

## Guide to Case Management in Public Law Proceedings

1.1 The object of this Guide (“the Object”) is to provide a means of managing the conduct of proceedings under Part V of the Children (Northern Ireland) Order (“the Order”) 1995 which:

- (1) is consistent with the contents of Article 3 of the Order;
- (2) is consistent with the overriding objective set out in Order 1 Rule 1A of the Rules of the Supreme Court (Northern Ireland) 1980;
- (3) promotes a consistent and predictable approach in all courts dealing with such proceedings;
- (4) identifies the substantive issues at as early a stage as possible and encourages the prompt resolution of such issues in a just manner either by agreement or by trial;
- (5) promotes the recording of core information in an efficient manner and an accessible form.

1.1A In this Guide any reference to a “Judge” or “Court” includes:

- (a) a Judge of the Court of Judicature;
- (b) a County Court Judge;
- (c) a District Judge (Magistrates Court) sitting with, or exceptionally, without Lay Magistrates.

1.2 This Guide applies to all proceedings under Part V of the Order issued on or after 1<sup>st</sup> October 2009. A court may apply some or all of the provisions of this Guide to proceedings issued before that date where it considers that to do so would further the Object. In so far as is practicable it also applies to all other public law proceedings.

1.3 It is recognised that in some cases a court may decide to depart from the provisions of this Guide in the best interests of the child or children concerned in the proceedings. A court is free to do so but should record why it has done so.

1.4 This Guide is to be read with, and is subject to, the Order, the Family Proceedings Rules (Northern Ireland) 1996 (as amended) and the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 (as amended).

1.5 The parties are expected to co-operate with each other and with the court in achieving the Object.

1.6 In this Guide a reference to a day by which something is to be done is a reference to the number of working days after the date of the issue of proceedings, not including the date of issue.

1.7 Where this Guide provides for the disclosure of documents, all documents disclosed shall be treated in the same manner as if they had been filed in court in the course of proceedings and should not be disclosed to any other person without either;

- (a) the consent of the party making the disclosure and every other party to whom the disclosure has been made; or
- (b) where proceedings have been commenced, the leave of the court.

### **The key stages**

2.1 The basis of the system is to identify what is to occur at each stage of the proceedings and encourage the court and the parties to achieve each necessary step in the proceedings at as early a stage as is consistent with the Object. It is recognised that each stage may not be appropriate to every case that time limits may sometimes need to be extended or abridged, that a stage may overlap with an earlier or subsequent stage and that the court needs to retain some flexibility to enable it to deal with changing circumstances.

2.2 It is intended that judicial continuity be maintained so that the judge who will eventually decide the case will manage it in person from an early stage. It is therefore essential that each case be allocated to the appropriate level of court at the earliest stage. Guidance on the allocation of proceedings is provided in the Appendix to this Guide.

2.3 The key stages for most cases that are subject to this Guide are as follows:

- (1) Pre-proceedings;
- (2) The issue of proceedings;
- (3) The first directions hearing;

- (4) The case management stage;
- (5) Issue resolution;
- (6) Trial.

### **Stage 1 - Pre-proceedings**

3.1 Except where it is not possible to do so consistently with the best interests of the child or where immediate intervention is required, a letter must be sent by a Health & Social Care Trust (“the Trust”) (or other applicant) to any prospective party prior to the issue of proceedings setting out:

- (1) the detailed concerns which lead the Trust to believe that the child has suffered or is likely to suffer significant harm within the terms of Article 50 of the Order;
- (2) what exactly the Trust proposes ought to be done to protect the child from suffering such harm in the future.

3.2 Subject only to the best interests of the child, if any of the following documents are in the possession or power of the applicant, they must be disclosed to any prospective party and any legal representative retained by any prospective party before the issue of proceedings:

- (1) any previous court orders and judgments;

(2) any relevant core assessment materials such as the current UNOCINI<sup>1</sup> Initial and Pathway assessments, Article 4 welfare reports and Article 56 investigation reports, relatives and friends materials (e.g. genogram, kinship assessment and Family Group Conference Plans);

(3) reports of any assessments;

(4) any other relevant reports and records containing key information (which may include contact sheets and other records of incidents upon which the Trust is likely to rely in the event of proceedings);

(5) any relevant pre-existing Care Plans including any Child in Need Plan or Child Protection Plan;

(6) any document indicating that a prospective party may suffer or may have suffered from any disability which may render that prospective party unable to take a decision or give an instruction on any question relevant to a matter specified in paragraph 3.1 but such documents should only be disclosed to that party or a legal representative retained by that party and authorised to receive such a document.

