PRE-PROCEEDINGS PROTOCOL

WARDS AFFECTED

All

EXEMPT/CONFIDENTIAL ITEM

No.

1.0 PROPOSED DECISION

1.1 Cabinet is asked to approve:

• the Pre-Proceedings Action Plan attached at Appendix 1, and ratify;

• the Pre-Proceedings Protocol attached at Appendix 2, and;

• the Protocol for Disclosure of Inadequate Agency Practice, attached at Appendix 3

2.0 JUSTIFICATION FOR THE DECISION

2.1 The Family Justice Review (November 2011) has stated that care proceedings can take far too long, taking an average of 52 weeks, and recommended that this timescale be reduced to 26 weeks and the system become more child focused.

2.2 Using information on dates for the receipt of care applications (Section 31) and those for closure, as recorded in the CAFCASS Case Management System (CMS), it is possible to measure and compare performance between Designated Family Judge (DFJ) Areas. Based on the last reporting period of April – September 2011, the national average is 55 weeks, whilst for Cheshire and Merseyside it is 65 weeks.

2.3 In response to the Review recommendations, the Designated Family Judge for Cheshire and Merseyside, Her Honor Judge De Haas QC, met with Directors of Children’s Services from across Cheshire and Merseyside to consider how court proceedings might be expedited more speedily. It was agreed to develop a protocol, to supplement the guidance set out in the Public Law Outline, as a reference point for practitioners on the work to be completed prior to, or in conjunction with, care proceedings, particularly for multi issue or slow burn cases.

2.4 The resulting protocol, attached at Appendix 2, was developed by social care officers from Wirral and Knowsley Councils, with further input from Directors of Children’s Services across Cheshire and Merseyside and her Honor Judge De Haas QC.
The protocol will be adopted from 1 July, for Cheshire and Merseyside Courts, with the intention that, if successful, it is adopted in other DFJ areas, although it is not a legislative requirement.

In order to support the implementation of the protocol, a programme of briefings and workshops for St Helens social care practitioners and managers has been put in place, as set out in the action plan attached at Appendix 1. Enhanced quality assurance and management oversight of care applications are also key elements.

A Protocol for Disclosure of Inadequate Agency Practice, attached at Appendix 3, is also in place to deal with situations in which Agency practice or co-operation is of concern to Judges. Although this pre-dates the Pre-Proceedings Protocol, Her Honor Judge De Haas QC has signaled that it will be used to identify agencies failing to deliver their role to an acceptable standard.

Since its adoption in 2010, St Helens has been cited twice under the protocol most recently in a case identified via the case file audit process put in place by the Acting Director of Children's Services following the work undertaken by Cordis Bright. In the first case, Judge Coppell was satisfied with the response provided whilst a response is awaited from Judge Dodds on the second case, following the submission of a report on 28th May.

A report summarising the two cases to date will be prepared for St Helens Local Safeguarding Children's Board, with a similar approach proposed for any future instances, with additional reporting to Cabinet depending on the nature and extent of any failure. The Director of Children and Young People’s Services, in consultation with the Cabinet Member for Children and Young People’s Services and Chief Executive, will determine whether Cabinet reporting is necessary on a case-by-case basis.

Although extremely challenging in seeking to reduce timescales to around half their current level, if successfully implemented the Pre Proceedings Protocol should contribute to better outcomes for children. Children living in situations of neglect or emotional abuse will continue to be supported to remain at home, within a family that has improved its capacity to parent, as a result of effective social care intervention. Where this cannot be achieved, a timely decision will be made to take children out of these situations and place them in an alternative setting more suited to their needs.

FACTS SUPPORTING THE PROPOSED DECISION

The Munro Review of Child Protection (2011) recommended extensive changes to the day-to-day delivery of child protection services. It proposes a changed approach in which social workers adopt a ‘healthy scepticism’ towards families with complex problems, within a practice framework that strikes a better balance between professional judgement and central prescription. Case management and recording systems should support effective social care practice, which in turn should include more direct work with children. This aligns with the local programme for change in social care practice that has been put in place as a response to the Cordis Bright review in November 2011.

The Munro Review and Family Justice Review share common ground in emphasising the importance of early help and support alongside timely intervention when parents/carers cannot deliver effective parenting. This acknowledges that significantly compromised parenting, due to complex problems such as alcohol and substance misuse, mental health and domestic abuse, is unlikely to be resolved within an appropriate timeframe for the child.
3.3 The Pre-Proceedings Protocol is founded on a number of principles:

- All Assessments are completed in advance of the commencement of the court proceedings.
- Parents are clear about what is expected of them to improve their parenting and clear about the consequence and timescales in which to improve.
- Family members will have been identified and alternative family carers are ruled in/out.

3.4 Nationally, there is a reported increase in care proceedings, possibly as a consequence of the more precautionary and interventionist approach advocated by the Munro Review. Locally 3 pre-proceeding cases have been identified through the case file audit process of current child protection cases, which itself forms part of a wider programme of social care practice improvement. This is evidence of the impact of the Munro Review at both national and local levels.

3.5 The Government recently published its ‘Action Plan for Adoption: Tackling Delay, in order to improve what it considers to be an unduly bureaucratic system, within which political correctness is preventing some children being adopted, particularly those from ethnic minority groups. The plan proposes a range of measures to increase the numbers of adopters and improve the support they receive, alongside reducing delays in the adoption process.

