**Discharge of Care Orders Procedure**

**This procedure includes:**

* **Discharge of Order to No Order**
* **Discharge of Order under the Accelerated Procedure**
* **Application for a Special Guardianship Order for a child who is on a Full Care Order.**

Request for an application should only be sent to legal when the decision to Discharge a Care Order has been approved by Senior Manager.

**The Process**

In order to submit an application for Discharge of a Care Order the Social Worker (SW) will need to send to the Legal Department the following:

* The original Care Plan (final version used in the proceedings) and amended Care Plans since the date of the Final Care Plan.
* Minutes of all LAC reviews at which the question of discharge has been actively considered;
* Relevant current medical evidence (if appropriate) - this will apply if the Child is under the care of a Paediatrician or other medical professional and has specific medical needs. It will not be applicable in all cases.
* A statement from the Team Manager or key Social Worker setting out;

1. The reasons for the application
2. A summary of the concerns which led to the Care Proceedings
3. Any outstanding concerns
4. The number of times the child has been seen by Social Services in the 24 months prior to issue
5. The current arrangements for the child’s care and education
6. Any change in the child’s circumstances since the conclusion of the Care Proceedings
7. The views of the parents and significant others - to use the accelerated procedure both parents with PR will need to be in agreement that an application to discharge is appropriate.
8. A consideration of the welfare checklist factors / Voice of the child being evident.
9. Up to date information from the child’s school where applicable (attendance, lateness, presentation, academic progress) - If the child is of school age, it is good practice to ask for a short updating report from the school to cover these issues or consult with them and include the information with the statement.
10. In the case of a child under school age, up to date information from the health visitor - again it is good practice to get a short updating report from the HV or in the alternative consult the HV on these issues and include their views in the statement.
11. Up to date information from other relevant services involved with the family (education welfare, CAMHS, YOT, drug service, mental health, learning disabilities) – If any of these services are involved with the child , an updating report should be sought from the service and submitted with the application
12. Details of arrangements for continuing post discharge support if relevant - It is good practice to include a copy of any Draft CIN plan if the proposal is to support the family/child on such a plan.

Only when all of the above information has been collated, should the Social Worker send to legal the request/instructions to apply to discharge the Care Order.

The draft statement should be sent to Peter Hollebone Children Social Care legal department.

* The case will then be allocated in legal to a Practitioner (where possible and where capacity allows to the Solicitor who had conduct of the Care Proceedings) or to a Principal Legal Officer.
* The Practitioner will make contact with the SW and inform them of the allocation. The Practitioner will confirm to the SW that the application is ready for issue or will advise on any proposed amendments /missing documents.
* The Social Worker MUST respond with instructions/revised documents within 7 working days.  Failure to do so means that applications are delayed and the evidence to support the application becomes out of date, leading to further unnecessary work for all concerned and unnecessary delay for the child/children.

Once the evidence to support the application is accurate and complete, the application will be made and the Social Worker will be notified by legal and sent a copy of the Application and Supporting Documents to be uploaded to LCS.  *NB. It is the responsibility of the social worker to ensure these documents are placed on the system immediately.*

* The Social Worker will be notified when a children's guardian has been appointed and when the Hearing is listed.
* Timeliness of assessments and reports are of paramount importance when we are looking to Discharge an Order. It is therefore necessary that once it has been agreed that a plan of discharge is to commence, timescales are agreed and adhered to. If agreed timelines are not adhered to then this is to be escalated to the Senior Manager responsible for the case and the Senior Manager must make arrangements for the work to be completed.

**NB: If the Care Plan is to make an application for a Special Guardianship Order, then an Application for Discharge of a Care Order is NOT to be made. The prospective applicant MUST make the application in their own right. Below is the process to be followed: see flow chart (appendix 2)**

*This applies to any child on a full Care Order, regardless of who the applicant is; the applicant could therefore be a current foster carer a connected carer or another person that the local authority are supporting to make an application.*

**Process**

A decision is made at Permanence Panel, or at a Care Planning meeting that the plan of permanence for the child/young person is Special Guardianship. The proposed applicant must be part of all conversations and in agreement with the plan. The Independent Reviewing Officer is in agreement with the plan and will ratify the plan on the completion of assessments.

* Once a Carer agrees to the making of a Special Guardianship Order Application, written signed consent from the proposed applicant must be obtained.
* On receipt of written consent an agreed timetable for completion of the SGO assessment is drawn up between the prospective carer and the social worker.
* The assessment process must not exceed 12 weeks and the usual process of assessing suitability and support to be given under the order should commence with immediate effect.

