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## **PROTOCOL FOR REDUCING DELAY IN CARE PROCEEDINGS IN NOTTINGHAMSHIRE AND NOTTINGHAM CITY**

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## Scope and aims

This protocol sets out requirements placed on practitioners and stakeholders involved in care proceedings in Nottingham City and Nottinghamshire. It has been produced by the Local Performance Improvement Group ('LPIG') with the endorsement of the key stakeholder agencies set out above.

This document is the result of a review of the various research projects conducted in relation to delay within care and supervision proceedings as well as:-

- a review of a sample of long running cases locally; and
- the work of a sub-committee in identifying local causes of delay and agreeing an appropriate response.

The sub-committee comprised of representatives from the Judiciary (County Court and FPC), the Magistracy, CAFCASS, HMCTS, Nottingham City Council, Nottinghamshire County Council and local private practitioners. As such, the document is the product of cooperation from all participants as it is recognised that a collaborative model is critical to success in reducing delay.<sup>1</sup>

The aim of the protocol is to eliminate, so far as is possible, unnecessary delay in concluding care proceedings locally. Whilst there have been suggestions that such initiatives are motivated by resource issues, the requirement to conclude matters in a timely matter is in fact an issue of welfare for the children subject to such proceedings and is embedded in the Children Act 1989 and the Family Procedure Rules 2010. As per the Children Act 1989, section 1(2):-

*In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."*

The issue of the protocol is intended to instigate a culture shift locally to ensure that all participants in these proceedings are aware of their duty to ensure that care proceedings are conducted expeditiously and fairly. The Court is required to ensure this by the Children Act 1989, section 32(1):-

***Period within which application for order under this Part must be disposed of.***

- (1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of subsection (2))—
- (a) draw up a timetable with a view to disposing of the application without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

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<sup>1</sup> Reducing Delay in Care and Supervision Proceedings : Local Performance Improvement Groups Guidance 2010 MOJ

In addition, attention is drawn to the overriding objective to the Family Procedure Rules 2010:-

“1.1.—(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (c) ensuring that the parties are on an equal footing;
- (d) saving expense; and
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”

This protocol is not intended to supplant the discretion of individual Judges and Magistrates. It is intended to represent a set of requirements which can, and should, be modified by each Judge or Magistrate to the requirements of a particular case, always remembering that cases are to be concluded fairly, as well as expeditiously.

Although this protocol to some extent re-states existing rules (in particular the provisions of the Family Procedure Rules 2010 and associated Practice Directions) this is as a result of the observation that there has been poor compliance with such provisions locally, hence the need for some particular provisions to be highlighted at a local level.

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The term ‘all parties’, when used in this document, refers to all parties involved in care proceedings and includes:

- Local Authorities
- Children’s Guardians
- Solicitors acting for any party within care proceedings
- The parties to the care proceedings themselves

## General

1. The Courts will aim to conclude matters in accordance with the Overriding Objective.
2. HMCTS collects data against targets of 30 weeks, 50 weeks and 80 weeks. The recent Family Justice Review has recommended a timescale of 26 weeks for all but exceptional cases. A date will be identified by which proceedings should be concluded at the first hearing of every case. This will be set in light of the timetable for the child, but will not exceed 30 weeks in the usual case, unless exceptional circumstances apply.
3. All parties are reminded of the importance of compliance with the orders and directions given by the Court. If a party anticipates any difficulty in complying with any direction or timetable, that party is under a duty to bring this to the attention of the Court as soon as possible and to request, if appropriate, an amendment to the directions given.
4. The failure of a party to comply with a direction does not automatically relieve other parties of their obligation to comply with their own directions. All parties will be expected to meet their individual obligations unless the Court agrees a revised timetable. If required, an extension of time must be sought.
5. Any party failing to comply with directions for the filing of evidence will need to seek permission from the Court to file the document out of time.
6. Any party seeking an amendment to any directions of the Court must:-
  - a. set out clearly in communications whether or not this **may** cause delay in the timetable the Court has set;
  - b. propose a revised timetable for any subsequent directions if this is necessary or appropriate; and
  - c. copy in all other parties to the correspondence to invite comments thereon.
7. The Court will ensure that failure to comply with directions will meet with appropriate sanctions. All parties are reminded of the possible sanctions for failure to comply with directions which can include:-
  - a. A reduction in the amount of time allowed for subsequent directions;
  - b. The incurring of expense in relation to, for example, an independent social work report where a Local Authority has failed to comply with directions;
  - c. A refusal to permit the evidence to be adduced; or
  - d. An order for costs against a party, or wasted costs.