3.3 The Trust may withhold any of the documents specified in paragraph 3.2 only when satisfied that to do so is in the best interests of the child. Where that is done the parties must be told what has been done and why it has been done.

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<sup>1</sup> Understanding the Needs of Children in Northern Ireland

3.4 If for some reason any of the documents specified in paragraph 3.2 are not disclosed before the issue of proceedings they must be disclosed to the parties and to the court at as early a stage after the issue of proceedings as is practicable. If any of those documents are being withheld in the best interests of the child then the Trust must seek the direction of the court as to their disclosure at the first directions hearing.

3.5 The persons in receipt of a letter written in compliance with 3.1 above are encouraged to attend any meeting organised by the Trust with a view to the resolution of issues without the bringing of proceedings.

## **Stage 2 - The issue of proceedings**

4.1 If proceedings are to be issued the following documents must be prepared, filed in court and served on all parties:

- (1) Form C1;
- (2) if possible, an interim care plan;
- (3) a document showing a proposed timetable for the child, with detailed reasons.

4.2 Form C1 must include the following information in numbered paragraphs:

- (1) a concise and relevant chronology to include a summary of relevant social work involvement with the family;
- (2) an initial summary of threshold facts;

- (3) details of the event or events which precipitated the application;
- (4) the terms of any immediate order sought;
- (5) initial placement options and proposals should the immediate order sought be made;
- (6) the applicant's proposals for allocation, with detailed reasons.

4.3 Upon the issue of the proceedings the court will administratively give standard directions:

- (1) appointing a Guardian ad Litem;
- (2) directing representation of any person under disability<sup>2</sup>;
- (3) for transfer (if appropriate);
- (4) for filing in court and disclosure (if it has not already taken place) of the documents specified in paragraph 3.2 (or such of them as are considered appropriate) and the transmission, preferably by secure electronic means, of all documents filed in court and the date of the first directions hearing to the Northern Ireland Guardian ad Litem Agency for the attention of the allocated Guardian ad Litem;
- (5) fixing a first directions hearing.

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<sup>2</sup> "person under disability" has the same meaning as that set out in Rule 6.1(1) of the Family Proceedings Rules (Northern Ireland) 1996 namely "a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 is incapable of managing his property and affairs".

4.4 The Form C1 and the documents specified in paragraph 4.1 must be served on all the persons on whom they are intended to be served within 3 days of issue. Discovery of documents must take place at the same time or, exceptionally, as soon thereafter as may be practicable.

4.5 The Northern Ireland Guardian ad Litem Agency must allocate a Guardian ad Litem to the case and ensure that a solicitor is instructed on behalf of any child, the subject of the proceedings, a sufficient time in advance of the date of the first directions hearing notified under paragraph 4.3(4) so as to ensure that both the Guardian ad Litem and the child's solicitor are able to provide to the court at the first directions hearing a considered view of the best interests of the child in relation to all the matters set out in paragraph 5.2 or such of them as are relevant to the case.

### **Stage 3 – The first directions hearing**

5.1 By day 8 (or, in the case of proceedings in a Family Proceedings Court, by the next possible sittings of the court thereafter) a first directions hearing must take place before the assigned judge.

5.2 The first directions hearing must deal with the following issues (or such of them as are relevant to the particular case):

- (1) whether there will be a need for a contested hearing on any issue;

- (2) whether there are any issues capable of immediate resolution by agreement or otherwise;
- (3) consider, amend and/or confirm the timetable for the child and set a timetable for the proceedings to reflect, in particular, the needs of the child;<sup>3</sup>
- (4) consider whether any additional persons ought to be served with or given notice of the proceedings;
- (5) confirm the allocation or direct transfer;<sup>4</sup>
- (6) identify cases suitable for early decision;<sup>5</sup>
- (7) the scrutiny of any (interim) care plan;
- (8) where appropriate, the appointment of a solicitor for the child under Article 60(3) of the Order;
- (9) the giving of standard directions including the following steps which must be completed by day 40 at the latest –
  - (a) the filing of a response by each parent to the allegations made in the Form C1 and dealing with any other issues, including any identified by the court;
  - (b) the filing of evidence;

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<sup>3</sup> In timetabling particular regard should be paid to the dates of all LAC Reviews, any change in placement, any move to a new school, the making or review of any statement of special educational needs, any assessment of the child by a paediatrician or other specialist and any significant steps properly to be taken to implement any (interim) care plan.

