

President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law)

Issued in accordance with rule 21 of the Family Court (Composition and Distribution of Business) Rules 2014

Introduction

1. This Guidance is issued by the President of the Family Division and applies to all private law proceedings under Part II of the Children Act 1989 (hereinafter referred to as 'private law proceedings') from 22 April 2014. It is issued following consultation with, and where applicable with the agreement of, the Lord Chancellor, in accordance with rule 21 of the Family Court (Composition and Distribution of Business) Rules 2014, and is to be read with those Rules and PD 12B FPR (CAP 2014).
2. The purpose of the Guidance is to ensure that all new private law proceedings are allocated to the appropriate level of judge and, where appropriate to a named case management judge (or case manager in those cases allocated to lay justices) who shall provide continuity for the proceedings in accordance with the President's Guidance on Judicial Continuity and Deployment (Private Law).
3. This Guidance applies to the allocation of all relevant proceedings to all judges of the Family Court (including lay justices sitting with assistant justices' clerks (referred to in this Guidance as legal advisers). During the implementation and consolidation of arrangements for the Family Court, this includes allocation to legal advisers conducting FHDRAs in court centres where:
 - (i) there is agreement between the Designated Family Judge ('DFJ'), HMCTS Head of CFT, the justices' clerk and the relevant Panel Chair(s) that available judicial resources locally require that FHDRAs continue to be listed before the legal advisers; or
 - (ii) in areas where the practice does not currently take place, where there is agreement between the DFJ, HMCTS Head of CFT, the justices' clerk and the relevant Panel Chair(s), and specific permission granted from the President of the Family Division and the HMCTS Director for Civil Family and Tribunals, that it be extended to facilitate the appropriate allocation of cases;

And in any event

- (iii) provided that such allocation does not restrict the court's ability to make substantive orders on the day of the hearing (i.e. by using parallel

or back-to-back lists, so that lay justices or judges are available to consider the case and, where appropriate, make a substantive order).

Allocation and Resources

4. In some DFJ's areas, full implementation of this guidance may result in a significant shift of caseload between levels of the judiciary. Before implementation it will therefore be necessary for the DFJ in consultation with the local judiciary, the justices' clerk, and HMCTS to review the available resources, in terms of courtrooms, court staff and judiciary including lay justices and legal advisers. The extent and timescale of implementation of the guidance should take these factors into account alongside any shift in allocation of public law cases following the implementation of the President's Guidance on Allocation Gatekeeping for Care Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law). The overarching intention should be to avoid delay in all children's proceedings wherever possible.

Allocation and listing schedules

5. The DFJ in consultation with the judiciary, the justices' clerk and HMCTS should review the family listing schedules in place within the DFJ's area taking into account the plans for the implementation of the Family Court. Where feasible and practical, consideration should be given to arranging listing schedules so that First Hearing Dispute Resolution Appointments (FHDRAs) are taking place in parallel lists (i.e. on the same day and ideally in the same building) before District Judges and lay justices (sitting with a legal adviser), or where appropriate (in accordance with paragraph 3 above) before legal advisers sitting alone. This will allow for re-allocation to be considered up to and including the date of the hearing of the case, so that an alternative judicial level to that selected by the Gatekeeper(s) (see paragraph 6 below) can be arranged if necessary (in particular, should receipt of the Cafcass Safeguarding checks or interview with the parties raise matters of particular significance which justify a revised allocation decision).

Gatekeeping teams

6. Each DFJ will lead a gatekeeping team responsible for private law gatekeeping in each of the Family Hearing Centres that are nominated by the President to be Designated Family Centres. The team will consist of the DFJ and the justices' clerk with as many legal advisers and District Judges as the DFJ considers necessary to carry out the gatekeeping role depending on local demand and conditions. The DFJ in consultation with the District Judges and the justices' clerk will determine whether gatekeeping decisions are to be made by the District Judges or legal

advisers acting alone, or together. The District Judge and legal advisers when making gatekeeping and allocation decisions are referred to as "the Gatekeeper(s)" in this guidance.

