burn' / multi issue cases where, for example, alcohol/substance misuse, neglect, emotional abuse, parental learning disabilities are key factors.
4. This document has been drafted in conjunction with colleagues from Cheshire and Merseyside, Lancashire and CAFCASS with a view to producing a protocol for proposed social work and pre-proceedings evidence to be presented to the court in Merseyside and Cheshire. It supplements the guidance given in the Public Law Outline. It is aimed to be a useful guide and reference point for practitioners in the hope that the Merseyside and Cheshire Family Courts will be in a stronger position to complete care proceedings cases within 26 weeks. It is also intended to improve the quality of social work assessments and plans submitted to court in such cases.

Context

5. The Munro Review of Child Protection recommended extensive changes to the day-to-day delivery of child protection services. Greater emphasis has been placed upon early help and support, a better balance between professional judgment and central prescription and improved supervision and professional support of social workers who should be encouraged to adopt a 'healthy scepticism' when working with families with complex problems. These measures are intended to raise professional standards, promote shared responsibility with partner agencies, and give more time for direct work with children.

6. Munro also highlights the importance of evidence based social work that is underpinned by relevant research findings. In *Safeguarding Children Across Services: Messages from Research* (C Davies and H Ward), 2012 an overview of key messages from 15 studies is presented for social work practitioners who deal with some of the most complex cases. Some key messages from the research are listed below:
 - A. Maltreatment is known to have a negative impact on children's physical, cognitive, emotional and social development and is linked with conduct and emotional disorders, delinquency and criminal behaviour, risk-taking behaviours, addiction and suicide. The consequences may persist into adulthood and be linked to adverse outcomes such as physical and mental health problems, reduced employment opportunity, social exclusion, intimate partner violence and abusive parenting.
 - B. Neglect and emotional abuse are associated with the most damaging long term consequences for children. It is cumulative and pervasive and its consequences are especially severe in early childhood (0-3 years) where it can affect an infant's ability to form a secure attachment with an adult caregiver and to develop trust in others to provide a stable environment. Early detection and effective inter-agency intervention can make a difference to children's developmental progress and ensure that such maltreatment is sufficiently recognized and acted upon in a timely manner.
 - C. In the first 6 months of a child's life, positive interactions are more important than interacting with specific people. At 7 months, however, a maltreated child starts to develop maladaptive attachments. Also at about this age, looked after children in short term placements may start to develop secure attachments to carers, the loss of which, particularly in the early years, can be sources of enduring distress. A recent study of attachment in adopted children found that those who were adopted before 12 months of age were as securely attached as their non-adopted peers, whereas those adopted after their first birthday showed less attachment security than non-adopted children. Therefore if children cannot live with their birth parents, early separation and speedy progression towards permanence are likely to be the least damaging courses of action.
 - D. 1 in 5 babies who experience significant harm are doubly jeopardized – being left too long at home waiting for parents to improve and remaining too long with interim carers and experiencing disrupted attachments by the time they are finally placed for adoption. Proactive case management is therefore crucial to ensure that child development timescales remain at the forefront of social work assessment and planning.
 - E. Repeated attempts at reunification should be avoided – this can be damaging to children's well being and could jeopardize the chances of achieving permanence via alternative routes.

- F. Parents who have not overcome complex problems involving substance misuse, alcohol misuse, mental health and domestic abuse by the time the baby is 6 months old, are less likely to do so within an appropriate timeframe for the child – although they may later make sufficient progress with parenting a subsequent child.
- G. Access to therapeutic parenting input early on is important – and likely to be more effective than dealing with the consequences of parenting issues at a later date.
- H. Adult services/Children’s services play a key role in recognizing the risks to children’s welfare and making appropriate referrals to Children’s Social Care.
- I. Child protection planning should not exceed 6 months generally.
- J. The prospect or actuality of criminal proceedings should not hamper the timetable of Social Work case management generally.

Pre-Court Protocol: Key Principles for Local Authority Effective Practice:

- 7. In view of such research findings and the Family Justice Review recommendations, it is suggested that the following principles underpin a regionally agreed protocol on dealing with cases prior to the commencement of legal proceedings:
- 8. The Social Worker’s statement should incorporate the critical issues which follow hereafter.

Critical Issues for all social workers pre proceedings

- a) Name of child/children and dates of birth (where they are living together with identity of school and any related half siblings)
- b) Name of mother and any partner (with address and date of birth and any other names).
- c) Name or names of fathers (with address and date of birth and whether or not there is Parental Responsibility)
- d) Name of extended family/friends involved or potentially to be involved as prospective carers or capable of providing assistance as to care (together with addresses as to those persons)
- e) Special needs/mental health issues of any party. Consider reference to adult disability/learning services.
- f) Special needs/mental health issues of any child including any medical issues in relation to the child.