*For further information regarding Special Guardianship Orders, please review the policy and financial process;*

[*https://www.proceduresonline.com/lancashirecsc/local\_resources.html*](https://www.proceduresonline.com/lancashirecsc/local_resources.html)

* Social worker immediately refers the matter to Lancashire County Council, (LCC), Legal Department and the Applicant (foster carer, connected carer etc), instructs their solicitor. The social worker can refer proposed applicant to the Law Society website for the list of legal advisors;

<https://solicitors.lawsociety.org.uk/>.

* Prospective Applicant are unlikely to have experienced this process before so it is important that they are supported along the way. It is important that they have access to independent legal advice.
* The applicant's legal representative will contact LCC legal department and agree the legal fees for the Special Guardianship Application.
* In the event of a prospective carer is not wanting to take independent legal advice, they will still need to make the application for the Special Guardianship Order. Whilst the social worker will be able to give some guidance, it is not independent and is unlikely to cover all the legal aspects of such orders. Free advice may be available from the Citizen's Advice Bureau, the Bar Representation Unit or the legal clinic at UCLAN. Further guidance regarding the forms that should be used in these circumstances can be found at; [www.justice.gov.uk](http://www.justice.gov.uk) – C1\_web\_04/14. In any case of this nature the prospective carer should be encouraged to take at least one session of independent legal advice before deciding to go it alone.
* The social worker must also do with immediate effect:

Alert the SGO Assessment officer that a financial assessment is required, following the process which can be found on the Local Resources section of Tri X (online procedures manual).

<https://www.proceduresonline.com/lancashirecsc/local_resources.html>

1. Requests medical information
2. Requests DBS for anyone over 18 in the household
3. Identifies and requests the prospective applicants References

* On completion of the Special Guardianship Assessment, Support Plan and Financial Assessment, which must be completed within 12 weeks, the documents must be presented to the Head of Service for sign off.
* Once the Documents are endorsed by the Head of Service the Social Worker must send all documents to the Legal Department, this includes:

1. Special Guardianship Assessment
2. Detailed Support Plan
3. Financial assessment
4. Applicants DBS and any member of the household over 18
5. Applicants medical information
6. Applicants references
7. Completed Regulation 15 notice (appendix 5)

* Once all the documentary evidence is available, including the Regulation 15 notice, LCC legal department will send all documents to the applicant's legal representative.
* The applicant has 28 days to respond or challenge the Assessment, Support Plan and /or Financial Assessment.
* After the 28 days' notice period, the social worker or their manager must draft the confirmation of offer letter, regulation 16 (appendix 6), and send this to LCC legal department. This letter confirms the local authority's position regarding the financial assessment and support plan.
* The prospective Special Guardian makes the application through their legal representative.
* Where the application can be accelerated, for example where the parents' consent to the making of the Special Guardianship Order, this should be certified on the application for gatekeeping purposes.

**Appendices**

**N.B.** From July to October 2019- all information can be found on Local Resources

<https://www.proceduresonline.com/lancashirecsc/local_resources.html>

A new update will be made to Tri X and from October 2019. The full process, including appendices set out below can be found at Chapter 1.4- Legal Proceedings;

<https://www.proceduresonline.com/lancashirecsc/contents.html>

**Appendix 1 - Social Work Discharge Statement template** N.B. SGO assessment is on LCS

**Appendix 2- Flow chart for Application for Special Guardianship Order when child is on full Care Order.**

**Appendix 3 - REGULATION 15 notice**

**Appendix 4- REGULATION 16 notice**

**Appendix 5 – Court Accelerated Process**

**Appendix 1 Social Work Discharge Statement template**

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**Appendix 2 Flow chart for Special Guardians**

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To review the Special Guardianship Policy, see the document below;

For the financial process for SGO;



All Special Guardianship documentation can be found;

[**https://www.proceduresonline.com/lancashirecsc/local\_resources.html**](https://www.proceduresonline.com/lancashirecsc/local_resources.html)

**Appendix 4 REGULATION 15**

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**Appendix 5 REGULATION 16**

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**Appendix 7 – Court Accelerated Process**

N.B. this Appendix is for the use of the legal representative and not social workers, knowing the process will however be useful.

**Appendix 7.1**

**PROTOCOL FOR LOCAL AUTHORITY APPLICATIONS TO DISCHARGE CARE ORDERS**

A protocol to enable suitable Local Authority applications for the discharge of care orders to be dealt with speedily and proportionately.

**The Background and the Purpose**

Local Authority applications to discharge care orders are rarely opposed by parents or family members and most often require simple scrutiny by a Children’s Guardian and thereafter by the Court before a proper decision can be made. It is in the interests of the children and of all of the parties for such applications to be dealt with speedily and proportionately.