7. All applications for private law orders which are received by 4.00 pm will be issued by HMCTS and placed before the Gatekeeper(s) for their consideration on the next working day, except where they are (or have been) dealt with as an urgent application. The Gatekeeper(s) should consider the application on the basis of the information provided in the application, and shall determine the appropriate level of judiciary in accordance with this guidance, and the requirements of the Family Court (Composition and Distribution of Business) Rules 2014, based on consideration of the relative significance of:
 - (a) The need to make the most effective and efficient use of the local judicial resources that is appropriate, given the nature and type of application;
 - (b) The need to avoid delay;
 - (c) The need for judicial continuity;
 - (d) The location of the parties or of any child relevant to the proceedings; and
 - (e) Complexity.
8. The judiciary including lay justices and legal advisers have an ongoing duty to keep allocation decisions under review particularly:
 - (a) when any response to the application is received;
 - (b) the safeguarding checks are received; and
 - (c) at the FHDRA when further information has been ascertained from the parties and Cafcass or CAFCASS Cymru at court.
9. When making an allocation decision the Gatekeepers will enquire into whether a MIAM exemption has been validly claimed, to the extent possible at this stage. If the MIAM exemption has not been validly claimed, the Gatekeepers shall give directions in accordance with rule 3.10(2)/(3) FPR 2010.
10. Prior to making an allocation decision the Gatekeeper(s) shall consider whether to allocate the application to a different location for hearing within the DFJ area, or to transfer the application to another DFJ area, where it appears that the parties, and/or the child(ren) who are the subject of the application, reside(s) in an area other than that covered by the DFJ.

11. Gatekeeper(s) are to be made available for a period of time on each weekday to allocate all private law proceedings which have been issued. Gatekeeper(s) will consider the file in each new application which has been issued on the preceding day and any urgent applications which are outstanding, and determine to which level of judge the proceedings should be allocated, i.e. to lay justices, a judge at District Judge level, a judge at Circuit Judge level or judge at High Court level sitting in the Family Court:
 - (a) Based on consideration of the relative significance of the matters set out in paragraph 7 (a)-(e) (above),and
 - (b) When considering complexity, by reference to the schedule to this guidance.

The Gatekeeper(s) will record their allocation decision and reasons on the case papers and make any appropriate arrangements for transfer (between courts) as necessary. In addition, where it appears that a case needs an urgent listing, the Gatekeeper(s) will ensure that the case is listed as a matter of urgency, and will give directions to abridge time for service if necessary.

12. The DFJ shall make arrangements to ensure the swift allocation of all cases within the Family Court to a named case manager so that it can be listed (in accordance with this Guidance and the Family Court (Composition and Distribution of Business) Rules 2014) in week 5 or 6 after issue, for an FHDRA, or sooner if an FHDRA is not appropriate.
13. If any Gatekeeper requires further guidance on a particular case, they should refer the allocation decision to the DFJ or his nominated deputy.
14. An allocation decision made by the Gatekeepers does not prevent a party to the proceedings applying for a review of the decision
15. The DFJ shall monitor the allocation and gatekeeping practices in the DFJ area to ensure that there is consistency of allocation, effective use of resources and the capacity to list cases at the earliest opportunity to avoid delay. He/she may issue local guidance to the Gatekeepers from time to time to reflect local circumstances and ensure the best use of resources. The allocation of work between the Circuit Bench, the District Bench, the lay justices and, where appropriate and agreed, the legal advisers may be subject to local directions by the DFJ .

Directions on Issue

16. Gatekeepers shall be able to issue Directions on Issue on Form CAP01 in the following circumstances:

- (a) where the Gatekeeper finds on the basis of the information provided that the exemption from attending a MIAM has not validly been claimed, the Gatekeeper will direct the applicant, or will direct the parties, to attend a MIAM before the FHDRA, unless the Gatekeeper considers that in all the circumstances of the case the MIAM requirement should not apply to the application in question; the Gatekeeper will have regard to the matters set out in rule 3.10(3) FPR when making this decision;
- (b) where it appears that an urgent issue requires determination, the Gatekeeper may give directions for an accelerated hearing;
- (c) exceptionally, where it appears that directions need to be given for the service and filing of evidence, he/she may give directions for the filing of evidence.