<sup>4</sup> See the Guidance Notes appended to this Practice Direction.

<sup>5</sup> These are likely to be cases where the child has no parents, guardians, relatives who want to care for the child or other carers, such as where the child is an abandoned baby or has been brought into this country and abandoned. In such cases the court will set a date for trial.

- (c) any further disclosure to be made by any party;
- (d) the filing of any case summary or issue paper for the case management stage;
- (e) the fixing of a date for receipt of the Guardian ad Litem's analysis;
- (f) the holding of an initial joint consultation;<sup>6</sup>
- (g) the identification of any need for assessments or the instruction of expert witnesses<sup>7</sup> and consequential directions (including the final date by which leave applications must be filed);<sup>8</sup>
- (h) the filing by the applicant of proposed directions in advance of the first case management hearing to include an indication as to which directions are agreed and which are not, indicating those parties who agree and those who do not agree and the detailed alternatives proposed by those who do not agree;

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<sup>6</sup> The objects of the initial joint consultation are;

(a) the agreement of directions required at the case management stage;

(b) the identification and resolution of issues capable of being resolved without trial;

A joint consultation need not involve the attendance of all the parties and their legal representatives in one place at one time. It may be conducted by telephone or other electronic means but a record should be kept of the discussion and any agreements made. The legal representatives of the Trust should usually coordinate any joint consultation.

<sup>7</sup> Parties wishing to instruct expert witnesses should comply with section 7 of the Children Order Advisory Committee Best Practice Guidance.

<sup>8</sup> Applications for leave to assess or for the release of documents need not be delayed until the case management stage but should be made as soon as possible. The court should be informed whether all other parties consent to the application so that it can consider whether to grant leave administratively without requiring a hearing.

- (i) the filing of case summaries by each party indicating which issues the filing party considers to require determination (including any outstanding issues as to transfer and the retention of expert witnesses) and which issues have been or will be agreed between the parties (subject to the approval of the court);
- (j) the date for the first case management hearing;
- (k) if it is intended to change the timetable for the child, the filing of a document by each party proposing such a change setting out the change proposed and detailed reasons for that change;
- (l) if there has been a failure to comply in any respect with the timetable for the child, the filing by the applicant of a document setting out the circumstances in which such a failure has occurred and proposals to remedy such failure.

5.3 The Guardian ad Litem's initial analysis shall include consideration of the following matters (unless any is inapplicable);

- (1) the adequacy or otherwise of each of the threshold criteria proposed by the applicant;
- (2) all possible placement options;
- (3) any family members who might care for the child if rehabilitation were not to be considered a viable option whether for the present or at all;
- (4) the views of the child;
- (5) risk issues and safety planning;
- (6) analysis of key issues;
- (7) applicant's social work and plans including any further work or planning needed;
- (8) recommendations for next steps in the conduct of the application (including the timetable);
- (9) any need for expert evidence/advice, and, if there is such a need, the identities of relevant available experts and advice as to the time within which each expert could report;
- (10) the adequacy of the timetable for the child, any failure to meet that timetable, the reasons for such failure and proposals to remedy that failure.

## **Stage 4 – Case Management Hearing(s)**

6.1 By day 45 (or, in the case of proceedings in Family Proceedings Court, by the next possible sittings of the court thereafter) a case management hearing must take place with the object of identifying all outstanding issues and giving full case management directions.

6.2 The court conducting a case management hearing will:

- (1) consider the proposed directions filed by the applicant;
- (2) consider the Guardian ad Litem's analysis;
- (3) confirm a date for trial;
- (4) give all necessary directions leading up to trial, including resolving any outstanding disclosure issues;
- (5) consider and determine all applications for leave to instruct expert witnesses;
- (6) reconsider and re-confirm allocation or direct transfer;
- (7) consider, amend and/or confirm the timetable for the child and give such directions as may seem appropriate to remedy any failure to meet that timetable;
- (8) scrutinise care-planning;
- (9) identify all key issues and consider the appropriateness of mediation in respect of all or some of such issues;

- (10) consider whether any issue raised by any party requires an issue resolution hearing;
- (11) direct any meeting of experts;
- (12) direct a joint consultation<sup>9</sup> in advance of the final review hearing;
- (13) direct the parties to identify those key issues which can be agreed and those which cannot;
- (14) direct the filing of Skeleton Arguments and Statements of Core Issues which should indicate which key issues have been agreed and which have not and the extent and reasons for any disagreement;
- (15) direct the filing of the Guardian ad Litem's final report;
- (16) fix a date for the pre-trial review.