- g) What is the timetable for the child and, in particular, what are the significant dates in the child's life in the next 6 months which are relevant to any plan for the child.
- h) Specify child protection issues in relation to any child.

Examples:-

- i. Alcohol
 - ii. Drugs
 - iii. Neglect
 - iv. School attendance
 - v. Domestic violence
 - vi. Home conditions
 - vii. Chaotic lifestyle
 - viii. Failure to control children
 - ix. Mental health
 - x. Financial difficulties
 - xi. Physical injuries
 - xii. Emotional abuse
 - xiii. Sexual abuse
 - xiv. Ill treatment
- i) What are the agencies involved; who has expressed concern/made referral, what is the nature of those concerns namely;-
- i. School
 - ii. Health Visitor
 - iii. Doctor
 - iv. Police
 - v. Housing Authority
- j) Investigation may be required from those agencies together with disclosure from those agencies.
- k) Having identified the risks/issues can these be addressed by the carer/s (or by the carer with assistance from extended family/friends or local authority).
- l) If the risk can be addressed by what specific measures?

Examples

- i. Improvement in school attendance
- ii. Improvement in home conditions
- iii. Drug testing/rehabilitation
- iv. Drink testing/rehabilitation
- v. Mental health advice/psychiatric treatment
- vi. Parenting Course
- vii. Freedom programme
- viii. Anger Management programme

- m) If risk can be addressed which agencies need to be involved to address risk? Have they agreed? What is involved? What is the timescale?
- n) Has an agreement been reached with the mother/father/carers to address specific issues of child protection/concerns? What is the timescale for the agreement? What is the process of monitoring whether or not the issues are being addressed? (There should be a time limited agreement so that any significant harm to the child is addressed)
- o) Is a Family Meeting/Conference being held for the following purposes:
 - i. to address the issues
 - ii. to address support mechanisms
 - iii. to obtain assistance from other agencies and/or kinship carers
 - iv. to identify kinship/friends carers
- p) If an agreement has been reached with the carers it should be specified what is to happen if the agreement is breached in particular
 - i. have kinship carers been identified and assessed (as a contingency)
 - ii. is the agreement clearly understood, particularly the trigger factors which may result in proceedings/removal of children/placement with kinship carers.
- q) Are there any services which can be provided or should be provided to address the issues? (e.g. parenting programme)
 - i) what are those services?
 - ii) are those services provided on a time limited basis? If yes, what?
 - iii) who is to access those services and who is to monitor compliance with those services and report as to whether those services have addressed the risks.
- r) Is it clearly understood by the carers what is the aim / objective of those services and/or assistance provided?

Pre-Proceedings Meetings and Letter

9. Pre-proceedings letters should be considered in all cases and, in particular, it may be appropriate to send the same together with the plan to address issues to parents at the earliest opportunity with a time limited agreement so that for the parents there is availability of legal advice and, if necessary, consent can be obtained (where appropriate) to a specialist assessment.
10. Pre-Proceedings letters follow or precede a pre-proceeding meeting with the parents, their legal representative, the local authority social worker and legal representative, chaired by the local authority. This provides

face to face opportunity to set out very clear expectations of the parents in respect of improvements required in the parenting of their child / ren. The resultant minutes should provide an open and transparent record of measures required to improve the children's circumstances.

