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Title: The legal side of permanence

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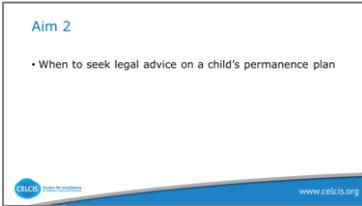
You are watching a webinar about the PACE programme from the delivery team in CELCIS, at the University of Strathclyde. PACE is a Quality Improvement programme aiming to reduce drift and delay in permanence planning for looked after children. These webinars were recorded in the spring of 2020, so please be aware that key changes in legislation guidance and practice may have occurred since this time. This webinar was recorded live as part of the PACE Collaborative programme. In this webinar, you will hear about the legal side of permanence. The session is delivered by Kirsty Doull, a consultant for the PACE programme and Heather Milne of West Dunbartonshire Council.



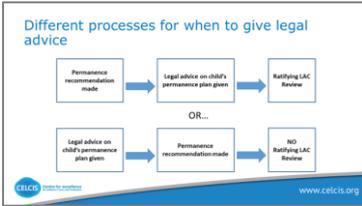
(KD) The legal aspects of permanence planning: the reason we wanted to do a webinar on this topic is that we recognise that solicitors are absolutely key to helping to progress permanence plans for looked after children and young people. That is why we asked that all the PACE teams have a solicitor on them.

So today we wanted to focus a wee bit on the legal aspects of permanence planning, and some of the key areas that legal teams have been involved in both in the PACE Collaborative areas and other PACE areas. I've tried to theme this around our PACE aims; so we'll talk a bit about the change ideas involving solicitors in Aim 2 - which as you know is from the date a child is accommodated to the date a permanence recommendation is made - and also in 4, which involves lodging a permanence order (PO) or a permanence order with authority to adopt (POA) application in court.

We'll also talk about some general change ideas that are being tested. I'm then going to hand over to Heather, who is going to talk to us about her involvement as solicitor sitting on the West Dunbartonshire PACE group.



(KD) Starting off with Aim 2 then specifically around when is the best time to seek legal advice on a child's permanence plan.



(KD) From working with a number of local authorities, we're now currently working in or have been in 27 local authority areas, we have found that there are generally two different processes for getting legal advice on a child's permanence plan.

The first one is where a permanence recommendation is made either at a Looked After Child (LAC) review, a legal advice meeting or a permanence planning meeting and *then* the solicitor provides legal advice on the child's permanence plan. This then means that the child's plan has to be presented again, usually what is known as a ratifying LAC review, to be fully ratified for recommended once the social worker has received the legal advice.

The other way is where legal advice is given before the permanence recommendation is made, meaning that there is no need for a ratifying LAC review and so this takes out a potentially unnecessary step in the process, whilst also ensuring that the social worker has the benefit of legal advice before they ask for the recommendation to be endorsed. This is an example of where we don't radically change a process. Advice is given and permanence recommendation is made either way, but simply changing the order in which we do these two things can have great benefits.

Early legal advice...

- Ensures that Social Work have the benefit of legal advice on a permanence plan for a child BEFORE asking for a permanence recommendation to be made
- Negates the need for further assessment / gathering further evidence later on in the process
- Ensures all options may be ruled in or out (with evidence) at an earlier stage = more robust case for court
- Well evidenced plans = getting to court quicker

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(KD) Our view is that in general, the earlier legal advice is sought the better. It means that social workers have the benefit of legal advice before they ask a LAC review or other forum to make a permanence recommendation. This means that they have the most robust case they could at that stage, and so will hopefully feel more prepared when seeking the recommendation. It also means that the LAC review has the benefit of the legal advice or at least knowing that the social worker has sought legal advice on the child's permanence plan.

It can sometimes prevent the need for further assessments to take place further down the line. For example, if advice is given early on that more kinship care options should be explored, this can be done at the earliest possible stage. Linked to that is the fact that social workers can get advice about what specific evidence they either need to gather or explicitly explain at an early stage. Further, we know that the more well evidenced the child's plan is, the quicker the process will be to get an application lodged in court.

Aim 2 Change Ideas



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(KD) So I now want to talk a little bit about some of the key change ideas that have been tested that involve legal advice and Aim 2.

