

**A New Public Law Outline
and Statutory Guidance for Local Authorities**

Frequently Asked Questions

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1. OVERVIEW

What is happening?

- Two key strands of work are being taken forward following the *Review of the Child Care Proceedings System in England and Wales*, published jointly in May 2006, by the Department for Constitutional Affairs (now Ministry of Justice), the Department for Education and Skills (now Department for Children Schools and Families) and the Welsh Assembly Government:
 - Revised statutory guidance (Volume 1 'Court Orders' of the Children Act guidance) under section 7 of the Local Authority Social Services Act 1970, to be issued by DCSF and the Welsh Assembly Government in autumn 2007, following consultation.
 - A new Public Law Outline (PLO), replacing the current Protocol for Judicial Case Management in Public Law Children Act Cases, to be implemented via a Practice Direction from the President of the Family Division in April 2008.

Why are these changes happening?

- There are around 14,000 applications (by child) for care or supervision each year. Whilst only a small number of cases, they are complex and take a long period of time to proceed from application to disposal – taking on average 51 weeks in care centres and 42 weeks in magistrates' courts (Family Proceedings Courts).
- Change is needed to reduce the impact of delay on the children involved. These are some of the most socially excluded in our society. Children in care are three times as likely to be convicted of an offence or cautioned as other children; and they tend to start using drugs at an earlier age, at higher levels and more frequently than other children.
- The longer it takes to resolve the question of whether or not a child should be taken into care, the longer a child has to wait for permanence in his or her life. This can mean it is more likely that children will live in a series of temporary placements until their future is decided, which may in turn impact on continuity in schooling. This is even more important given around 70% of children in residential care leave school with no GCSEs.

What did the Care Review recommend?

- The Care Review made a number of recommendations to improve the system for children and families subject to care proceedings and to ensure that all resources in the system are used in the most timely and effective way. In particular, it encouraged early intervention to find resolutions before cases reach court, and when cases do proceed to court, identified ways to improve the quality of local authority applications and improve case management procedures.
- The Care Review highlighted 5 key areas for attention:
 - **Helping families** – Ensure Families and children understand proceedings
 - **Better informed resolution** – Ensure applications are only made after all safe, appropriate alternatives have been explored
 - **Preparation for proceedings** – Improve quality and consistency of section 31 applications
 - **During proceedings** – Improve case management
 - **Inter-agency working** – Encourage closer professional relationships

Who is involved in taking this work forward?

- The Care Proceedings Programme was established to take forward the work arising from the Care Review, as well as other initiatives designed to reduce delay. The Programme is led by the Ministry of Justice with wide inter-agency involvement from the DCSF, the Welsh Assembly Government, the Judiciary, Cafcass, Cafcass Cymru and the Legal Services Commission. We also work closely with the Association of Directors for Children's Services, the Local Government Association, the Children's Commissioner and the Association of Lawyers for Children.
- The work is overseen by an inter-agency Ministerial Group, Delivery Board and Implementation Steering Group. The focus for the Steering Group is to provide support to ensure family justice agencies embed the new procedures under the statutory guidance and the PLO into their own practices and systems and to ensure a programme of inter-agency training is delivered in the lead up to national implementation.

How and when is this work being taken forward?

- The revised statutory guidance is currently out for consultation. DCSF launched a three month consultation on 21 June 2007 and the closing date for responses is 28 September 2007. The consultation document is available on the DCSF website:
<http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1495>
- The consultation has also been issued to all Local Authorities in Wales, and this consultation closes on 19 October 2007.
- At the same time, the President has sent the draft PLO to the Care Proceedings Ministerial Group, Delivery Board, Stakeholder Group, Family Justice Council and the Family Procedure Rules Committee, for comment by 13 September 2007.
- The President is also keen for the experiences of 10 initiative areas (**London, Liverpool, Portsmouth, Oxford/Milton Keynes, Birmingham, Leicester, Newcastle/Sunderland, Warrington/Chester, Swansea and Plymouth/Exeter**) to help inform the development of the PLO.
- The outcome of the consultation and feedback from the initiative areas will help inform the final draft of the PLO, which is to be produced by the end of the year. Following agreement by the Lord Chancellor, the final version will be implemented nationally from April 2008.
- Following the analysis of responses to the consultations in England and Wales the final guidance is expected to be issued in advance of the final PLO, which will give local authorities time to imbed these practices before the PLO is implemented nationally.