- 8.** All parties are reminded of the need to be proactive in ensuring documents are filed in a timely manner. The following is noted:-
  - a.** Where, for example, an allocated worker is unavailable for unforeseen reasons, Local Authorities and CAFCASS will be expected to have contingency plans to allocate the matter to another worker urgently to ensure that filing dates are met; and
  - b.** Where obtaining a lay party's evidence is likely to be difficult (e.g. where a person has a disability or is in custody), Solicitors are expected to ensure that appropriate appointment arrangements are made sufficiently in advance of the filing date to ensure compliance.
- 9.** Where the Official Solicitor has accepted an invitation to represent a party under a disability, delays in the Official Solicitor providing instructions will not be permitted to result in delays to the proceedings, save in exceptional circumstances.
- 10.** All parties are reminded of the need to advise the Court of **any** delays or potential delays in the timetable set, not just their own delays. If delays occur and are not notified to the Court, all parties will be asked for an explanation as to why the Court was not notified, not just the party in default.
- 11.** All representatives will be required to complete the attached form (Annex A) at the Case Management Conference ('CMC') and Issues Resolution Hearing ('IRH') certifying that they have notified the Court promptly of any delays by any parties in complying with directions and if not, why not.
- 12.** Local Authorities shall confirm, when submitting applications for renewal of any interim order:
  - a.** Whether or not all directions have been complied with; and
  - b.** Whether or not there is any delay, or potential delay, in the timetable.
- 13.** As part of the drive to reduce unnecessary delay, all parties can expect the Courts to challenge any consent orders presented to the Court which include provisions which may cause unnecessary delay in the proceedings. The Court will be more proactive in scrutinising timetables agreed or proposed by the parties.
- 14.** In order to assist the Court in active case management, all advocates and parties (including the Children's Guardian, Social Worker and / or Team

Manager) shall attend Court no later than one hour prior to the time set for any hearing and shall be ready to go into Court at that time if required.

### **Commencement of proceedings**

- 15.** Wherever possible, Local Authorities are expected to lodge their application documents via email to assist the Court in the early administrative requirements of a case.
- 16.** Local Authorities are expected to issue proceedings in a timely fashion and any request to abridge time for service of the application must be made, and justified, within the covering email enclosing the application and will be considered as per the Family Procedure Rules taking all relevant circumstances into account, including the time taken for the Local Authority to issue its application.
- 17.** Where a Local Authority is taking steps to issue proceedings, CAFCASS are to be notified via email in advance, where practicable, with details of the child(ren)'s name(s) and date(s) of birth and contact details for the Social Worker and Team Manager.
- 18.** In any case where disclosure from the Police may be required, the Local Authority will be expected to have lodged their request for disclosure, pursuant to the Annex B protocol, in advance of the first Court hearing.
- 19.** Where there has been significant involvement from a Local Authority in a particular family prior to issue of proceedings, the Local Authority will be expected to come to Court with a clear plan for the child(ren).

### **Case Summaries**

- 20.** The Applicant shall file and serve a current case summary no less than 2 working days prior to each Court hearing. Parties are not required to use a prescribed form, but are required to address the following matters (in the order set out below):-
  - a.** Reading list for the hearing;
  - b.** The date set for conclusion of the proceedings, together with details of the stage reached (e.g. "The Court has determined that these proceedings are to be concluded within 30 weeks (by the 1<sup>st</sup> January 2012). This hearing takes place at week 18.");
  - c.** Details of any directions which have not been complied with, on time, since the last hearing;

- d. The issues to be resolved at this hearing and, where known, very brief details of the positions of the parties; and
- e. The issues to be resolved at the final hearing.

### **The timetable for the child**

- 21. Local Authorities are reminded of their duty to complete question 8 on the C110 application form with adequate information for the Court to base a decision regarding the timetable for the child.
- 22. All parties and the Courts are to ensure that the pace of proceedings is dictated by the needs of the children concerned so far as is possible. Some proceedings will need to be substantially expedited to ensure that the welfare of the children remains the Court's paramount consideration.
- 23. The Court and the parties will review progress in the light of the timetable for the child at each hearing.
- 24. The Court will carefully scrutinise any requests for authority to instruct an expert, regardless of whether the request is by consent. In line with the findings of the Family Justice Review and the provisions of Practice Direction 25A, the Courts will increasingly recognise the position that the expertise within the Local Authority and the Children's Guardian should, in the majority of cases, be sufficient to provide the Court with the necessary information to determine a case.
- 25. All parties are reminded of the local Practice Direction requiring that any expert report must be filed within a maximum of 12 weeks from instruction.
- 26. All parties are reminded of the requirements of the Family Proceedings Rules and Practice Direction 25A regarding the instruction of experts, and such requirements shall be enforced by the Courts in all but exceptional circumstances including, where considered appropriate, refusal to agree to the instruction of an expert where the rules have not been adhered to.
- 27. Practice Direction 25A is required reading for all representatives. Parties are reminded, in particular, of the following provisions:-
  - a. Expert evidence will be restricted to that which is reasonably required to resolve the proceedings (FPR Rule 25.1);
  - b. Provision exists for written questions of clarification to experts within ten days of receipt of the expert's report unless the court directs otherwise (FPR Rule 25.6);



