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Leicestershire Procedure

Legal Proceedings and

Children's Decision-

Making Panel Applies to-

All children

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Updated Procedure for Care Proceedings

This procedure is based upon the current Leicestershire's Children and Family Service Procedures Manual.

The details set out below are focused on local procedures for Leicestershire and reflect recent changes.

The numbered chapter and paragraphs for this reflect the current position of this procedure within the procedures manual and associated chapters.

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1.4.2 Care and Supervision Proceedings and the Public Law Outline

1. Introduction

Under Section 31 Children Act 1989, a court may only make a Care Order or Supervision Order if it is satisfied that the Threshold Criteria have been met.

Under the **Public Law Outline (2014)** and the Children and Families Act 2014, there is a 26-week time limit for the completion of care and supervision proceedings. This places an increased emphasis on pre-proceedings work and the quality of Assessments.

Where adoption is the permanence plan for the child and no Care Order has been made, combined care and Placement Order applications should be made, so that decisions can be made swiftly. Where there are on-going Care Proceedings, the Placement Order application should be submitted as soon as the Agency Decision Maker decision has been made. The court may make both orders, which would ensure that the child remains protected should the Placement Order be revoked (as the Care Order would automatically be reactivated).

Placement Order applications are not subject to the 26-week time limit, but an early application will ensure best use of court time and help keep to a minimum the overall length of the process. The application must clearly state why the parents cannot parent the child, what other realistic permanence options have been considered and rejected, and why adoption is the only permanence option that meets the needs of the child. (See also **Placement for Adoption Procedure**).

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2. Pre-Proceedings

2.1 Principles

Work done in the period pre-proceedings is vital for two reasons:

- It may divert a case along a route which avoids the need for proceedings;
- When that is not possible, and proceedings must be commenced, the preparatory work will facilitate the smooth running of the case with the aim of relevant assessments being completed within pre-proceedings.

Pre-proceedings work includes:

- Early Help - see **Threshold Document - Continuum of Help and Support**;
- Assessments and meeting assessed needs (see **Assessments Procedure**). For cases which result in court proceedings, the information generated by the Assessment will be expected to form the central part of evidence that supports an application for a care or supervision order, and will include, as appropriate, primary evidence from the agencies involved. Additional parenting capability assessments (where there is a specific need for specialist expertise for a decision to be made as to threshold and the need for proceedings) should be commissioned at the pre-proceedings stage. Parenting assessments should follow the approved East Midlands Parenting assessment framework (See Appendix 3).
- Family Group Conferences or Family Support Network Meetings should take place for the identification and assessment of family and friends' placements, if appropriate. (See **Family and Friends Care Policy**). All viability assessments of family members or friends who are proposed as alternative carers should be completed within pre-proceedings.
- Helping families to engage early - this engagement should include early, direct and clear written communication with the parents, setting out the local authority's specific concerns, outlining what needs to be done to address those concerns and indicating the possibility of proceedings if the situation does not improve within an identified timescale. It is important that throughout this period, the child (subject to his or her age and understanding) is kept aware of what is being proposed and that his or her views are heard. This may include by way of an Advocate for children and/or for parents where there are issues of Capacity, (see **President of the Family Division, Family Proceedings: Parents with a Learning Disability**).

See also the **Leicester City, Leicestershire and Rutland Local**

Safeguarding Children Boards Procedures Manual, Children at Risk where a Parent has a Learning Disability Procedure.

- Children's Decision-Making Panel takes place as a method of decision making for the journey of the child in terms of the commencement of pre-proceedings and its review.
- Consideration should be given to whether any expert assessments are needed, for instance, cognitive assessments if there are questions and concerns about parents' level of understanding.