6.3 An issue resolution hearing is a hearing held in advance of trial to:

- (1) resolve any issues which appear capable of resolution;
- (2) determine any issues which require to be determined in advance of trial;
- (3) deal with any issues which any party seeks to have determined but which do not appear to the court to be key issues which require to be determined at the trial.

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<sup>9</sup> See footnote 3 above.

6.4 An issue resolution hearing may be held at any time and may be combined with a case management hearing. The court may direct that evidence is to be taken and the order in which each party shall adduce evidence and cross-examine witnesses.

6.5 Every effort should be made to deal with all case management issues at one hearing but it is recognised that in some cases that may not be possible in which event, the court, bearing in mind the timetable, will endeavour to deal with all such issues as soon as possible after the initial case management hearing.

### **Stage 5 – Final Review Hearing**

7.1 If so directed a further joint consultation will take place between 2 and 7 days before the final review hearing with the object of reviewing compliance with the directions already given and considering what further directions may be required for trial. In particular consideration shall be given to:

- (1) core issues and skeleton arguments;
- (2) witness template;
- (3) any revised time estimate;
- (4) readiness for trial;
- (5) any threshold agreement;
- (6) any further identification and narrowing of key issues;

- (7) the possibility of evidence being received by video-link so as to avoid the need for witnesses to travel to attend the trial;
- (8) consider the timetable for the child, any failure to comply with the timetable for the child and any amendments required to the timetable for the child.

7.2 If further directions are required then the applicant must file a draft list of proposed directions by no later than 12 noon 2 working days before the final review hearing.

7.3 The proposed final care plan should be available for consideration at the joint consultation specified in paragraph 7.1 but its absence should not delay the holding of the joint consultation. In any event the proposed final care plan must be filed by 12 noon at least 2 working days before the final review hearing.

7.4 The final review hearing will be held no later than 2 weeks before trial. The objects of the final review hearing are to assess and confirm readiness for trial and to identify and narrow any outstanding key issues.

The court will:

- (1) identify and consider the key issues to be determined at trial and ways of narrowing or resolving those issues;
- (2) scrutinise compliance with directions and make any further directions required;
- (3) consider the proposed final care plan;
- (4) consider whether any proposed threshold concession or agreement ought to be accepted by the court;
- (5) consider the witness template and the receipt of evidence by video-link;
- (6) scrutinise compliance with Practice Direction 2003/1 (bundles) and 2003/2 (time estimates);
- (7) confirm the date and length of trial;
- (8) consider the timetable for the child, any failure to comply with it and the reasons for such failure and any amendment of the timetable for the child and any further directions required in relation to it.

### **Stage 6 - Trial**

8. The trial shall take place in accordance with the timetable and, unless a split trial has been directed, shall resolve all outstanding issues. At the conclusion of the trial or any element of a split trial, consideration shall be given to the extent

of disclosure and the need for anonymisation of any judgment and of any documents filed in court.

### **General**

9.1 Nothing in this Guide is intended to affect the issue of applications for Emergency Protection Orders and nothing in this Guide is to delay the issue of proceedings where those are required in the interests of the child because immediate intervention is considered essential.

9.2 The solicitor and counsel (where instructed) who has conduct of the case and is likely to have conduct of the trial should attend the case management hearing, any joint consultation, any issues resolution hearing and the final review hearing. Where this is not possible then another counsel and/or solicitor, as the case may be, who is familiar with the issues in the proceedings should attend.

9.3 The court encourages the parties to use mediation for the resolution of any issue where it is available, in the best interests of the child and reasonably practicable and safe but no party can be obliged to enter into any form of mediation if unwilling to do so. Where appropriate the court may adjourn proceedings for a limited time to enable mediation to take place. The court will require those providing mediation to report to the court as to the progress and outcome of such mediation and the positions taken by each party engaging in mediation. The parties must be advised that by agreeing to engage in mediation

each party will have irrevocably consented to the mediator reporting to the court as directed by the court.

9.4 In the event that it becomes apparent that it is not possible to comply with a date set by the court or this Guide within which anything is to be done, any party or the Guardian ad Litem must apply to the court at the earliest opportunity, with reasons, to vary the relevant date.

9.5 The court will facilitate the making of interlocutory orders administratively without a formal hearing where that can be done with the consent of all parties and without detriment to the best interests of the child. To that end the court must be informed when any application is made by the consent of all parties.

9.6 Where the facilities are available to the court and to the parties, the court will actively encourage the full use of technology, including electronic information exchange and video or telephone conferencing.

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