- c. Parties seeking leave to instruct an expert need to contact any proposed expert and provide such expert(s) with a significant level of detail<sup>2</sup>;
- d. In relation to each proposed expert, the Court will require confirmation of the various details required by the Practice Direction<sup>3</sup> including *inter alia* timescales, full details of costs, and non-availability to give evidence at a future hearing; and
- e. Any party seeking permission to instruct an expert must file a draft order and written proposal by 11am on the working day prior to the relevant hearing with a significant level of detail including *inter alia*:-
  - i. the Letter of Instruction, including the questions to be put to the expert;
  - ii. a CV (or similar detail);
  - iii. why the evidence cannot be adduced by the Social Worker and/or the Children’s Guardian;
  - iv. costs and timescales;
  - v. availability of the expert for future hearings; and
  - vi. whether public funding has been approved.<sup>4</sup>

**28.** Where there is a direction for the instruction of an expert, all publicly funded representatives are required to ensure that an application for prior authority to incur the expense of an expert is made within two working days of the order authorising the expert’s instruction.

### **Court bundles**

**29.** All parties are reminded of the contents of Practice Direction 27A regarding Court Bundles, which imposes obligations on both the Applicant’s solicitor and other parties’ representatives. Solicitors for the Applicant are reminded of the requirement to serve a copy of the index to the bundle on all other parties five working days prior to the relevant hearing.

**30.** All parties are referred to the protocol issued by the Family Proceedings Court in relation to Court bundles.

**31.** Court bundle(s) shall be filed the Applicant for every hearing at which the parties are required to attend as follows:-

- a. No later than five working days prior to the relevant hearing in the Family Proceedings Court; and
- b. No later than two working days prior to the relevant hearing in the County Court.

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<sup>2</sup> Practice Direction 25A, paragraph 4.1

<sup>3</sup> Practice Direction 25A para 4.2

<sup>4</sup> Ibid, para 4.3

## **Advocates' Meetings**

- 32.** Advocates' Meetings are an effective means of narrowing issues and ensuring effective hearings take place. Problems have been experienced locally with the effectiveness of Advocates' Meetings, hence the following requirements are to be followed.
- 33.** Advocates' Meetings are to take place no less than 7 days prior to the relevant hearing.
- 34.** The Children's Solicitor shall:-
- a.** Circulate an agenda by 12 noon on the working day before the Advocates' Meeting; and
  - b.** File a brief summary of the meeting at Court no later than two working days prior to the relevant hearing.
- 35.** The Advocates' Meeting shall agree, so far as is possible, a Case Management Order and the Applicant's Solicitor shall file a draft Case Management Order by no later than 10am on the working day prior to the relevant hearing.
- 36.** All parties are referred to Annex B which contains:-
- a.** A model order for the Case Management Conference;
  - b.** A model order for the Issues Resolution Hearing; and
  - c.** A model witness template.

## **The Case Management Conference**

- 37.** Whilst the Case Management Conference ('CMC') has been a useful means of ensuring an early focus on timetabling in the proceedings, the following provisions are aimed to make the CMC more effective.
- 38.** The Case Management Conference shall ordinarily take place within four weeks of the initial hearing.
- 39.** The lay parties (usually the parents) shall file and serve a Position Statement no later than 14 days prior to the CMC in accordance with the requirements of the relevant Practice Direction<sup>5</sup> including:-
- a.** the party's proposals for the long term future of the child (to include placement and contact);

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<sup>5</sup> Practice Direction 12A para 26.1(30)