Sir James Munby, President of the Family Division, set out in 'The Process of Reform: the revised PLO and the Local Authority' the expectations of the local authority in relation to pre-proceedings work. He recommended that:

- Local authority lawyers be involved, advising and assisting their social work clients, at an early stage;
- A properly organized Legal Planning Meeting is invaluable and can be the key to achieving timely outcomes to Care Proceedings;
- The employment of a local authority case manager is vital. (The post of case manager was created for the purposes of the Tri-borough Care Proceedings Pilot.) The case manager works directly with social workers and managers, with the intention of improving the quality of social work Assessments and statements presented to court. The aim is that statements are purposeful, concise and clearly lay out the work that has been undertaken up to that point. The Case Manager works in a coaching role to help social workers produce high quality statements and to be explicit about the impact of delay on each individual child.

2.2 Children's Decision-Making Panel

Before a decision can be made to initiate Care or Supervision Proceedings, the case should be presented at the Children's Decision Making- Panel.

At the Children's Decision-Making Panel, a decision will be made about whether the Threshold Criteria have been met and whether:

- It is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, whether this be through a period of pre-proceedings or whether this is continuing involvement and support outside of pre-proceedings (such as continuation of the current child protection or child in need plan); or
- Proceedings should be initiated immediately.

Information presented to a Child Protection Conference should inform the decision-making process, but it is for the local authority to consider whether it should initiate proceedings.

If the decision is taken at the Children's Decision- Making Panel to undertake a formal pre-proceedings process, the local authority will send to the parents/those with Parental Responsibility:

- A *letter before proceedings* which states that proceedings are being contemplated and invite parents and their legal representatives to a pre-proceedings meeting; or

If a decision is made to commence proceedings

- A *letter of issue* which states that proceedings are being initiated.

(Standard letter templates are included at [Appendix 1: Letter Before Proceedings](#); and [Appendix 2: Letter of Issue](#).)

Where a parent may lack Capacity, consideration should be given as to whether personal discussion, involving an Advocate and/or legal representative, should be undertaken before the sending of such a letter.

In pre-birth cases, the timing of the sending of the pre-proceedings letter or letter of issue should take account of the risk of early birth and should ideally be sent at or before 24 weeks.

2.3 Letter Before Proceedings

The Letter Before Proceedings (see letter template at [Appendix 1: Letter Before Proceedings](#)) is the formal written notification that proceedings are likely. It should set out:

- A summary in simple language of the local authority's concerns;
- A summary of what support has already been provided to the parents;
- What the parents need to do and what support will be provided for them, to avoid proceedings, including timescales;
- Information on how to obtain legal advice and advocacy, making clear how important it is for the parent to seek legal representation.

The letter should invite the parents/others with Parental Responsibility to a pre-proceedings meeting (see Section 2.4 Pre-Proceedings Meeting below). This meeting should take place within 10 working days of the decision to commence pre-proceedings. The letter sent to parents inviting them to this meeting should give a minimum of 5 working days' notice.

An up to date list of relevant solicitors in the local area who are specialists in child care cases should be sent with the pre-proceedings letter.

2.4 Pre-Proceedings Meeting

Where proceedings are being initiated, parents/others with Parental Responsibility should be invited to a pre-proceeding meeting to agree proposals for addressing the current problems which have led to concerns about the welfare of the child.

At this meeting, the local authority should:

- Agree a revised plan for the child, which should be subsequently confirmed in writing to the parents, setting out what the parents and the local authority must do to safeguard the child during pre-proceedings period. The plan will indicate the steps the local authority will take to support the parents and the timescales within which progress must be made for proceedings to be avoided;
- Outline the steps that the local authority will take at the end of this period, depending on whether progress has been demonstrated; and
- Review arrangements for identifying potential family carers, and/or for assessments with the parents, particularly where these require letters of instruction to assessment or expert services.

Setting clear expectations and timescales for improvement will reduce the potential for delay. The child's plan should be reviewed within six weeks of the meeting to ensure that sufficient progress is being made.

2.5 Pre-proceedings Reviews

The progress of a period of pre-proceedings will be reviewed at the Children's Decision-Making Panel and clear timetables/dates for work and review will be set. This will include the decision to continue pre-proceedings if further time or progress is needed, or decision to issue proceedings.