One area has successfully tested and then implemented the removal of the ratifying LAC review, and has sought legal advice before the LAC review that makes the permanence recommendation. This obviously means that other things had to be put in place in order to do this; for example, a timescale put around requesting legal advice, ensuring that an assessment of parental capacity was available to the solicitor in good time etc. But it did result in the removal of an unnecessary step in the process, and this saved approximately four weeks in their process.

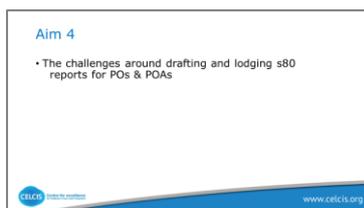
In general, a number of areas have decided to seek legal advice before a permanence recommendation is made, with one area implementing a process for requesting this advice via a referral form. This form asked the social worker to fill in key information about the child and the proposed plan. For example, does the child's father have parental responsibilities and

rights? What specifically is the recommendation the social worker would like to make? What is the evidence for this recommendation, etc.

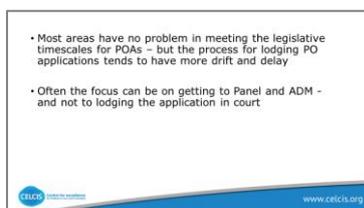
It also has a checklist for key reports and assessments that should be sent to the solicitor. There's also a timescale around this, to ensure the solicitor has enough time to study the paperwork and give the advice in plenty of time, ahead of the permanence recommendation being made.

One area has set up a kinship care panel, which is currently meeting once a month. This panel is not just about approving allowances for kinship carers, but also for approving a child's permanence plan to live with kinship carers, and to approve family members as kinship carers. This has made the plans for kinship care are given similar scrutiny to other permanence plans and there's also a legal advisor to this panel.

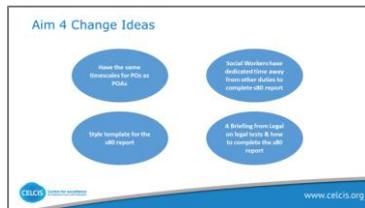
West Dunbartonshire have tested holding a permanence planning meeting which makes a permanence recommendation for children with a plan to live in kinship care. I'll let Heather speak more about this later, but it is worth mentioning as it led to further discussions about processes for children in kinship care.



(KD) Moving on to Aim 4 then and looking at some of the challenges around drafting Section 80 reports and the process for lodging PO and POA applications.



(KD) We found that most areas consistently meet the legislative timescales for lodging PO applications, but often find that without such timescales for POs, PO applications can often drift. We also find that sometimes the focus is primarily on getting a child's permanence plan approved by the panel and then the ADM (Agency Decision Maker) and not so much focus is placed on lodging PO applications in court.



(KD) So I just want to talk briefly now about some of the key change ideas that are being tested around this part of the process.

The most obvious one is fixing the same timescale for lodging POs as is in place for lodging POAs. Whilst this may raise capacity and resource issues, it nevertheless serves to highlight that all forms of order securing permanence for a child are just as important as each other. Children who need a PO should not wait any longer than those needing a POA for their application to be lodged in court.

Something as seemingly basic as having a clear style template for the Section 80 report with the necessary statutory headings has been tested and has, as you would expect, found to be helpful.

Another idea that is being tested as the provision of a briefing note from legal which outlines the necessary legal tests and some advice on how best to complete the Section 80 report. This is given to a social worker at the panel that recommends the application should be sought. The feedback so far is that this was very helpful for a social worker who had not drafted the report before.

Also being tested in a number of areas is a social worker having dedicated time away from other duties to complete the report. This has been successful so far, as we know that without such time other duties, such as child protection, can take priority and the drafting of the Section 80 report can slip to the bottom of the to do list.



(KD) Some ideas have also focused on improving the quality of the report, with one area testing a quality assurance process, whereby the report isn't sent to legal until a social work manager has double checked it.

Another idea is providing a social worker with mentoring support for completing the report from a worker who's more experienced in writing them. This is because we know that some workers don't routinely do this

type of work, and this will hopefully demystify some of the complexities around this part of the process and the drafting of the report.

Linked to supporting the worker who is drafting the report, is the idea that has been tested in a number of areas where a solicitor occasionally works in the same office as social workers. This again should hopefully take some of the perceived fear of completing the report.



(KD) I've noted on this slide, some other ideas that are being tested that mainly fall within Aim 3.