2. INITIATIVE AREAS

Which areas are testing the PLO?

- The PLO is being tested in the following Care Centres and Family Proceedings Courts which feed into these centres:
 - Birmingham
 - London
 - Liverpool
 - Warrington/Chester
 - Newcastle/Sunderland
 - Exeter/Plymouth
 - Leicester
 - Milton Keynes/Oxford
 - Swansea
 - Portsmouth

How were the initiative areas chosen?

- As this is a judicial initiative, the initiative areas were determined by the President in consultation with relevant Designated Family Judges

How long are we expected to follow these new procedures?

- The President is considering how the initiative areas should proceed after October 2007 when the procedures will be reviewed.

What happens if the final version of the Public Law Outline or statutory guidance changes following the consultation?

- It is important that the progress in the initiative areas, as well as the views and comments of consultees are taken on board to ensure that the final version of the PLO is as effective as possible. The initiative areas will be kept fully informed and briefed about any changes that may be made as soon as they emerge.
- An inter-agency email communications network has been set up for the initiative areas to send updates about the progress of implementation. It is planned to extend this to national level. In addition a telephone Helpline has been established for agencies to use if they have queries about the initiatives. The following people can be contacted:

Local authority queries

General

Jane Held

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Initiatives in England

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Cafcass queries

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Legal queries

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3. REVISED STATUTORY GUIDANCE

What are the main changes in the revised guidance?

- Local authorities will be expected to submit better quality applications to court. The revised guidance places increased emphasis on pre-proceedings preparation of cases by local authorities to ensure that all the necessary steps have been completed prior to issuing proceedings to avoid unnecessary delay during the start of the court process. This will ensure that all kinship care options have been fully explored, core assessments carried out and that care plans have been prepared and shared with families.
- A key change is the entitlement of parents and those with parental responsibility, to non-means tested publicly funded legal advice. This can be accessed once the local authority has notified parents and others with parental responsibility of its intention to initiate proceedings. This additional legal help will cover liaison and negotiations with local authorities, with the aim of either avoiding proceedings or if this is not possible, identifying the key issues in dispute at an early stage.

How can you ensure local authorities will be able to meet the pre-proceedings elements?

- 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, for example ensuring all kinship opportunities have been fully explored and that a core assessment has been completed.
- While this is to be specifically included in the new guidance, it is very likely that local authorities in the initiative areas are already only making section 31 care and supervision orders on the basis of completed core assessments and with care plans already prepared. If certain 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.

It would be helpful to be able to give parents information about suitably qualified solicitors to help them seek legal advice quickly, is this information available?

- Yes, under the Law Society Children Panel Accreditation Scheme. The aim of this is to connect you with practitioners experienced in representing children and other parties under the Children Act 1989, and these are listed on the Law Society website:
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor/view=panelinformation.law#MCP>

What alternatives are there to Family Group Conferences (FGC) to pursue alternative kinship options?

- We would encourage greater use of FGCs as not all local authorities currently make use of this practice. Given the nature of statutory guidance, it is not appropriate to incorporate detailed practice guidance as part of it. However, guidance about communicating with children and working with families is available in the book by David P.H. Jones, *Communicating with vulnerable children. A Guide for Practitioners* (Publisher: Gaskell, ISBN number: 1-901242-91-9). You may also wish to view the resources for use by practitioners listed on the ICS website:
www.ecm.gov.uk/ics

When should the notification be issued to parents?