In 2006, to that end HHJ David Gee DFJ, with the approval of Ryder J (as they each then were), devised a Local Practice Direction for an Accelerated Procedure which is still used.

The 2006 Procedure is somewhat superseded by modern Gatekeeping and this Protocol is intended to replace it whilst maintaining and furthering its original objectives within the current procedural regime.

**Which cases come under this protocol?**

Applications made by the Local Authority which are supported by the parents of the child(ren) concerned and/or by their carers and which the Authority believes likely to be uncontentious.

**Which cases do not come under this protocol?**

Applications made by any party other than the Local Authority;

Applications which are likely to be opposed or include contentious law or fact.

**At any point the Court may direct that the protocol does not or no longer applies in a particular case.**

**The Process**

When a local authority considers that this protocol should apply to an application for the discharge of a care order it should:-

1. Include with the application a formal written request from the solicitor with conduct that the matter be considered in accordance with this protocol.
2. Include with such request the following documents/information and a checklisted index of them:-

* A copy of the care order or a document stating when it was made and by which judge or bench and legal adviser.
* If available a transcript or transcripts of any judgment(s) delivered during the care proceedings.
* A document stating the name of the Children’s Guardian during the care proceedings attached to a copy of the final report of the Children’s Guardian within the care proceedings.
* The original care plan and amendments of or revisions to it;
* Minutes of any LAC reviews at which the question of discharge has been actively considered;
* Relevant current medical evidence
* A statement from the team manager or key social worker setting out:-

(i) The reasons for the application

(ii) A summary of the concerns which led to the care proceedings

(iii) Any outstanding concerns

(iv) The number of times the child has been seen by social services in the 24 months prior to issue

(v) The current arrangements for the child’s care and education

(vi) Any change in the child’s circumstances since the conclusion of the care proceedings

(vii) The views of the parents and significant others

(viii) A consideration of the welfare checklist factors

(ix) Up to date information from the child’s school where applicable (attendance, lateness, presentation, academic progress)

(x) In the case of a child under school age, up to date information from the health visitor

(xi) Up to date information from other relevant services involved with the family (education welfare, CAMHS, YOT, drug service, mental health, learning disabilities)

(xii) Details of arrangements for continuing post discharge support if relevant.

**Upon Issue**

The application will be considered by the gatekeepers who will determine whether they consider that an accelerated process is appropriate.

If it is appropriate for there to be an accelerated process the gatekeepers will seek to allocate the application to the judge or bench who made the care order or to the most appropriate alternative if the original decision maker is longer available. If the order was made by the Justices the matter will be allocated to the lay bench with the expectation that those who originally made the care order will have the opportunity to sit on the discharge application.

**Directions upon Issue**

The directions on issue will normally include:-

* The child or children to be made parties
* Cafcass to appoint a Children’s Guardian for the child(ren) with a request that that Children’s Guardian appointed be the Children’s Guardian who acted in the original proceedings (to be named in the order).
* The appointed Children’s Guardian is to undertake enquiries as to the issues set out below.
* The Children’s Guardian is to consider instructing a solicitor to act for the child or children;
* The application is to be listed before the allocated Judge or the lay bench for directions and timetabling if necessary on or before the expiry of 8 weeks from issue (elh 45 minutes - usually); all parties to note that the hearing may be the final hearing of the application if that is possible.
* The children’s team to file a short position statement no later than 2 working days before the hearing (which may be written and signed by the Children’s Guardian or drawn upon his/ her instructions by the solicitor for the child(ren)

Such position statement is to seek to cover the matters listed below. Its length if possible should be no longer than 2 pages.

The Children’s Guardian need not attend the hearing unless he or she wishes or they consider it necessary.

* Each other party, if so advised, may file a short position statement in reply to that of the CHILDREN’S GUARDIAN no later than 9.00 am on the morning of the listed hearing. If the other parties agree the position of the CHILDREN’S GUARDIAN then they need not file position statements.

**Matters to be undertaken and/or considered by the child’s solicitor and guardian and included in the position statement required above**

* + 1. Whether the application is suitable to be resolved under this accelerated process
    2. A review of all the documentation which accompanied or should have accompanied the discharge application;
    3. The child’s wishes and feelings as ascertained directly by the Children’s Guardian unless this it is considered inappropriate;
    4. A description of the Children’s Guardian’s visit to the child(ren) in at home and any observations of the child with his current carers;
    5. The views of the parents, carers and any relevant/significant other
    6. The child’s school attendance record, lateness, presentation and academic progress;
    7. A consideration of the relevant welfare checklist factors and in particular whether the child would be at risk of significant harm if the care order were to be discharged.
    8. To provide a copy of the final Children’s Guardian’s report from the care proceedings if the local authority have not already done so.