One idea is taking the Section 80 report to the permanence, or the approval and matching, or fostering and adoption panel, rather than the Child's Adoption and Permanence Report (CAPR). In addition, there is another test of simply not taking the CAPR panel at all, and relying on information provided in other reports. The rationale for these tests is that they hopefully provide an earlier opportunity for the Section 80 report to be drafted even if it necessarily can't be fully complete at this point, and also reduces some of the work involved in completing both the CAPR and the Section 80 report.

One area has tested having a legal discussion to prepare the case for the permanence panel within two weeks of the permanence recommendation having been made. This allows for solicitors to be involved in ensuring all necessary paperwork is being presented to the panel.

Further, there are many examples of joint training between solicitors and other agencies to, again, try to demystify this part of the process and also to be clear about necessary legal tests.

I'm now going to pass over to Heather, who's going to talk through her experience of working in PACE in West Dunbartonshire, and some of the key change ideas that involve solicitors that they have been working on.

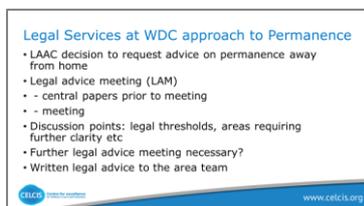


(HM) Hello, everyone, it is Heather here. So just as a bit of an introduction, myself and one of my colleagues, Maureen, principally deal with the child law cases at West Dunbartonshire Council.



(HM) Last October, we attended the PACE 2-day workshop, and as some of you may be aware, this is an introduction to PACE and how it works and how that programme will go forward. It also leads on to an identification of PACE leads who will take the programme forward within your local authority area. I took on that role from the legal department within the council and I have attended the meetings thereafter. Within West Dunbartonshire Council, we meet with Kirsty and Carol Ann, our Data Analyst, once a month it is now, previously, it was a slightly more intensive level, it was once every two weeks, for around two to three months, I believe, and then it dropped back to the monthly meetings.

So just in terms of the structure of PACE, and the way West Dunbartonshire are approaching it. It definitely gives you the opportunity to be in a multi-disciplinary a meeting with professionals from different backgrounds. Obviously SCRA are a feature of the PACE programme and our locality manager for North Strathclyde comes along to the meeting, as well as the wider network for children, including foster carers, nursing, education - it's a really helpful meeting for there to be all those disciplines represented.



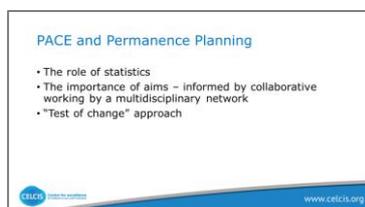
(HM) In terms of how West Dunbartonshire Council approach permanence planning, we are from the field of thought that we hold a legal advice meeting. As Kirsty mentioned earlier, I think there's principally two ways that local authorities approach this, either as a paper exercise or as a face to face meeting. Obviously there would be different factors which inform

that decision, such as geographical issues and so on. Essentially, at West Dunbartonshire a LAC meeting makes a decision to request legal advice from our department and at that point that is arranged, and we receive the principal papers for that child or that sibling group. If there's anything missing from the papers, obviously this is requested and a meeting is identified.

In advance of the meeting, with holding the papers, clearly, there's the opportunity to identify any areas you think needs to be followed up at the meeting. Also to be abreast of the circumstances, as you would expect. In the meeting, I find that to be a really helpful way to approach permanence planning. Whilst the reports and papers are helpful, there's often work that perhaps a social worker has completed with a family that's maybe not included, whether that's just oversight or it's a new factor or new work that's been completed with the family you can touch on that.

As you'll be aware as well, these matters in these cases are very much a moving feast often, and things will have changed perhaps with contact, or with mum, or dad - even in the timescale from arranging the meeting until the meeting actually taking place, as often there's a number of weeks between.

If, at the end of the meeting, we feel like there's other issues which need to be looked at - as you'll be aware, we often identify areas where we think there needs to be further exploration or there's further evidence that's necessary - then at that point, there would perhaps be a decision for a follow up legal advice meeting to take place and subsequent weeks or in the early months. Otherwise, if we do feel at that stage, that we have enough for the threshold, we would give a verbal decision at that meeting and thereafter issue written legal advice on the point which will summarise roughly why we think the threshold has been met and that set of circumstances.