- The notification to parents should be provided to them as soon as possible after the local authority has decided that it intends to make a section 31 Children Act 1989 application. The draft guidance makes clear that the communication to the parents should make clear the basis of the local authority's concerns about the welfare of the child.

To make the guidance more 'user friendly', could it incorporate some practical examples?

- Unlike the other volumes of Children Act 1989 guidance, Volume 1 is as much of relevance to local authority legal advisers as it is to social workers and other children's services practitioners. This means that its language is rather 'legal' in places. However, given the nature and purpose of statutory guidance it would not be appropriate to include good practice examples in it, but we would welcome any specific suggestions about how the guidance could be made more 'user friendly' to help social workers.

The pre-proceedings work is an extra burden for local authorities

- Since these changes are primarily about 'front loading' interventions rather than about adding additional stages to the process, we do not consider that there will be an overall increase in the burden on local authorities. In fact, the burden on local authorities may reduce, in terms of the simplification represented by the PLO, compared to the existing Protocol.

Will there going to be consistency of documents with the integrated children's system?

- Yes there will be.

Can you give any advice on gaining parental consent to approach relatives at an early stage and maintaining working relationship with parents?

- The most important thing is to work through and with parents so they are fully engaged with the process, this is likely to be much more productive than covert approaches to members of the wider family which would be inappropriate.

Surely some relatives will not put themselves forward at an early stage to avoid any conflict with the parents?

- We agree this is quite likely and that is why, in a number of cases, it is only possible to pursue 'family and friends' options once proceedings have begun.

What level of detail will be required in assessing family members?

- This is likely to depend on the role that is envisaged for the family member. A high level of detail is likely to be needed if, for example, a family member is to be assessed with a view to being approved as a local authority foster parent. In situations such as this, a Police National Computer/ Criminal Records Bureau, check would be essential.

Do kinship carers/assessments always have to be fully completed before proceedings are issued?

- This will depend on the circumstances of each case. In some instances this will be possible, whereas, in others the need to safeguard the child may preclude this step from being completed.

How wide is the search for relatives?

- This will be wholly dependent on the circumstances of the child in the individual case and will need to be considered on a case by case basis.

How do we ensure everyone comes forward? Will there be some form of deadline (e.g. the commencement of proceedings) after which family members will not be considered?

- It will be necessary to exercise professional judgement about the point to which this should be pursued as opposed to the setting of a final deadline, particularly without the authority of the court.

If DNA testing is required to confirm the father's identity, will the local authority need to complete this work prior to the proceedings (& fund it)? Also what happens if father(s) only come forward at or after the commencement of proceedings?

- In cases such as this, there will be implications for the whole of the paternal family. Although the suitability of a putative father as a permanence option for the child may need to take account of DNA evidence of paternity, there are likely to be a number of other important factors to take into account. The consideration of putative fathers as permanent carers may therefore take place at any time before or after (or, occasionally instead of) care proceedings.

How do S38(6) assessments fit into the timetable?

- These can only take place after proceedings have been initiated, and could arise at any point in the process.

There may be situations where we do not want to alert the parents to the possibility of issuing proceedings, for example if there is a risk of them disappearing. Do local authorities always have to inform parents of their concerns?

- In this type of situation, you would need to consider whether there are grounds for an emergency protection order or the exercise of police protection powers.

4. A NEW PUBLIC LAW OUTLINE

What are the main changes contained in the Public Law Outline?