HHJ Sarah Singleton QC

DFJ Lancashire

June 2017

**Appendix 7. 2 – For Legal**

**Accelerated Procedure Certificate**

Case No

|  |  |
| --- | --- |
| B E T W E E N  LANCASHIRE COUNTY COUNCIL   * and –   (minors represented by the Children's Guardian)   * and -   - and - | Applicant  1st Respondent  2nd Respondent  3rd Respondent |

I, **Legal Advisor/Solicitor**certify:-

(i) That this local authority application to discharge the care order(s) made on under case number **Case Number** is suitable to be dealt with by way of the Accelerated Procedure because it is unlikely to be opposed by any other party;

AND

(ii) Copies of all documents listed in Appendix B of the Local Practice Direction dated 21st November 2006, in so far as they may be relevant, accompany this application

Date:

Signature:

**Appendix 7.3 (legal)**

**Documents to be lodged on issue in Local Authority Applications to Discharge a Care Order to the Accelerated Procedure**

**­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The application shall be accompanied by a bundle comprising copies of the following documents:-

(i) certificate form at Appendix 1;

(ii) the original care plan and amendments of or revisions to it;

(iii) minutes of the LAC reviews at which the question of discharge has been considered

(iv) any relevant medical evidence

(v) a report from the team manager or key social worker setting out:-

(a) the reasons for the application

(b) the concerns which led to the care proceedings

(c) any outstanding concerns

(d) the number of times the child has been seen by social services in the 24 months prior to issue

(e) the current arrangements for the child’s care and education

(f) any change in the child’s circumstances since the conclusion of the care proceedings

1. the views of the parents and significant others
2. a consideration of the welfare checklist factors
3. Up to date information from the child’s school (attendance, lateness, presentation, academic progress)
4. In the case of a child under school age, up to date information from the health visitor
5. Up to date information from other relevant services involved with the family (education welfare, CAMHS, YOT, drug service, mental health, learning disabilities)
6. Details of arrangements for continuing post discharge support if relevant

Points I, j, k, l can be provided in separate documents.

(vi) A completed checklist as at **Appendix 7.5** indicating the documents included in the bundle

**Appendix 7.4 (legal)**

**Investigations and Enquiries to be carried out by the Children’s Guardian under the Accelerated Procedure**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The Children’s Guardian will be required to:-

(i) Consider all the documentation which accompanied or should have accompanied the discharge application on issue [see Appendix B];

(ii) Ascertain the child’s wishes and feelings;

(iii) Visit the child in his placement and observe the child with his current carers;

(iv) Ascertain the views of the parents, carers and significant others;

(v) Consider the child’s school attendance record, lateness, presentation and academic progress;

(vi) Consider the welfare checklist factors and in particular whether the child would be at risk of significant harm if the care order were to be discharged.

(vii) Provide a copy of the previous report filed in the care proceedings.

# Appendix 7.5(legal)

Local Authority Applications to Discharge a Care Order to the Accelerated Procedure - Documents Checklist

|  |  |  |
| --- | --- | --- |
| Document title | | Tick or n/a |
| **(i)** Accelerated Procedure Certificate form at Appendix A | |  |
| **(ii)** The original care plan and amendments / revisions | |  |
| **(iii)**)The minutes of the LAC reviews at which the question of discharge has been considered | |  |
| **(iv)** Any relevant medical evidence | |  |
| **(v)** Report from the team manager or key social  worker setting out: | **Indicate if in body of report** |  |
| 1. The reasons for the application |  |  |
| 1. The concerns which led to the care proceedings |  |  |
| 1. Any outstanding concerns |  |  |
| 1. the number of times the child has been seen by social services in the 24 months prior to issue |  |  |
| 1. the current arrangements for the child’s care and education |  |  |
| 1. any change in the child’s circumstances since the conclusion of the care proceedings |  |  |
| 1. the views of the parents and significant others |  |  |
| 1. a consideration of the welfare checklist factors |  |  |
|  |  | **Indicate if separate report attached** |
| 1. Up to date information from the child’s school (attendance, lateness, presentation, academic progress) |  |  |
| 1. In the case of a child under school age, up to date information from the health visitor |  |  |
| 1. Up to date information from other relevant services involved with the family (education welfare, CAMHS, YOT, drug service, mental health, learning disabilities) |  |  |
| 1. Details of arrangements for any continuing post discharge support if relevant |  |  |

Please place completed checklist on top of bundle