(HM) When PACE first came into West Dunbartonshire Council, one of the things which I felt was hugely helpful from the outset, I've noted it as statistics on the slides, but then on reflection I thought, actually, it is data (and Carol Ann's our data analyst). So, apologies for that. But certainly it is the introduction of data, and our specific data for our area, and how that highlights and demonstrates the trends in our area. That's hugely beneficial, because you often don't see it in black and white, and I'm sure you had a similar experience when you have that data put before you.

This introduced at a very early stage where we were performing well, and also those areas where we felt that there would be areas for some further work.

I've put at the bottom of the slides about tests of change, which will be a term that you're familiar with, but certainly the data links up with that, in that, the data allows us to develop our aims, based on where we feel we need to address and thereafter, you would then have your tests of change to try and affect real positive changes for the children behind the data.

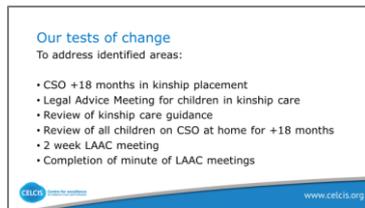
Just to touch on the tests of change just very quickly. Obviously I said earlier about the meetings that we have, they are multi-disciplinary and the tests of change are very much developed by that multi-disciplinary network and with all of the information that they have to share, which I think does lead to the best outcomes in terms of the tests of change.



(HM) So leading on from the data, our areas which we felt we should perhaps focus in on. One thing West Dunbartonshire have is quite a large kinship population, that might be a similar in some of your areas as well, and the data really demonstrated that. You'll see when we move on to some of our tests of change, quite a few of our tests address or try to address that issue and try to improve upon our approach to our kinship children because they do make up such a large number in our population of looked after children.

I've touched on this area when I was speaking earlier, about areas where we were performing well and other identified areas where perhaps there was a bit more work required. I think what will be consistent across Scotland is that areas where we're performing well, is the workers that are behind these cases, and how committed they are to the children that they are looking after, and developing care plans for. That was something that was definitely highlighted, that there's a real passion to address where there are perhaps areas of delay and a commitment to do that.

In terms of areas of delay, I don't think it's helpful for me to go into too much detail about what our specific aims are, as each of our areas will have our own and we will know what we're committed to. But perhaps later in the discussion it'll become clearer where we're trying to address.



(HM) Our tests of change - I've just put on an overview of those on the screen at the moment. So I mentioned earlier about the way that West Dunbartonshire Council approach permanence planning from the offset.

This actually isn't on the slide; we, as a first test of change, developed guidance for social workers attending a legal advice meeting, which is a bit of an aide memoir - it identifies the areas where we think they would really have to almost know the answer to that before coming along. Those are the areas we would be asking questions about and that'll follow what you would be asking of your workers as well: who mum and dad are, where they are, what's the position, contact, birth certificate in place, current CSO. All the basic levels necessary that we would be asking of them.

Moving on from that one, taking the first test of change on the list. As I said earlier, we do have a big kinship population. So one of the first things we looked at was children on a compulsory supervision order in a kinship placement for more than 18 months - Kirsty mentioned this earlier as well. I took on a specific test of change, whereby I would hold, with a social worker, a meeting in a legal advice meeting format, whereby I would have papers in advance about that child or that sibling group, and that kinship placement, have some additional questions and meet with them to discuss the care plan for those children and to look at whether the test of necessity was still in place for that CSO. Moving on from that whether we could better secure that child in that placement if it is going to be a permanent placement.

What I found was helpful, arising from those meetings with those social workers, was that social workers so often deal with the Children's Hearings System and then they will deal with permanence proceedings, and direct adoption proceedings in our area. But perhaps they're not as familiar and comfortable with talking about a Section 11 order and how that process works because they're not generally a part of that, and they're not the ones that are pushing that forward, it would be very much the relative - the kinship carer - that would do that.

I felt it was useful time spent to meet with a social worker and also be able to give them a bit of advice on that, which they can then relay on to a relative or kinship carer, and hopefully support them to feel informed and they can then take that forwards when they seek the advice of a solicitor.

Another aspect which kinship has brought up in our area was, would it be appropriate for the local authority to apply for a permanence order for children in that situation? That's something that quite often comes up. Obviously in terms of minimum intervention of the local authority, if a kinship carer is looking after that child, and there's not a huge role or remit for us, it clearly doesn't meet the threshold for that. But in those situations where perhaps we are intensively involved, and that's likely going to remain the case, and where that kinship carer is keen not to perhaps be taking the fight to court, I think that's often an issue. We can certainly support them with that.