- The process will be more streamlined so that the six stages under the current Protocol will be reduced to four stages, greater emphasis on **pre-proceedings** preparation:
 - 1) Issue and First Appointment** to allocate and give initial case management directions
 - 2) Advocates meeting and Case Management Conference (CMC)** to identify issues and give full case management directions
 - 3) Advocates meeting and Issues Resolution Hearing (IRH)** to resolve and narrow issues and identify any remaining issues
 - 4) Hearing** to determine remaining issues
- A key feature of the PLO is increased emphasis on pre-proceedings preparation to ensure that applications are made only in appropriate circumstances and after alternatives have been properly explored. In this way the PLO seeks explicitly to take account of the revised guidance, which sets out all the steps that local authorities need to complete before issuing proceedings.
- The timetable for progressing a case will be fixed around the needs of the individual child involved and all cases will be listed in accordance with these individual timetables.
- Enhanced case management and advocacy preparation will ensure that the key issues in the case are identified early on. A new case management template order will help to support this, and a final hearing date will only be set when the issues have been narrowed down, so the final hearing can focus on only the main issues in dispute.

What will happen to the current Protocol and cases already in the system?

- The draft PLO will not apply retrospectively. Therefore all cases issued after implementation of the initiative locally should follow the processes under the draft PLO. The current Protocol will continue to be applicable to applications made before this point.

The current timetabling does not appear to take into account the need for Adoption Panel consideration of care plans. What are we supposed to do as the two appear to be mutually exclusive?

- The Family Justice Council has recently issued guidance on concurrent planning in care cases. The actual and/or potential involvement of an Adoption Panel is of course a factor that the court will need to consider in setting a timetable for the child in individual cases.

The new process seeks to ensure that assessments take place before care proceedings start. What will the court's approach be if additional assessments are also requested before proceedings?

- It is not the intention that all of the work done in proceedings is to be shifted pre-proceedings. It is important to ensure that core assessments are undertaken wherever possible before proceedings commence. Where the contents are

disputed and the lack of agreement requires protective measures to be taken, the question of another assessment would be one to be addressed in care proceedings.

How will Finding of Fact hearings fit into the new process?

- The court will factor Finding of Fact hearings into the timetable in the same way as presently. In most of the rare cases where Finding of Fact hearings are required these should be timetabled around the CMC so that a Finding of Fact hearing is directed and an adjourned CMC then considers the consequence for further directions.

What will happen if there is a significant change of circumstances very late in the case, for example at the Issues Resolution Hearing?

- If there are late changes in circumstances, following their duty under the rules to co-operate with the court in case management, the parties should advise the court of this immediately. They may be able to agree directions and a next hearing date and advise the court of their proposals. In any event, the case management judge (which includes the legal adviser at FPC) will consider their proposals and determine the best way forward. This could result in approving the agreed directions or could include fixing an urgent hearing to review the situation and making directions for any necessary information to be available for that hearing.

If more than one child is involved in a case and there are conflicting interests, how will the timetable for the child be determined?

- The timetable for the child may differ for different children and consideration will need to be given to all of the circumstances in a case to determine how and when the case should proceed. As at present, if one child's case will be ready well in advance of another's it may be appropriate to deal with it then. In considering whether it is in fact ready, the court will have regard to all parties' positions and will not consider the same issues in dispute on more than one occasion.

When will contested ICOs be heard? Will this coincide with the First Appointment?

- This will be a matter of local resources. Some cases will be transferred on Issue, with the first hearing at the County Court, and some will be listed before a legal adviser at the FPC. In cases before the FPC, the FPC should endeavour to deal with the ICO wither on the day of the First Appointment or the next working day. The court should have sufficient information on the Issue of proceedings to determine the best way to proceed. In most cases, in accordance with the Outline, arrangements for contested interim hearings will be considered at the First Appointment. This will enable the parties with the court to identify the issues and evidence required for the contested hearing.

5. WHAT ARE THE TRAINING ARRANGEMENTS...

....for judiciary?

- All Designated Family Judges in the initiative areas have been provided with centrally issued briefing packs containing information about the new procedures. In addition members of the Care Proceedings Programme team have made visits to the initiative areas to meet DFJs and seek their views on whether any additional support is needed at local level.

- The Judicial Studies Board is developing plans to train the judiciary in readiness for implementation next April through the family case management training, which will be held at regional level from Autumn 2007. In addition there will be training at area level using JSB training packs, including DVDs. Training will also extend to Justices' Clerks and Legal Advisers.

