

To:

8 June 2007

Dear

### **Care Proceedings – Local Judicial Initiatives**

I am writing in order to let you know about an important initiative being taken forward by the family courts in your area, which will have implications for Children's Services in your authority and the way in which your local authority makes applications for care and supervision orders under section 31 of the Children Act 1989.

I am sure that you will be aware of the long standing concerns about delay in public law Children Act cases, which means that care cases take on average 51 weeks in Care Centres and 44 weeks in Family Proceedings Courts from application to disposal. Such delays, where avoidable, run counter to the welfare of the child principle, and have long been a concern to Government, local authorities and all practitioners in the family justice system. They also impact on your ability to ensure the stability of care and placements, and to meet your own performance targets as an authority for children in care and adoption.

The Ministry of Justice, Department for Education and Skills and Welsh Assembly Government, working closely with Sir Mark Potter, the President of the Family Division, plan to make improvements to court processes, and local authority contributions to these processes, during the course of the next year. Cafcass, Cafcass Cymru, Her Majesty's Courts Service (HMCS), the Legal Services Commission, the Local Government Associations in England and Wales (LGA and WLGA) and the Association of Directors of Children's Services (ADCS) in England and Association of Directors of Social Services (ADSS) in Wales are closely involved in taking this work forward.

The President of the Family Division plans to replace the *current Protocol for Judicial Case Management in Public Law Children Act Cases*, which sets out the different stages of the court process as care cases progress through the system, with a new streamlined Public Law Outline (PLO) from April 2008. This will be underpinned by revised statutory guidance to local authorities (Volume 1 'Court Orders' of the Children Act 1989 guidance), which will be available from the autumn.

### **Judicial Initiatives**

Elements of the new PLO have already been tested in three court centres – Liverpool, London and Portsmouth – since October 2006, to help inform the development of a draft. These initiatives have looked at different elements of the judicial process and have not always had a direct impact on local authorities. For example, the initiatives have examined issues such as when a care case should be listed and ensuring cases are heard at the most appropriate tier of court. Positive changes on the ground in areas like Liverpool include fast tracking some cases where this can be done safely, and changing working practices in some types of case, such as an accelerated process for determining applications for the discharge of care orders, in circumstances where a child or young person has been in a stable placement for some years and where a care

order is no longer required to ensure the safeguarding and promotion of that child's welfare.

Following discussion with relevant Designated Family Judges (DFJs), the President has indicated that he wishes to test the new processes set out in the draft PLO in 10 centres, starting over the next few weeks and months. In addition to Liverpool, London and Portsmouth, this will now include: Birmingham, Leicester, Newcastle, Oxford/Milton Keynes, Plymouth/Exeter, Swansea and Warrington. Each of these centres receive applications from a number of local authorities.

Feedback from these centres, together with the outcomes of a consultation with key stakeholders on the PLO between June and September 2007, will help to inform the production of a final version, to be implemented nationally from April 2008.

As the court in your local area will be testing the new PLO, I want to ensure you are aware of, involved in and able to contribute to the plans as they develop. A full list of the 'initiative courts' and local authorities likely to be affected by this is annexed to this letter. I also attach a current draft of the new PLO for your information. Given the nature of such initiatives, the draft will almost certainly evolve further in the run-up to being finalised.

The initiative, in each local court area, is to be led by the DFJ. They are now in the process of convening local inter-agency meetings to move these issues forward collaboratively and constructively. Implementation steering groups have been established in England and Wales to support local agencies, including local authorities, embed these new practices and to meet the expectations of the draft PLO. Support will be provided through an email network involving a nominated individual for each local authority to keep informed of changes and help share information across agencies in the initiative areas. I would be grateful if you could nominate a children's services manager who would be able to fulfil this role within your local authority. A telephone/email Helpline to deal with queries about the new procedures is also being set up and will operate from 1 July. Details of the Helpline are also attached for your information.

### ***Key changes***

Briefing packs are available locally, via Local Family Justice Councils, outlining why these changes are taking place and what the main changes comprise. I thought it would also be helpful, in this letter, to summarise the key changes which will result from implementation of these initiatives.