It tended to be that a Section 11 order was more appropriate. But certainly it was still useful to have the discussion and to be reviewing whether that would be the better way to secure the child in their placement.

Just following on from that, we did realise in discussion at our PACE meetings that perhaps it would be helpful to review our kinship care guidance for kinship carers. As I've discussed, feeling empowered in terms of information, assists them in going forward to instruct their solicitor. One thing that we felt we did have to address and make clear was what support, in terms of professional support, but also, financial support would be available to kinship carers if they were pursuing a Section 11 order. Certainly, that guidance explains that in better detail. It also addresses any concerns and the overlap with continuing care – the new provisions under the 2014 Act - and the impact on when a Section 11 order has been granted for a child in a placement.

Just looking thereafter, there was a whole PACE meeting approach to the Child Supervision Order (CSO) at home for more than 18 months. Whilst I took more of a lead on the kinship placement, the CSO at home was more of a peer review approach to this matter. It was looking at developing an aide memoire, it was a list of the legal tests for a CSO: what's the care plan; is the CSO regulating one specific issue; is there still a need for this, Or have the original concerns been addressed; and/ or would the family engage on a voluntary basis.

One of our initial aims from PACE was to review all the children who had been at home on a CSO for more than 18 months. Actually just recently, we have completed that aim - which was great - certainly we approached it and the way that there was a small group of social workers, plus myself, who conducted a paper exercise in the first instance to read through the background for the child and thereafter meet with the social worker to complete this review, following through the questions on the aide memoire, to review whether the CSO was still necessary in the circumstances. That was certainly really helpful. I completed five of those reviews; I think in two of them, the social workers are now looking to call a review panel and

maybe now we will look to recommend that perhaps the CSO is no longer necessary.

As you'll all be aware there are quite often difficulties, when a child is at home and a CSO is regulating a specific issue; perhaps the child's place of residence or contact with a specific parent. Those issues don't necessarily resolve overnight or quickly and that will often be held up as well in family proceedings and Section 11 orders. The social workers are always approaching it with the best intentions and it is to safeguard the child in the meantime, and that is something that we have to be quite practical about, that will be the necessity for the CSO in some instances.

Thereafter we looked at the care planning from the point the child comes into care. It might be replicated in other areas, we have a 72-hour meeting, once a child comes into care. When we had a PACE meeting, we discussed that actually, this is more about immediate care planning, what the days following accommodation will look like for the child, what they like - just basic planning. It's quite difficult to get into the nitty gritty of the concerns that led to that child being accommodated. Also, in the background, you've got if it's by Child Protection Order (CPO), a CPO hearing, second working day eighth working day. That's all really fresh and raw, and very much being litigated, and there's advocates in those forums and that is been discussed, but perhaps the 72-hour meeting isn't the best place to be discussing what exactly will be required of the parents. As such, we introduced a two week LAC meeting to our immediate care planning for children who've been accommodated. The feedback from the social workers involved is that that has been a really positive change, they do feel that they can get into what will be expected of the parents a bit better following a bit of time from accommodation. They can really set out what will be expected in terms of assessing their parenting capacity going forward and who they should be engaging with and everything you would be used to hearing. That's been the care plan for the last couple of months before we normally become involved.

Just at the bottom of that slide, I've added on that we felt it was really important to minute that meeting. That from a very early stage, the parents have been given fair notice that these are our concerns, and this is how we would like you to approach managing that and that we would certainly give as much support as we could in helping them to affect change for the benefit of the child or children.



(HM) As a final overview of our experience of PACE, I've touched on the benefits and challenges. I would say that it was quite difficult to come up with a list of challenges, I wouldn't say that there are any challenges at all with engaging with PACE. I found it to be hugely helpful to have that professional network brought together, that's something that, but for PACE, we wouldn't have had the opportunity to do and that does lead on to the benefits as I've identified on this slide.

The workers have responded to the tests of change, and these are small tests of change, and that's very much how they are introduced to the local authority area when PACE becomes involved. I think that's helpful in that the workers don't feel a bit overwhelmed by significant changes, and the idea that you can sample and try a test if it's not quite working well, or if you get information that says actually, perhaps we need to go down this route, then you can explore that.