Proceedings

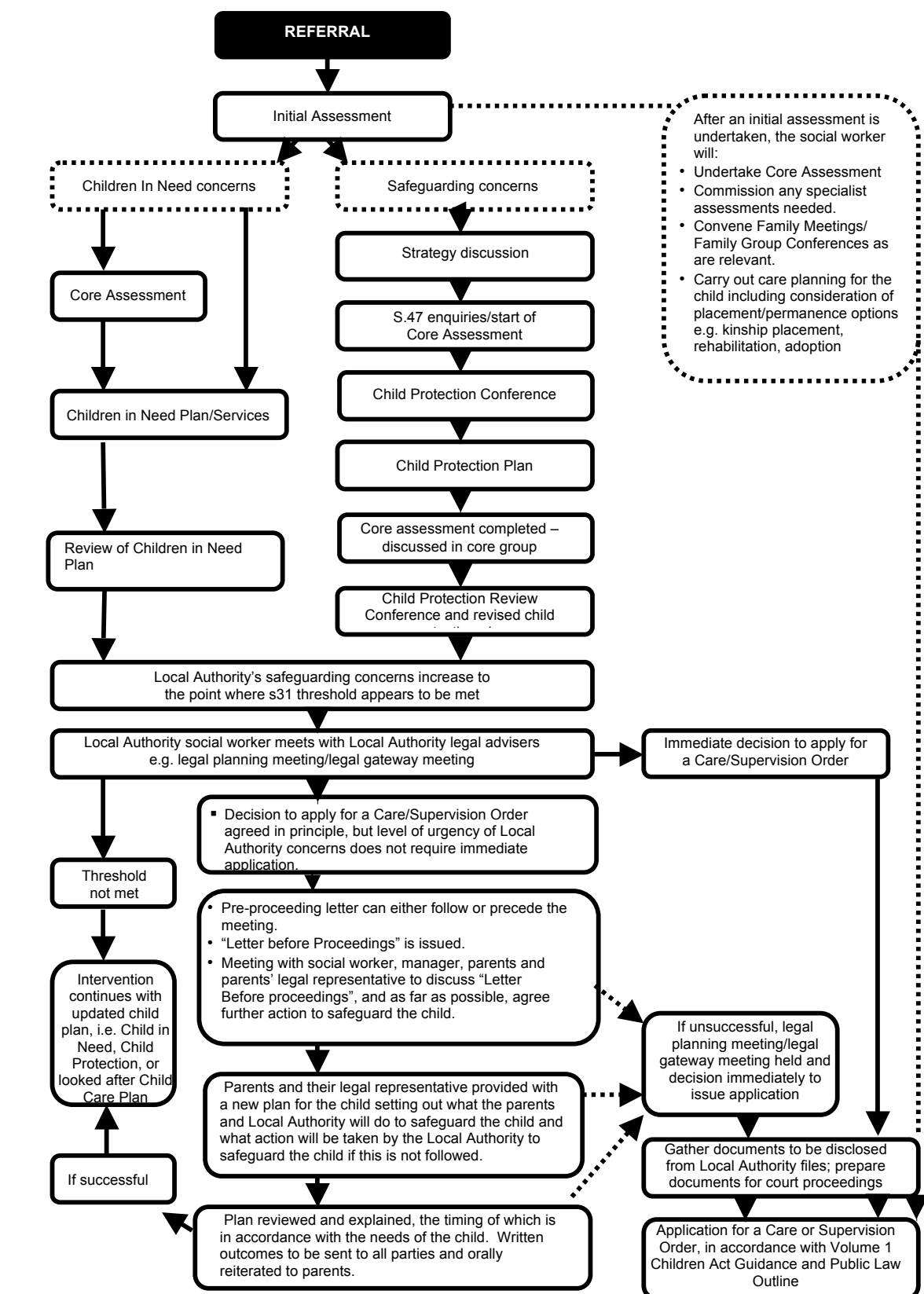
11. If proceedings are to be issued, local authorities should issue proceedings with an identified objective (Practice Direction 12 (A) and should outline what are the issues in this case together with the realistic options for the child. The Social Worker's statement should include a detailed analysis of all potential realistic outcomes but should concentrate on why the outcome proposed is the preferred outcome.
12. All evidence upon which the Local Authority rely should be prepared in advance (including alcohol and drug testing, parenting assessments focussed on the issues, and relevant disclosure from all third party agencies).
13. At the outset of proceedings there should be a clear analysis as to capacity to change of the carers and to sustain change within the timetable for the child (having regard to the timetable for each child in the context of the significant harm which the child has already experienced).
14. Specialist assessments should, appropriately, have been commissioned prior to proceedings having regard to the issues and having regard to any consent by the carers and should comply with the Experts Practice Direction. Medical records will be required.
15. However, it will be very rare to commission specialist assessments where there are issues of consent in the context of capacity/psychiatric issues. The need for proceedings should immediately be considered in such cases.
16. Local Authorities should have identified any learning disabilities and / or any other specialist assessments prior to proceedings. A parenting assessment must take such disability into account.
17. Local Authorities should have identified and completed all relevant and full assessments in relation to extended family members and friends prior to the commencement of care proceedings.
18. Family Meetings/Conferences should have been considered prior to proceedings as a useful tool in the identification of potential friends/family carers. In all cases a family tree should be drawn up. It should have been clearly explained to the family the need for identification of alternative carers.
19. A detailed chronology should be completed from the outset which provides a historical context of significant events i.e. previous child protection plans of child/siblings, number of agency referrals and nature of current concerns. This detailed chronology should identify for how long a child/children have been the subject of social services involvement

(such being a useful tool to analyse what significant harm, if any, the child has been exposed to or suffered thereby dictating the timetable and needs of the child).