In each of the initiative areas, the court will closely and routinely consider what action has been taken by local authorities before a care application has been made in order to ensure everything that needs to be done has been done and thus to avoid unnecessary delay at the beginning of the process. For example, it will be important to ensure all kinship care opportunities have been fully explored; a core assessment has been completed; and that care plans have already been prepared and shared with families which, at the very least, cover the period that represents the duration of any interim care order that the court might make. I fully recognise that it is very likely that your local authority only makes section 31 care and supervision order applications once this work is completed, but we want to ensure that this good practice is embedded consistently, which is why this is to be specifically included in the new guidance.

Where parents or others with parental responsibility for the child receive the local authority's written notification of its intention to apply for a care or supervision order, they are entitled to non means tested publicly funded legal advice which covers liaison and negotiations with the local authority with the aim of avoiding proceedings or limiting the issues.

Where the circumstances of the case permit, having particular regard to the safety of the child, the local authority should liaise with parents (and any others with parental responsibility) and their legal representatives with a view to considering what steps, if any, can be taken to avoid proceedings including by explaining the local authority's position and concerns and, where proceedings cannot be avoided, by narrowing down the issues of concern to those that cannot be resolved without proceedings.

If for whatever reason the necessary pre-proceedings action has not been taken, the judge and/or Legal Adviser will consider issuing standard directions to ensure this work is taken forward as the case progresses. The new PLO document, as now drafted, seeks explicitly to take account of the content of the statutory guidance to local authorities, which will be issued for consultation later this month. Although the new guidance will not be implemented until later this year, its draft status will not, of course, prevent local authorities from continuing to comply, in the usual way, with court directions made during the course of proceedings.

As part of the initiative, the timetable for progressing the case will be determined according to the needs of the child involved. All cases will be listed in accordance with these individual timetables and a final hearing will only be scheduled once the key issues in the case have been identified and narrowed to the extent that is possible. Additionally, advocates will be expected to ensure they discuss the issues in the case before hearings take place.

Please will you arrange for a copy of this letter to be shared with relevant local authority children's services managers and legal teams, for their information, discussion and for consideration in terms of any necessary changes to your own authority's practice. If you want to find out more, or to discuss the impact the changes may have for your authority please do not hesitate to contact me in the first instance.

A handwritten signature in black ink that reads "B. Clark". The letters are cursive and slightly slanted to the right.

**BRUCE CLARK**  
**DEPUTY DIRECTOR, PARTNERSHIPS DIVISION**

## **Annex – Initiative areas and local authorities**

### **Liverpool**

Designated Family Judge: HHJ Margaret de Haas QC

- Liverpool City Council
- St Helen's Council
- Sefton Metropolitan Borough Council
- Wigan Metropolitan Borough Council
- Wirral Metropolitan Borough Council
- Knowsley Metropolitan Borough Council

### **Warrington**

Designated Family Judge: HHJ Kevin Barnet

- Cheshire County Council
- Halton Borough Council
- Warrington Borough Council

### **Leicester**

Designated Family Judge: HHJ David Brunning

- Leicester City Council
- Leicestershire County Council
- Rutland County Council

### **Newcastle**

Designated Family Judge: HHJ Judith Moir

- North Tyneside
- South Tyneside
- Gateshead Council
- Newcastle City Council
- Northumberland County Council

*Please note discussions are underway with the judiciary to determine exactly how the initiative in Newcastle will be taken forward. The following local authorities may also be affected:*

- Durham County Council
- Sunderland City Council

### **Birmingham**

Designated Family Judge: HHJ Donald Hamilton

- Birmingham City Council
- Solihull Metropolitan Borough Council

### **Swansea**

Designated Family Judge: HHJ Isabel Parry

- Swansea County Council
- Neath, Port Talbot County Council
- Carmarthenshire County Council
- Pembrokeshire County Council
- Ceredigion County Council