I think it's really to always be evolving, and as I say, working on your data, to address those areas that perhaps needs to be improved upon slightly. I have found that to be a really helpful process. That probably leads me to the ends of my slides, and I can pass back to Kirsty.

(KD) That's great. Thank you very much for that Heather, and for sharing some of your experiences about PACE in West Dunbartonshire. So thank you, you've given us a lot of food for thought there. Linda, I was wondering if you have any particular comments on what you've just heard at all?

(LD) Hi, I'm one of the permanence consultants and didn't meet everyone at the (PACE) Collaborative unfortunately.

I have a couple of questions. First of all, I think we could clone Heather, I think every local authority could benefit from having a Heather. My first question was, because my area of interest is often very young children, I wonder, Heather, would it be appropriate to seek legal advice before a child is born? Particularly where it might be a child whose siblings have been removed? The other question I had was, do you have to have grounds established? Or is it possible for the local authority to seek a Permanence Order to Adopt (POA) without being in the hearing system?

(HM) So generally, my advice would be that I wouldn't be wanting to give legal advice on permanence before a child's born. My view would generally be that the case law suggests that you have to be reviewing on an ongoing

basis and the parents' circumstances and their ability to care. Whilst the department would have the benefit of a great deal of information from the older siblings, I wouldn't be recommending that we do not assess this new set of circumstances and the new born baby. As we'll all be aware, unfortunately, there will be a lot of cases where perhaps matters follow suit, and that baby is also accommodated for the longer term, but there are instances whereby a younger sibling is able to go home because there has been a positive change. So I would always approach in that way and I wouldn't want to give advice prior to baby being born.

The way I would generally approach the grounds of referral question, my view would be that I think we could be open to criticism if we gave legal advice prior to grounds of referral being established. For two reasons, obviously, you're on an interim compulsory supervision order during that process and matters are very much in the interim. But taking aside from that, I think it would really inform the parenting capacity assessment, whether the parents can reflect upon established grounds of referral, which have been established by a Sheriff and found to be true. If they aren't able to do that, my view and the social workers view tends to be that 'is this likely to happen again?', essentially, they can't reflect upon the concerns and see how they would adequately safeguard the child in the future. That would be why I would generally hold off for grounds of referral to be established.

(KD) Can I just add to that, as well? Just to add on to what Heather said. I think on your first point there, Linda, about legal advice before the child is born. I think for me, one of the key parts, in that very sensitive part of the process is keeping up communication between social worker, social worker managers, and solicitors involved because, as Heather says, it will obviously be an assessment of parental capacity, circumstances could change, but obviously, you're still being alive to the circumstances, that that led to previous children having to be removed from their care. So I think for me, while you couldn't give maybe necessarily as concrete advice as you would at, for example, when you recommend making a permanence recommendation, you should very much be having that dialogue and being in touch. So that should it get to, for example, a pre-birth case conference, your solicitors are very much involved in that as well and know the circumstances of the family.

(HM) If I could add, we do have certain cases which are quite complex, and there are complex grounds of referral. Even though we are not giving permanence advice, we're not at that stage. As you'll all be familiar with, we do have a high level of involvement with those workers anyway, just giving advice about the grounds of referral system, that process and supporting them with those proceedings.

(LD) I think I've had the benefit of legal advice for subsequent children, where the risks are high that that child will be accommodated from birth. That can be very helpful; I don't think it has to be formal legal advice, as you and Heather have said, but having that opportunity to discuss the circumstances of that child, if the assessment in pregnancy is that nothing's changed can be really helpful in terms of just the thinking of the workers in planning the next steps.

I have been in the position where we have sought a POA with the agreement of parents at the end of an assessment without being in the hearing system. Now, I know people have different views on that, but I was reflecting on a case where parents with learning difficulties had the support of their families, but agreed to the adoption, because they were extremely vulnerable in their own right, and we were never actually in the Children's Hearing System.

So I do think there's an opportunity to work flexibly with families on occasions rather than always have to be in the hearing system.

(KD) Thanks, Linda. And so all that's left for me is to thank Heather and Penny very much for all their contributions and help today and to thank you all for being part of this webinar, and have a great afternoon. Thank you.

Linked resources

CELCIS Knowledge Bank:

<https://www.celcis.org/knowledge-bank/>

Independent Care Review and The Promise:

<https://www.carereview.scot/>