....for legal practitioners and other agencies?

- Looking forward to national implementation, plans are underway to deliver a national programme of inter-agency training, to be delivered in spring 2008. A training sub-group of the Steering Group has been established to develop training material and oversee the rollout of this programme. A detailed specification for delivering the training is being prepared, with logistical arrangements to be finalised early in the autumn.
- The training sub-group is working closely with the JSB to ensure judicial and staff training plans link up. The JSB training material is currently being reviewed to help inform the development of training materials for other agencies.

....for court staff?

- The key staff who are likely to have training needs are those with listing responsibilities for care cases, case progression officers and public law section managers and staff. We are liaising with Learning and Development Division to assess the training needs of staff. A number of staff in each area will be invited to the inter-agency training session, and specific business skills training will also be provided to help staff on the job. Learning and Development are working closely with the JSB and the training sub-group to ensure training material is not duplicated and is directed at the right level of staff.
- It should be noted that Legal Advisers will receive training on the new procedures via the JSB case management training.

6. EVALUATION

What are the plans for evaluation?

- It is important to gain early indication of whether the PLO is having a positive impact. As the average care case last about one year, the full benefits of the initiatives are not likely to emerge immediately. However, we will be providing support to DFJs to evaluate the impact of the initiative in order to inform the President's review of the draft PLO in October 2007.

The initiatives haven't been running that long - how will they be evaluated?

- Given the average length of a care case, we acknowledge that there will be difficulties in evaluating the effectiveness of the overall process. However, the President of the Family Division and members of the Implementation Steering Group have agreed an approach to evaluation which look at the extent of user engagement, will assess the quality of applications and the effectiveness of case management in those stages of the PLO that care cases reach. Lessons learnt in implementing the statutory guidance and PLO in the initiative areas will also help inform national implementation.

What information will be evaluated?

- An inter-active online survey is being developed which all of those involved in the initiatives will be able to access. This will ask questions about the extent of user engagement and the impact of the new processes, both before proceedings have been issued and during the court process, depending on how far the case has progressed. Recognising that the commencement of the testing of the PLO varies from area to area, the Programme Team will liaise separately with each initiative area as to how and when this survey might be released in their area. It is hoped to start releasing the survey in some areas in September 2007.
- In addition, the Ministry of Justice Research Unit will conduct a small number of visits to selected initiative courts to review court files where the new processes have been applied. Relevant centrally held data in HMCS, the Department for Children, Schools and Families, the Welsh Assembly Government, Cafcass, Cafcass Cymru and the legal Services Commission about the progress of cases will also be reviewed.

The outcomes of these pieces of work will be fed back in a report to the President in October.

- In addition, the President will be holding a meeting with DFJs in October to discuss their experiences in implementing the initiatives. The President has also asked DFJs to complete a 'record of allocation' form. Two copies of this form should be produced by the court, one of which should be kept on the court file with any orders, the other to be held centrally by the court. At a later date, the President will ask for the centrally held copies of these forms to be sent to him, in order to assess how allocation decisions have been taken in accordance with the draft allocations guidance.

What information will the court be required to keep and monitor for the purposes of evaluation?

- The President has asked courts to keep copies of the 'record of allocation' forms. In order to minimise the impact of the initiatives on the courts involved, we will not be asking courts to record any additional information.
- A 'case history monitoring form' has been provided to courts if they find this useful to help inform what is happening to cases which are applying the PLO. DFJs may find these useful in preparing for their meeting with the President in October and would suggest that court staff discuss with their DFJs whether there are benefits in completing these forms.

What is the case management model template order?

- Before the Case Management Conference (CMC), parties will be asked to complete a draft case management template order, which has been circulated to all initiative areas. As this is available electronically, court staff will be able to cut and paste from this document into FamilyMan when the order is made. The case management template order can be circulated electronically to other local family justice agencies and legal practitioners.