3.6 In May, the Government published its Adoption Scorecard setting out the range of indicators it would use to assess how quickly Local Authorities place children for adoption. It contains increasingly challenging thresholds from 2012 onwards for Local Authorities to reduce the average time between a child entering care and moving in with its adoptive family, and the average time between receipt of a Care Order and matching a child with an adoptive family. Respectively, this will require a local reduction from 659 days (2012) to 426 days (2016) and 171 days (2012) to 121 days (2016), each based on a 3 year average.

3.7 In cases in which Local Authorities fall below expected levels of performance, the Government will issue an Improvement Notice requiring certain actions, with a statutory power of intervention to remove adoption services from Local Authority control should they consider this necessary. St Helens was placed in the mid range within the Adoption Scorecard but will need to continue to improve its performance to meet the tapering timescales up to 2016. Successful implementation of the Pre Proceedings Protocol, including significant reductions in the timescales for care proceedings, is therefore also a key element in meeting the requirements of the Adoption Scorecard.

4.0 RISKS ASSOCIATED WITH THE PROPOSED DECISION

4.1 Although there is broad agreement between Her Honor Judge De Haas QC and Cheshire and Merseyside Directors of Children’s Services on the need to significantly reduce proceedings timescales, the current delays are not solely due to the failings of Local Authorities. Delays can also occur due to the actions and omissions of parents, their legal advisors and the courts themselves. It is also the case that the requirements of the protocol are unlikely to be met in circumstances such as a problematic family moving in to the area at short notice, thereby preventing the early assessment approach envisaged by the protocol, or a suspicious injury to a child within a family with no previous child protection concerns.
4.2 As a consequence, there is a risk that the challenging reductions in timescales envisaged by the protocol are not achieved. The implementation plan is therefore focused on ensuring St Helens Council can deliver its role, although overall success will rely on a range of agencies; including some not open to direct influence.

4.3 The Pre-Proceedings Protocol describes a ‘front loaded’ process in which assessments previously completed during proceedings, on a cost shared basis, will be undertaken in advance to be funded by the applicant Local Authority. Whilst these costs should be offset to some extent by reduced legal costs, initial estimates are that the overall cost per case will be greater than at present.

4.4 St Helens’ population of Looked After Children is currently significantly above national and regional comparators. There is a risk that this will grow further as some children currently subject to a child protection plan are moved more quickly to proceedings by social workers who rightly conclude that parents are unlikely to deliver effective parenting within an appropriate timeframe for the child. This may include an increased pressure on placements, whether foster carers or residential, whilst plans are progressed. The recruitment and approval of adopters, alongside enhancing other arrangements for permanency, will also be critical to achieving the timescales of the protocol without further increasing our looked after children population. Locally and nationally, the number of children available for adoption is currently greater than the number of approved adopters.

4.5 There is a potential risk to the reputation of St Helens Council if practice fails to meet the requirements of the Pre-Proceedings Protocol resulting in increased use of the Protocol for Disclosure of Inadequate Agency Practice. The implementation plan attached at Appendix 1 has been developed to mitigate this risk particularly through greater management oversight of applications.

4.6 In seeking to meet the challenging timescales set out in the protocol there is the potential for judges to increase the use of care orders in which the child remains at home, but with parental responsibility shared by the Local Authority. This has been resisted in the past, as it is not generally considered good practice over the longer term.

5.0 OTHER IMPlications

Legal - The Pre-Proceedings Protocol is voluntary and intended to complement rather than replace the Public Law Outline and will therefore require parental consent for all stages.

Financial – Currently, the costs for assessments required by the courts would be shared between the Local Authority and parents, the latter acting individually or on a joint basis with costs divided accordingly. Implementation of the Pre-Proceedings Protocol may lead to increased costs due to assessments being funded entirely by the Local Authority rather than on a shared basis as at present. Whilst it is not possible to be precise on the changes in costs, which will vary on a case-by-case basis, initial modeling suggests growth in direct costs from circa £16k to £19k for a typical case. There is also an associated, and potentially greater, cost pressure if the population of Looked After Children is increased.

Human Resources – None

Land and Property (Asset) – None

Anti Poverty - None
Effects on existing Council Policy – None
Effects on other Council Activities – None
Human Rights - None.
Agenda 21 - None
Equalities – None
Asset Management – None
Health – None

6.0 PREVIOUS APPROVAL/CONSULTATION

6.1 The Pre-Proceedings Protocol has been subject to ongoing consultation between Her Honor Judge De Haas QC and the Directors of Children’s Services, resulting in the document attached at Appendix 2.

7.0 ALTERNATIVE OPTIONS AND IMPLICATIONS THEREOF

7.1 The Pre-Proceedings Protocol is voluntary and the Council could choose not to take steps to implement its requirements within day-to-day social care practice. However, to do so would leave St Helens out of step with the Munro Review and the practice of local partner agencies, and lacking a coherent response to a situation it has previously acknowledged as being unacceptable.

8.0 APPENDICES

Appendix 1: Pre-Proceedings Protocol Implementation Plan
Appendix 2: Pre-Proceedings Protocol
Appendix 3: Protocol for Disclosure of Inadequate Agency Practice

The Contact Officer for this report is Andy Dempsey, Acting Director of Children and Young People’s Services, 2nd Floor, Atlas House, 01744 675933

BACKGROUND PAPERS

None.