

**Statutory Guidance for Local Authorities
and the Public Law Outline**

Frequently Asked Questions

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1. GENERAL

This document seeks to address some of the key questions that have been raised about the revised statutory guidance for local authorities and the Public Law Outline. For more general information about the reforms please also refer to the Ministry of Justice website: <http://www.justice.gov.uk/guidance/careproceedings.htm>

What is happening?

- 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), two key pieces of work are being taken forward, which will become effective on 1 April 2008.
 - Revised statutory guidance (Volume 1 'Court Orders' of the Children Act guidance) under section 7 of the Local Authority Social Services Act 1970, issued by DCSF and the Welsh Assembly Government
 - A new Public Law Outline (PLO), replacing the current Protocol for Judicial Case Management in Public Law Children Act Cases

Why are these changes happening?

- There are around 14,000 applications (by child) for care or supervision each year. These cases are complex and time consuming – 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 people in our society. Children in care are three times more likely to be convicted of an offence or cautioned than other children; and tend to start using drugs at an earlier age, at higher levels and more frequently than other children.
- The lengthy court process prolongs instability in the child's 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 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. The Care Review encourages early intervention to find resolutions before cases reach court, and identified ways to improve the quality of local authority applications and improve case management procedures for those that do reach court.
- The Care Review highlighted five 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 between agencies

Who is involved in taking forward the work to implement the statutory guidance and the PLO?

- The Care Proceedings Programme was established to take forward the work arising from the Care Review. The Programme is led by the Ministry of Justice with wide inter-agency involvement from DCSF, the Welsh Assembly Government, the Judiciary, Cafcass, Cafcass Cymru and the Legal Services Commission. It also works 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 an Implementation Steering Group. The focus of the Steering Group is to provide support to ensure family justice agencies embed the new procedures into their own practices and systems.

What will success look like and how will the reforms be evaluated?

- Currently, performance is measured by the proportion of care and supervision cases which are completed within 40 weeks. The aim is to complete 56% of cases in the magistrates’ courts and 48% of cases in care centres within 40 weeks.
- The Ministry of Justice is considering how both the guidance and PLO can be evaluated following implementation. The initiative areas will be evaluated in the coming year, and national evaluation is expected to commence before 09/10 because it takes on average one year for a case to be completed.

What are the proposals to increase the fee payable by local authorities for making care or supervision applications?

- HMCS issued a consultation paper setting out proposals for a new fee charging regime for local authorities earlier this year. This can be viewed at: <http://www.justice.gov.uk/publications/cp3207.htm>
- The proposals reflect HM Treasury policy on fees and charges to reflect the full cost of providing the court system for each application. The consultation closed on 11 March 2008 and the responses are currently being reviewed.

Which areas were involved in testing the PLO?

- The PLO was 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?

- The initiative areas were chosen by the President in consultation with relevant Designated Family Judges

Were the initiative areas evaluated before the PLO was finalised?

- Implementation of the PLO is being led by the judiciary. As most cases take on average a year to proceed through the courts, it was recognised that it would be difficult to evaluate the impact of the PLO fully in terms of delay. The President and the Judicial Review Team were keen to hear feedback about the proposals from the initiative areas and the President met with his Designated Family Judges in each of the initiative areas in the autumn 2007 in order to gauge how the PLO was operating and bedding down. In addition, an online survey for court users in the initiative areas and a consultation on the content of the PLO fed into this process.
- In addition, the experiences of the initiative areas have had a crucial role in helping to inform implementation plans. Workshops were held with key representatives from each area, for example, to receive feedback and views.

The final version of the PLO differs to that which has been used in the initiative areas. Which version should be used?

- The final version of the PLO has been sent to all DFJs and court staff in the initiative areas. The question of when it is appropriate to start using the final version, and if this should occur before April, is a matter to be considered by the DFJ in each area, and court users will be informed of the position at a local level.

2. 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 are carried out and that care plans have been prepared and shared with families.
- 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 those 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 avoiding proceedings or if this is not possible, identifying the key issues in dispute at an early stage.

If I comply fully with the pre-proceedings checklist, there is likely to be a huge amount of paperwork filed with the courts. Is all of it needed?

- The aim of the pre-proceedings checklist is to ensure that all pertinent documents which are on the local authority file are lodged with the application from the outset. Only those documents that are directly relevant to the local authority case, e.g. the outcome of key meetings with the family, should be filed with the application.

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

- The court will closely and routinely consider what actions have been taken by local authorities before a care application has been made. If certain pre-proceedings steps have not been taken, the judge and/or legal adviser reviewing the application will consider issuing standard directions to ensure the case can progress.
- If a child's welfare is at risk, the local authority must make an immediate court application. The absence of certain steps or documents is irrelevant in these circumstances.