20. The wishes and feelings of children and young people should be clearly evidenced in all assessments and plans.
21. In all cases Local Authorities should identify the needs of each child in terms of realistic options and in terms of the timetable for each child in the context of the significant harm to which the child has already been exposed or is likely to be exposed.
22. Each Local Authority should establish robust local procedures to oversee such cases and ensure that the principles set out above are implemented. These procedures should include appropriate legal advice and senior management oversight. Decisions to issue care proceedings will come within this framework.
23. Any professional development of social workers should include learning from serious case reviews and equip the social worker with confidence to present evidence based assessments and plans in court.
24. The social worker is the case manager and should be equipped to present the evidence succinctly to the court and be prepared for challenge.

Appendix 1 – Cheshire and Merseyside Local Authority Process

Flowchart – Pre-proceedings – Public Law Outline



Appendix 2: Guidance

Chronology

It is important to understand the history of a case by reading files, understanding the context to presenting risk factors and producing a chronology.

The chronology should not be a list without value but, rather, a record of significant events which place the current concerns in context. It needs to reference what happened prior to the period of current involvement and provide sufficient detail to understand the timeline of events. It should underpin the core assessment and be regularly updated to reflect emerging issues and significant events.

Genogram

A genogram should be completed that reflects the work undertaken to identify key family/friends and the nature of often complex relationships.

Core Assessment

The Framework for the Assessment of Children in Need and their Families Statutory Guidance provides the holistic framework upon which all assessments should be undertaken.

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008144

A robust multi agency core assessment will form the basis for all future planning and intervention and lay the foundation for future legal argument should care proceedings be initiated. It is too late to complete a core assessment once the case comes to court. The core assessment should be completed with a view to identifying need, take account of history and a range of other factors including children's developmental needs. It should be the tool for gathering evidence from a range of agencies early on and clearly underpin the subsequent plan. It may be useful to hold a meeting with agencies at the start of the assessment process in order to agree how the assessment will be completed, who will do what, how the information is to be obtained and within what timeframe. The core assessment should contain detailed analysis of the impact of presenting behaviours upon the parenting task in the light of the developmental needs of children and not simply provide a narrative of key issues and concerns.

Risk Assessment

Social workers must constantly consider, and make judgements about, whether a family's care of a child is safe enough for the child to stay within the family or whether safeguarding concerns are so significant that the child must be removed, or if in care, whether it is safe enough for them to return home. These decisions are 'risk assessments'. The task is not a one off event or

periodic undertaking rather it is something the social worker must do constantly with every case.

A risk assessment should be incorporated into the existing core assessment document and be subject to continuous review via the child in need, child protection and children looked after review systems. However, where the risk identified is more complex or relates to a specialised area of work, a dedicated risk assessment document may be completed.

Models of risk assessment tools vary significantly across the region. However, all risk assessments should be undertaken on a multi agency basis with a clear emphasis on information sharing to support and safeguard the child.

Risk is about uncertainty. Risk assessment is a process where this uncertainty is recorded and reviewed. Risk assessment leads to increased focus and clarity in order to reduce the uncertainty. (Bruce Thornton). Risk assessment focuses on evaluating the effect (impact) on the child and the likelihood that this is going to happen. Risk assessments should:

- Be clear regarding what is being assessed
- be holistic in nature,
- include a genogram,
- record the voice of the child and family
- Be shared with the family
- Be part of everyday practice
- Be recorded and evidenced to support decision making
- Reference tools used to inform recommendations and decisions

In *Signs of Safety – a solution and safety orientated approach to child protection casework Approach* (A Turnell and S Edwards 1999) it is argued that strengths as well as deficits should be clearly acknowledged in risk assessment. The focus should be on opportunities as well as dangers in order to increase the potential for good outcomes. It is also argued that change and the removal of risk from within the home can be achieved by establishing a co-operative relationship with the child, parents, carers and extended family.