### **Exeter/Plymouth**

Designated Family Judge: HHJ David Tyzack QC

- Devon County Council
- Plymouth City Council
- Torbay Council

### **Portsmouth**

Designated Family Judge: HHJ Linda Davies

- Portsmouth City Council

- Hampshire County Council
- Isle of Wight Council
- Southampton City Council

### **Milton Keynes/Oxford**

Designated Family Judge: TBC

- Milton Keynes Council
- Buckinghamshire County Council
- Oxfordshire County Council

### **Principal Registry of the Family Division**

Designated Family Judge: HHJ John Altman

*Discussions are underway to determine exactly how the initiative in London will be taken forward.*

- London Borough of Barking and Dagenham
- London Borough of Barnet
- London Borough of Bexley
- London Borough of Brent
- London Borough of Bromley
- London Borough of Camden
- City of London
- London Borough of Croydon
- London Borough of Ealing
- London Borough of Enfield
- London Borough of Greenwich
- London Borough of Hammersmith and Fulham
- London Borough of Haringey
- London Borough of Harrow
- London Borough of Havering
- London Borough of Hillingdon
- London Borough of Hounslow
- London Borough of Islington
- Royal Borough of Kensington and Chelsea
- Royal Borough of Kingston upon Thames
- London Borough of Lambeth
- London Borough of Lewisham
- London Borough of Merton
- London Borough of Newham
- London Borough of Redbridge
- London Borough of Richmond upon Thames
- London Borough of Southwark
- London Borough of Sutton
- London Borough of Tower Hamlets
- London Borough of Waltham Forest
- London Borough of Wandsworth
- London Borough of Westminster
- London Borough of Hackney

# DRAFT PUBLIC LAW OUTLINE /7

<b>PRE PROCEEDINGS</b>
<b>PRE-PROCEEDINGS CHECKLIST</b>
<b>The Checklist Documents:</b>
<ul style="list-style-type: none"> <li>• Previous orders &amp; judgments/reasons</li> <li>• Assessments               <ul style="list-style-type: none"> <li>- Initial and core assessment</li> <li>- Section 37 Report</li> <li>- Kinship assessments</li> </ul> </li> <li>• Additional Reports &amp; Records               <ul style="list-style-type: none"> <li>- Existing single, joint or inter-agency materials</li> <li>- Strategy Discussion Record</li> <li>- Minutes of family group Meeting</li> </ul> </li> <li>• Initial Social Work Statement</li> <li>• Initial Social Work Chronology</li> <li>• <b>Schedule of Proposed Findings</b></li> <li>• Plans               <ul style="list-style-type: none"> <li>- <b>Outline Care Plan</b></li> <li>- Other Inter-Agency Plans &amp; Assessments</li> </ul> </li> </ul>

<b>STAGE 1</b>	
<b>ISSUE</b>	<b>FIRST APPOINTMENT IN FPC</b>
<b>On DAY 1 and by DAY 3</b>	<b>By DAY 6</b>
<b><u>Objective:</u> To ensure compliance with pre-proceedings checklist</b>	<b><u>Objective:</u> To allocate and give initial case management directions</b>
<ul style="list-style-type: none"> <li>• LA files:               <ul style="list-style-type: none"> <li>- <b>New application</b></li> <li>- <b>Pre-proceedings checklist</b></li> <li>- Checklist documents</li> <li>- An Allocation Proposal</li> </ul> </li> <li>• Issue application</li> <li>• Give <b>standard directions on issue</b> including allocation               <ul style="list-style-type: none"> <li>- Compliance with pre-proceedings checklist</li> <li>- Consider allocation proposal</li> <li>- Nominate 2 case managers</li> <li>- Direct <b>CAFCASS critique</b></li> </ul> </li> <li>• Appoint Children’s Guardian</li> <li>• Allocation of the Guardian by CAFCASS</li> <li>• Appoint solicitor for child</li> <li>• LA serve issued documents on Parties</li> </ul>	<ul style="list-style-type: none"> <li>• Arrangements for contested interim care hearing</li> <li>• Initial Case Management               <ul style="list-style-type: none"> <li>- Case management checklist</li> <li>- Parties &amp; service of documents</li> <li>- Allocation guidance</li> </ul> </li> <li>• Hearings               <ul style="list-style-type: none"> <li>- Identify ‘<u>Early Final Hearing</u>’ and transfer cases</li> <li>- Fix ‘Early Final hearing’ or Stage 2</li> </ul> </li> <li>• <b>Standard Directions on First Appointment</b> <ul style="list-style-type: none"> <li>- Direct <b>CAFCASS analysis</b> for stage 2</li> <li>- LA advocate’s case summary</li> <li>- Parties’ Outline position statements</li> <li>- Parties’ initial witness statements</li> <li>- For Transfer</li> </ul> </li> </ul>