How will the voice of the child be represented during the pre-proceedings stages?

- There is no provision for the child to be represented at the meeting between the local authority, the parents and their legal representatives. The purpose of the meeting is clarify the issues for the parents and to help them to understand what needs to happen in order to avoid court proceedings.
- It is of course important, and part of the local authority's role, to consider the voice of the child throughout a properly undertaken core assessment.

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

- DCSF encourage the use of FGCs, particularly as not all local authorities currently make use of them. Social workers will need to consider if it is appropriate to hold a FGC depending on the circumstances of an individual case. Further guidance about communicating and working with children and their

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)

Where do Family Group Conferences fit into the process?

- The pre-proceedings flowchart, which is annexed to the guidance, sets out that Family Group Conferences may be used at any point following the initial assessment. All of these cases are very different and individual discretion will need to be exercised by social workers about whether a FGC is appropriate and when it should fit into the process.

Don't these reforms shift the delay during proceedings to the pre-proceedings stages?

- The vast majority of the families in care proceedings have previously been known to local authorities for many months, and very often for a number of years. As with the previous Protocol, the PLO expects that based on this extensive engagement with, and knowledge of families, local authorities will continue to need to properly prepare documentation to support court applications.
- The PLO recognises that there will be cases where the need to safeguard the welfare of the child means that an application should be made to court immediately and that it will not be possible to lodge all of the appropriate paperwork at that time.

To what extent will the courts expect to see specialist and independent assessments of family members during the pre-proceedings stages?

- The purpose of assessment process before proceedings commence is to help the local authority to determine whether it is appropriate to make an application to court and to help them come to a decision about what the needs of the child are. As part of the core assessment process, local authorities will need to consider to what extent any specialist or independent assessments may or may not be appropriate.
- Local authorities will need to work closely with key partners – e.g. Children's Trusts and health partners – to identify how early and proportionate assessments should be incorporated into core assessment activity.
- Of course, the parties may wish for additional assessments to be completed during court proceedings. The parties should discuss whether an expert is required at the advocates' meeting before the CMC. The question of whether additional expert assessments should be commissioned is then a matter to be determined by the court at the CMC. In the first instance, though, the court will consider if these assessments should be undertaken by the social worker or children's guardian.

When should the notification be issued to parents?

- The decision about whether to issue a letter before proceedings, setting out local authority's concerns about a child should be taken at a legal planning/gateway meeting. In some circumstances, the safeguarding concerns will be such that a decision will be taken to make an application to court immediately. In these circumstances it will not be possible to send a letter to the parents. However in other circumstances, whilst care or supervision proceedings may be deemed appropriate, the safeguarding concerns may nonetheless allow time to be factored in for further work with the family, and a letter before proceedings should be issued at this point.

Can the letter before proceedings be issued to parents/those with PR before the birth of an unborn child?

- Yes

What processes should be adopted by local authorities after a letter before proceedings is issued?

- Local authorities should aim to meet with the parents and their legal representatives as soon as possible after a letter before proceedings is issued. Any plan that is agreed at this meeting should also be communicated to the parents and their legal representatives after this meeting. The plan should be reviewed regularly and the safety of the child should be a paramount consideration in this. Local authorities will need to introduce their own procedures and systems for monitoring whether progress is being made with the family. If at any point the risk to the child is such that court proceedings should be taken, then an application should be made immediately.

Will there 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 closely with parents at each stage 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.
- It is accepted that in many cases some relatives will not put themselves forward at an early stage to avoid conflict with the parents. The focus on working with the parents before proceedings is an attempt to overcome some of these issues. In many cases, though, it is accepted that it may only be possible to pursue 'family and friends' options once proceedings have started.

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

- This will 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.

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

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

How wide is the search for relatives?

- This will need to be considered on a case by case basis.

How do we ensure all potential carers come forward? Will there be a deadline (e.g. the commencement of proceedings) after which family members will not be considered?

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

Will full assessments or viability assessments be required of potential family carers?

- This will depend on the individual circumstances of each case and will need to be considered separately as is currently the case.

If DNA testing is required to confirm the father's identity, will the local authority need to complete this work prior to the proceedings (and fund it)? And what happens if father only comes 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.

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?

- Local authorities will need to exercise their discretion and judgment about how and when they should engage with children and their families. In these circumstances, in order to safeguard the welfare of the child it may be appropriate to progress to court proceedings. Consideration should also be given as to whether there are grounds for an emergency protection order or the exercise of police protection powers.

How much will be paid for pre-proceedings legal advice and what will this cover?