Principles of Allocation

- 17. Allocation decisions must be made in accordance with the Family Court (Composition and Distribution of Business) Rules 2014.
- 18. This Guidance identifies criteria which are intended to be consistent with the Family Court (Composition and Distribution of Business) Rules 2014, and the decisions of superior courts.
- 19. In determining allocation, judicial continuity is an important consideration and the President's Guidance on Judicial Continuity and Deployment (Private Law) is to be followed.
- 20. In determining allocation consideration must be given to the matters set out in paragraph 7(a)-(e) above, in particular the need to avoid delay and provide the earliest possible hearing dates consistent with the welfare of the subject child(ren).
- 21. No distinction is to be drawn between proceedings which may be heard by District Judges and District Judges (Magistrates' Courts). There is an expectation that District Judges will assume personal responsibility for all case management hearings in proceedings allocated to them in accordance with the President's Guidance on Judicial Continuity and Deployment (Private Law).

Allocation Guidance

- 22. Subject to the guidance given below, all private law proceedings may be heard by any judge who has been authorised or nominated to conduct such proceedings, and may be case managed by the same judge or legal adviser.

23. When considering specifically the complexity of a case (see paragraph 7(e) above), it is envisaged that all relevant family applications (as defined in CAP paragraph 23) will be heard by lay justices (or at the FHDRA by legal advisers) unless they are of the type set out in the Schedule to this Guidance (see paragraphs 25 and 26 below). Additionally, a relevant family application may:
- (a) be allocated to be heard by lay justices where specifically approved by the justices' clerk (or his nominated deputy) in consultation with the DFJ, or
 - (b) be re-allocated to be heard by lay justices where, at FHDRA or other hearing, it appears to the judge that the case does not fall, or no longer falls, within the Schedule.
24. There is an expectation that lay justices will not hear any contested private law application where the estimated length of the hearing is in excess of 3 days without the same having been approved by the justices' clerk in consultation with the DFJ.
25. When considering specifically the complexity of a case (see paragraph 7(e) above), it is envisaged that:
- (c) proceedings described in Part 1 of the schedule to this Guidance will be allocated to a District Judge, or a District Judge (Magistrates' Court). If, on allocation it appears to the District Judge that the particular circumstances of the individual case justify allocation to a Circuit Judge, the District Judge shall so allocate it.
 - (d) subject to paragraph 27 (below), proceedings described in Part 2 of the schedule to this Guidance will be allocated to either a District Judge, District Judge (Magistrates' Court) or to a Circuit Judge or a High Court Judge.
26. Where the Gatekeeper allocates proceedings described in Part 2 of the schedule to a Circuit Judge or to a High Court Judge sitting in the Family Court, the FHDRA for that case shall be listed before a District Judge or District Judge (Magistrates' Court) unless the Gatekeeper considers (in discussion with the DFJ) that the FHDRA should be conducted by the Circuit Judge or High Court Judge (as appropriate).
27. Proceedings described in Part 3 of the schedule to this Guidance are to be issued in the High Court, not the Family Court. If they are received in the Family Court, then they must be identified and transferred to the Family Division of the High Court.
28. Where it appears to a Court that the issues in a case have developed from the point of initial allocation in such a way as to justify re-allocation, the court shall consider re-allocation in accordance with this Guidance and Schedule, having

regard to the matters set out in paragraph 7 (a)-(e) above, and taking account to the extent appropriate the principle of judicial continuity, and the need to avoid delay.

Urgent hearings

29. Urgent applications are those in which the applicant for a private law family order invites the court by application C2 either to (a) list the application for a hearing without notice to the respondent, or (b) reduce the normal (14 days) time-limit for service of an application and list a hearing at short notice.
30. If the application is considered by the Gatekeeper(s), they are to have regard generally to the guidance in paragraph 12.1-12.5 of the CAP in relation to the making of without notice orders when considering how to allocate an application that is presented for allocation as 'urgent'.
31. When presented with an application said to be urgent, the Gatekeeper(s) shall upon receipt:
 - (a) allocate the application to the appropriate level of judiciary in accordance with rule 16 of the Family Court (Composition and Distribution of Business) Rules 2014, and
 - (b) determine whether the application requires
 - (i) a hearing on that day, or
 - (ii) requires an early hearing in advance of the FHDRA, with a reduced time for service of the application.

If an application for an urgent hearing is refused, reasons shall be given in writing and the application listed for FHDRA; the Gatekeeper may issue further directions in accordance with paragraph 16 above.

[end]