## STAGE 2

ADVOCATES MEETING	CMC
No later than 2 days before CMC	Between DAYS 11 & 60
<b><u>Objective:</u></b> To prepare the case management template order	<b><u>Objective:</u></b> To identify issue(s) & give full case management directions
<ul style="list-style-type: none"><li>• Consider Local Authority advocates' case summary, position statements &amp; <b>CAFCASS critique/analysis</b></li><li>• Draft <b>Template Order</b></li><li>• File Template Order with case manager / case management Judge by 11am one working day before the CMC</li></ul>	<ul style="list-style-type: none"><li>• Scrutinise compliance and allocation<ul style="list-style-type: none"><li>- Identify issue(s)</li><li>- Identify evidence, witnesses required &amp; availability</li><li>- Identify special measures</li><li>- Give full case management directions</li><li>- Case management checklist</li><li>- Allocation checklist</li><li>- Specify <b><u>timetable for the child</u></b></li><li>- Timetable IRH</li><li>- Identify further hearings required and hearing dates/windows</li><li>- Approve <b>template order</b></li></ul></li></ul>

### STAGE 3

**ADVOCATES MEETING FOR THE IRH**

**IRH**

**No later than 2 days before the IRH**

**Between 16 & 25 weeks**

**Objective: To update the case management template order**

**Objective: To resolve and narrow issue(s) & identify any remaining key issues**

- Consider Local Authority advocates' case summary, position statements & **CAFCASS critique/analysis**
- Draft updated **Template Order**
- File Template Order with case manager / case management Judge by 11am one working day before the CMC

- Judicial identification of the key issue(s) (if any) to be determined
- Final Case Management directions
  - Case management checklist
  - Witness templates
  - Skeleton arguments
  - Judicial reading list/reading time/Judgment writing time
  - Time estimate
  - Bundles Practice Direction compliance
- Approve **Template Order**

### STAGE 4

**HEARING**

**In accordance with the timetable of the child**

**Objective: To determine remaining issues**

- All file & serve updated case management documents & bundle
- **Draft final order(s)** in approved form
- Judgment/Reasons
- Disclose documents as required after hearing

## **Annex - Helpline numbers**

### **Local authority queries**

Jane Held

01986 781318

[jane.held@lga.gov.uk](mailto:jane.held@lga.gov.uk)

Bruce Clark

020 7925 6430

[Bruce.clark@dfes.gsi.gov.uk](mailto:Bruce.clark@dfes.gsi.gov.uk)

### **CAFCASS queries**

Anthony Douglas

020 7510 7066

[Anthony.douglas@cafcass.gov.uk](mailto:Anthony.douglas@cafcass.gov.uk)

Elizabeth Hall

020 7510 7009

[elizabeth.hall@cafcass.gov.uk](mailto:elizabeth.hall@cafcass.gov.uk)

### **HMCS queries**

Jodie Smith

020 7210 0691

[jodie.smith@hmcourts-service.gsi.gov.uk](mailto:jodie.smith@hmcourts-service.gsi.gov.uk)

### **Legal queries**

David White

01473 264215

[david.white@legal.suffolkcc.gov.uk](mailto:david.white@legal.suffolkcc.gov.uk)