- The new level of pre-proceedings advice (Level 2) is intended to support parents and those with parental responsibility to engage with local authorities. It is hoped that this new level of help will help them engage or re-engage with the local authority and that the local authority will work with them to avoid proceedings or, where this is not possible, to narrow the issues in proceedings so that they can be dealt with more quickly.
- The standard fee payable for Level 2 help is £347. For further information on the rates available please refer to the LSC website.

Given that the aim is to divert families away from care proceedings, why is pre-proceedings legal funding only available at the point at which the Local Authority takes the decision to issue proceedings?

- Legal help has always been available to parents pre-proceedings through the legal help scheme. Level 2 is a new level of funding through additional monies to facilitate negotiation in specific circumstances. Legal help will continue to be available as previously at Level 1 of the new fee scheme.
- Discussions with the DCFS have shown that the most effective trigger point is where the local authority considers that action might be appropriate but there is still time to work closely with the family. At this stage there will be a very real opportunity for lawyers to explain the issues to the parents, which may influence a local authority's final decision to issue proceedings.

Who is entitled to receive pre-proceedings legal advice?

- Level 2 advice is available to parents and those with parental responsibility. There is no provision for this to be available to extended family members.

Where can parents find information about suitably qualified solicitors to help them seek legal advice quickly?

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

To what extent have voluntary organisations been engaged in the development of the guidance and how far should they be involved in the pre-proceedings work?

- A number of voluntary organisations were active in the development of the guidance, providing valuable consultation feedback. These services are commissioned by local authorities and, nearly all local authorities have arrangements with voluntary organisations to provide services to children in need and their families, for example advocacy services for parents involved in child protection processes and family group conference services. It is expected that such arrangements will continue and develop in light of the revised guidance and the PLO.

4. PUBLIC LAW OUTLINE

I need leave from the court to disclose previous court orders/judgements. How can I be expected to file these with the application?

- In these circumstances local authorities are asked to alert the court to the fact that there have been previous orders and to summarise what happened in these cases and why they are relevant.

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

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

What will happen to cases that are already following the Protocol once the PLO is introduced?

- The PLO will not apply to applications issued before 1 April 2008. However, the court may direct in any individual case that the PLO will apply in whole or in part.

How will the timetabling take into account the need for Adoption Panel consideration of care plans?

- If Adoption Panel consideration of care plans is a factor in individual cases then this should be flagged as a consideration for the court to consider in setting the timetable for the child.

What will happen to the timetable for the child if there are other competing considerations, such as the availability of expert witnesses?

- The court is responsible for reviewing the timetable at all stages of the case and will need to consider if the timetable for the child needs to be altered. There may well be competing considerations faced by the court, which will affect the timetable, and this will need to be handled by the courts on a case by case basis.
- The Care Proceedings Programme team is working closely with the Department of Health to look at how the Chief Medical Officer's proposals to address the supply and availability of expert witnesses can be taken forward. This is a long term project than the implementation of the PLO and the revised statutory guidance.

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 intended 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 and, as part of them, additional specialist assessments may be commissioned in order to help inform the local authority's decision to take proceedings.
- Where the contents of a core assessment 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. Under the Experts Practice Direction, if the question of whether an expert should be instructed is raised, the court should first consider if this work can be completed by a social worker or children's guardian.
- It should be noted that the judiciary have also received training on the Experts Practice Direction, including how and when it is appropriate for an expert's opinion to be instructed.

How will finding of fact hearings fit into the new process?

- There will be no changes to finding of fact hearings. Most of the cases where finding of fact hearings are required will be timetabled around the CMC so that a finding of fact hearing is directed and an adjourned CMC can consider the outcome for further directions.

Does the new system have the facility to identify parent's who lack litigation capacity at an early stage to enable a guardian ad litem to be appointed?

- The pre-proceedings guidance should remind local authority staff of the need to identify 'protected parties' at an early stage. The use of legal advocates in the pre-proceedings process should also enhance earlier identification.
- This question will also be raised at each stage of proceedings: on issue of the application; at the First Appointment and again at the Case Management Conference.

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

- Parties should immediately advise the court of any late changes of circumstance. 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 arranging 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 be different 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. If one child's case will be ready well in advance of another's it may be appropriate to deal with it then. The court will hear all parties' positions individually 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 depend on 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 whether 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 line with the PLO, 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.

What is the process to ensure that a solicitor for the child is appointed in time for the First Appointment?

- It is imperative that a solicitor is appointed to the child in good time for the first hearing. On day one the court should appoint a children's guardian. Cafcass / Cafcass Cymru will allocate the case and a children's guardian should appoint a solicitor on the child's behalf by day three. In cases where Cafcass / Cafcass Cymru are not in a position to do this, the court should appoint a solicitor for the child under section 41 of the children Act 1989 and in accordance with the

guidelines for courts for appointing a solicitor for the child in specified proceedings, April 2007. The court should follow the same procedure whether or not a court duty guardian scheme is in operation.