Key to the risk assessment process is an acknowledgement that precision is impossible to achieve. Therefore there has to be a consideration of probabilities and the analysis of risk factors which, in turn, relies upon gathering information regarding the combination of circumstances and characteristics that suggest risk may be present (M Calder). Social workers need to use judgement and balance and consider the value and likelihood of the possible benefits of a particular recommendation or decision against the seriousness and likelihood of the possible harm. Such decisions may need to be made in conditions of uncertainty. However, every effort should be made to ensure consistency in decision making as stated in the Munro Review of Child Protection:

Harm can never be totally prevented. Risk decisions should, therefore, be judged by the quality of the decision making, not by the outcome.

The standard expected and required of those working in child protection is that their risk decisions should be consistent with those that would have been made in the same circumstances by professionals of similar specialism or experience.

Specialist Assessment

Specialist assessments may be required in order to understand an individual's parenting ability in the context of alcohol misuse, substance misuse, sexual offending, domestic abuse, mental health, learning disability etc.

It is suggested that such assessments, including drug testing of parents, takes place prior to the commencement of proceedings where possible. It is acknowledged that there may be issues in relation to commissioning a specialist assessment before court, including funding considerations. However, leaving this task until the court process commences can seriously lead to delay for the child. It is, therefore, suggested that social workers explore the possibility of specialist assessments prior to the commencement of proceedings and not leave to court directions. Where it has not been possible to secure parental co-operation to such an assessment in advance of a court hearing, this should form part of the evidence that is eventually submitted in proceedings.

Psychological assessments should only be required in certain circumstances and should be commissioned prior to the commencement of proceedings in order to reduce delay and evidence the attempts to engage family members voluntarily without a court order. The purpose and expectations of such an assessment should be clearly defined with an emphasis on analysing the impact of presenting problems on the capacity to parent effectively within the child's developmental timeframe.

Greater attention should be paid to the needs of parents with learning disabilities and their entitlement to an assessment that is compliant with the parenting assessment manual. The Government White Paper Valuing People – A new strategy for Learning Disabilities for the 21st Century (2001) stated that parents with learning disabilities are amongst the most socially and economically disadvantaged groups. They are more likely than other parents to make heavy demands on services and have their children looked after by the local authority. People with a learning disability can be good parents and provide their children with a good start in life, but may need considerable help to do so.

Family Meetings / Conferences

Family Meetings / Conferences should be held as early as possible in the case in order to identify potential family carers or sources of support. It is suggested that such a meeting should initially be held prior to a child being made subject to a child protection plan – and no later than 18 months after a child protection plan has been made if there are concerns about lack of progress. The timing of the meeting will depend upon the circumstances of the case, but the emphasis should be on recognising the need to raise the profile of safeguarding concerns amongst extended family at the earliest opportunity – rather than wait until the commencement of proceedings.

There are a number of Family Meetings / Conference models to draw on and consideration needs to be given to whether the process is best facilitated by someone not directly involved in the case. However, the key tasks remain the same regardless of who this is. These are:

- Involvement of wider family group in making plans and decisions for children and young people.
- Building on strengths of families and communities.
- Use of genogram to identify full family network
- Clear agenda, objectives and support identified prior to a meeting with consideration given to suitability of venue and timing of meeting
- The family to agree a plan that meets the needs of the child and the issues identified by the social worker
- Close monitoring of plan

Training

Training for social workers should focus upon equipping them with the confidence to present evidence based assessments and plans effectively within a courtroom setting. A consistent approach to court skills training across the Cheshire and Merseyside region should be developed.

Appendix 3: CAF/CASS Position

There are rising numbers of children requiring a service from Cafcass, combined with significant delay in care proceedings in the local area.

Cafcass believe that in order to successfully refocus the role of the court pre-proceedings work needs to be carried out effectively by local authorities in more cases than at present and that the court should then give this work due recognition by not permitting assessments to be duplicated within proceedings.

A re-focusing of the work done at this point should lead to a reduction in the need for further expert assessments, and a reduction in the length of proceedings and the number of contested hearings.

We support local strong performance agreements and protocols between family justice agencies and local authorities, setting out clear expectations and consider that IROs also potentially have a powerful role to play in constructively challenging poor practice both at the pre-proceedings stage and subsequently.

Cafcass believes that the child's needs and timetable should be given greater focus and prominence within the family justice system with cases completed where possible within six months, and more quickly in infants' cases. A key feature of change in care delay is the need for stronger performance management of all agencies in order that our combined resources are used to help children in the most effective way.

Appendix 4: Operation

The Protocol will come into force from 1st July 2012. It will be monitored by the Directors of Children's Services and the Designated Family Judge (DFJ) for Cheshire and Merseyside. It will be reviewed at all meetings held by the DFJ with the Directors.

References/Resource Materials

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