- b. the party's reply to the Local Authority's Schedule of Proposed Findings;
  - c. any proposal for assessment / expert evidence; and
  - d. the names, addresses and contact details of any family or friends who it is suggested be approached in relation to long term care / contact or respite.
- 40.** In a case involving injury to any of the children subject to the proceedings, the lay parties (usually the parents) shall also file a narrative statement no later than 14 days prior to the CMC detailing that party's account in relation to the injury.
- 41.** The Local Authority shall file and serve a table / list summarising its position in relation to potential family or friends of the parents who could be considered as potential carers for the child no later than 11am on the working day prior to the Advocates' Meeting including:-
- a. Whether or not any prospective kinship carers have been identified by the family or the Local Authority;
  - b. A summary of the results of initial checks on its own systems (or with the Local Authority area in which they reside) in relation to any potential carer;
  - c. Details of the results of discussions with the parents regarding any potential carer (where possible);
  - d. The results of initial telephone enquiries of any potential carer (where possible); and
  - e. The Local Authority's proposals for assessment of any / all of the persons identified.
- 42.** The Children's Guardian shall file her or his Initial Analysis and Recommendations no later than 4pm on the working day prior to the Advocates' Meeting unless the Court considers that some other document (a Position Statement, for example) will be sufficient in the particular circumstances of the case.

### **Fact Finding Hearings**

- 43.** Where a case is considered to require a fact finding hearing prior to the final hearing, all parties shall address the issue as to whether or not a fact finding hearing is required within their case summary, position statement or other document filed in advance of the CMC.
- 44.** Where the court agrees that a fact finding hearing is required, the case will be listed for a pre-hearing review and the following procedure shall be followed:-

- a. The Local Authority shall file and serve a composite schedule of findings as per the attached model schedule (Annex C) together with a witness template detailing the Local Authority witnesses who support the findings sought (Annex D). These documents are also to be served in electronic form to enable the respondents to endorse their comments;
  - b. The lay respondents shall file, within 14 days thereafter, the composite schedule of findings and witness template with their comments endorsed thereon;
  - c. The respondents' comments on the witness template shall detail which Local Authority witnesses are required by reference to areas of relevant cross examination;
  - d. The Local Authority shall file the final composite schedule of findings sought and final version of the witness template, to include details of the availability of the witnesses sought, no later than 5 working days prior to the pre-hearing review.
- 45.** At the pre-hearing review the court will again give consideration as to whether or not a fact finding hearing is required. If so, then the court will give detailed consideration to the need for the witnesses which each party seeks to call before approving a final time estimate for the hearing.
- 46.** The court will consider the listing of the Issues Resolution Hearing and consequential directions at the pre-hearing review to ensure that no time is lost following the conclusion of any fact finding enquiry.

### **The Issues Resolution Hearing**

- 47.** The Issues Resolution Hearing ('IRH') has proved effective, locally, in resolving issues and concluding cases at an early stage, as well as avoiding unnecessary blocking of Court lists with ineffective trials. The following provisions aim to increase the efficacy of the IRH in resolving issues at an early stage. All parties are reminded to consider any separate protocols in place regarding the IRH (such as the IRH Protocol for the Family Proceedings Court).
- 48.** The Court will note in the order made at the IRH which issues have been resolved and which remain to be determined at the Final Hearing. The Court will also note that a final order may be made at the Issues Resolution Hearing.
- 49.** The Court will require the parties to have completed a witness template prior to setting the time estimate for any final hearing save in exceptional circumstances. All parties are reminded of the requirement to have witness availability to hand for the Issues Resolution Hearing (including availability of any experts).

50. Cases will be allocated to the court where the case can be dealt with most effectively and in such a way as to avoid delay.

### **The Final Hearing**

51. In an appropriate case, the Court will direct that the Issues Resolution Hearing shall be the final hearing.
52. Where the matter is listed for a final hearing, the following documents shall be filed and served:-
- a. An Opening Note from the Applicant no later than 5 working days prior to the hearing to include an Advocate's Chronology (NB the Social Work chronology will not suffice);
  - b. Concise Position Statements from all other parties no later than 2 working days prior to the hearing; and
  - c. Where any legal arguments are to be presented at the hearing, a Skeleton Argument shall be filed by all parties who seek to present any legal argument no later than 2 working days prior to the hearing.

### **Adoption**

53. Whilst the legal requirements relating to the conduct of Adoption Panels are recognised, delays in convening an effective Adoption Panel continue to be a substantial cause of delay within care proceedings locally.
54. At the CMC, the Court will expect:-
- a. Local Authority Adoption Panels to 'pencil in' cases to a timely panel where adoption is likely to be one of the options being considered at the IRH or final hearing; and
  - b. Social Workers, in conjunction with Independent Reviewing Officers, are to arrange for a timely Looked After Review to ensure that a 'Best Interests decision' can be considered at least six weeks prior to the date for the 'pencilled in' Adoption Panel. That date will be endorsed as a recital to the Case Management Order.
55. In appropriate cases, where the date of an adoption panel is close to the relevant hearing, the Court will direct the service of a draft placement application with supporting documents (which will be subject to any amendments as a result of the conclusion of the relevant Adoption Panel) to facilitate the consideration of these prior to the Panel date.