Who should hear an IRH in the Family Proceedings Courts?

- While the IRH is in principle capable of producing a final order if the circumstances warrant, and that is a highly desirable outcome, its primary function and purpose is that of a case management exercise to be dealt with by the legal advisers. Legal advisers will be capable, and required, to scrutinise filed evidence and draw attention to failings to deal with or respond to issues raised by other parties. Legal advisers will be able to fulfil the objective of the IRH 'to resolve and narrow issues; to identify any remaining key issues.' In the few cases where the case can be finally resolved by the time of the IRH, it is most unlikely that the parties, or at least one of them, will be unaware of this and will thus be expected to inform the court

Why can't professionals, for example social workers and children's guardians, participate in advocates' meetings?

- As legal representatives the role of advocates at these meetings is to clarify and where possible, resolve issues in order to assist the court to manage the case in line with the PLO. This is a new and separate task and attendance of people who will not be making a case before the court may obscure the issues.
- During the course of preparing the necessary documentation for the court, the advocates should be fully instructed regarding their client's position in order to participate effectively in the meeting. They may also find it useful to ensure their clients are in a nearby room and/or can be contacted should further instructions be needed during the meeting itself.
- If professionals were to attend these meetings it may be seen as unfair to parents if they are the only people excluded (unless they are a litigant in person) or intimidating if they were there with the professionals.

If the advocates' meeting is held only two days before the CMC or IRH this doesn't leave long to draft and submit the case management order to the court?

- The Practice Direction states explicitly that advocates' meetings should take place no later than two days before the CMC and IRH; more time can be allowed in the process to ensure that there is sufficient time for the appropriate paperwork to be completed.

If a child has sought separate representation from the Children's Guardian, and the Children's Guardian no longer has legal representation, would the Children's Guardian be able to participate in the advocates meeting?

- Yes. In this case the unrepresented Children's Guardian would be in a position analogous to that of a litigant in person and should be able to attend the advocates meeting.

What will be the process for agreeing and setting the timetable for the child, and will there be any 'final' time limit, such as 40 weeks? Once the timetable/limit is set, will it be the expectation that all processes will fit within that child's timetable?

- The timetable will be set by the Judge or Case Progression Officer, after consideration of the information from the parties. Cases should still not exceed 40 weeks without good welfare reasons.

Has additional funding been set aside for Case Progression Officers within civil courts?

- Some of the key tasks of involved are already being carried out by those with responsibility for handling care cases. Local decisions are being taken about whether to establish specific posts or if the functions to be integrated into existing roles.

How does Article 6 of the Human Rights Convention sit with reducing court time and saving resources?

- The changes do not seek to reduce court time but to make better use of court time by front loading preparation and analysis.
- The ECHR Article 6 jurisprudence will not be contravened by any of the proposals.

When will the new application form, incorporating the pre-proceedings checklist, be available?

- As the C1 form is specified in the Rules, it has not been possible to make amendments to this in time for implementation of the PLO. Her Majesty's Courts Service is considering when an application form for care and supervision proceedings can be introduced. In the meantime, the supplementary form PLO1 should be used. This is annexed to the Practice Direction and will be available on the HMCS website from mid March.

What is happening to the C13 form?

- Until the new application form is introduced, the C13 form will remain in place and should be used as appropriate.

When will new rules, underpinning the PLO, be introduced?

- A separate programme of work is being taken forward to harmonise the family proceedings rules, for both the magistrates and the county courts. The timeframe for implementation has not yet been agreed although new rules underpinning and supporting the PLO will be introduced as part of this.

What is the procedure when applications for an Emergency Protection Order proceed to full care proceedings?

- EPOs are outside the scope of the PLO. However, the Practice Direction does state explicitly that consideration should be given to applying the PLO to all public law proceedings and it will therefore be a decision to be taken by the court about how and when it is appropriate for the PLO to apply when an application starts by way of EPO.

Where can I access the Experts Practice Direction?

- The final version of the Practice Direction is available on the HMCS website: <http://www.hmcourts-service.gov.uk/cms/files/Experts-PD-flagB-final-version-14-01-08.pdf>

Will there be a standard template for the allocation record and timetable for the child?

- Although a template was issued in the initiative areas the judiciary are keen for the format of the allocation record and timetable for the child to vary according to local needs. That said, the judiciary are currently considering whether a standard national template would be helpful to local authorities and, should this be developed, this will be made available on the care proceedings website.

4. WHO CAN I CONTACT IF I HAVE A QUERY?

Local authority queries

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