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3. Starting Care or Supervision Proceedings

Before a decision can be made to initiate Care or Supervision Proceedings, the case must be presented at the Children's Decision-Making Panel for the decision to commence proceedings.

If a decision needs to be taken on an urgent basis and cannot be presented at Children's Decision-Making Panel, then this decision will be made by the relevant service manager in conjunction with discussions and advice from legal services and the head of service. This can be in the form of a legal planning meeting.

Once the decision has been taken to initiate proceedings, the social worker will send the parents/those with Parental Responsibility a letter of issue which states that proceedings are being initiated - see letter template at [Appendix 2: Letter of Issue](#).

The social worker and local authority legal adviser will then prepare the documents that are required to be produced for Court. The local authority legal adviser will advise the court of the name of the Independent Reviewing Officer and their contact details once known.

In some cases, the level of concern about a child's welfare may require rapid and sometimes immediate recourse to the courts. There may not be time for a pre-proceeding meeting and the collation of all documentation prior to such an application. A lack of documentation should never prevent a case being brought to court quickly where this is essential to protect the child's welfare. Such cases should never be the norm, however, and where a piece of documentation cannot be supplied immediately, the authority must state on the application form the reasons why it cannot be included and confirm the date when the documents will be submitted to the court.

3.1 Pre-Birth Planning and Proceedings

Considering Care and Supervision Proceedings at a pre-birth stage and when a child is newly born remains challenging for several reasons.

A High Court judgment (*Nottingham City Council v LW & Ors* [2016] EWHC 11(Fam) (19 February 2016)) has sought to provide 'good practice steps' with respect to public law proceedings regarding newly born children and particularly where Children's Services are aware at a relatively early stage of the pregnancy.

From previous judgments it is established that: 'At an interim stage the removal of children from their parents is not to be sanctioned unless the child's safety requires interim protection.' (See also [Applications for Emergency Protection Orders Procedure, X Council v B Guidance](#).)

It continues to be important to ensure for both the child and the parent(s):

- Any hearing should be considered a 'fair hearing' commensurate with Article 6 of the Human Rights Act (the right to a fair trial);
- The fact that a hospital is prepared to keep a newborn baby is not a reason to delay making an application for an ICO, (the hospital may not detain a baby against the wishes of a parent/s with PR and the capability of a maternity unit to accommodate a healthy child can change within hours and is dependent upon demand);
- Where a Pre-birth Plan recommends an Application for an ICO to be made on the day of the birth, 'it is essential and best practice for this to occur'.

Once it has been determined that there is sufficient evidence to make an application for an ICO and removal of a child, any additional evidence (e.g. from the maternity unit) must not delay the issuing of proceedings. Any such information may be 'envisaged and/or provided subsequently'.

Good Practice Steps

In all but, 'the most exceptional and unusual circumstances, local authorities must make applications for public law proceedings in respect of new born babies timeously and especially, where the circumstances arguably require the removal of the child from its parent(s), within at most 5 days of the child's birth':

- The Pre-birth Plan should be rigorously adhered to by social work practitioners, managers and legal departments;
- A risk assessment of the parent(s) should be 'commenced immediately upon the social workers being made aware of the mother's pregnancy';
- The Assessment should be completed at least 4 weeks before the expected delivery date;
- The Assessment should be updated to consider relevant events pre - and post-delivery where these events could affect an initial conclusion in respect of risk and care planning of the child;
- The Assessment should be disclosed upon initial completion to the parents and, if instructed, to their solicitor to give them opportunity to challenge the Care Plan and risk assessment;
- The Social Work Team should provide all relevant documentation (see **Section 4, Documentation**) necessary to the Local Authority Legal Adviser to issue proceedings and application for ICO:
 - Not less than 7 days before the expected date of delivery;
 - Legal Services will aim to issue on the day of the birth and certainly no later than 24 hours after the birth (or the date on which the Local Authority is notified of the birth).
- Immediately on issue - or before - the Local Authority legal adviser:
 - Should serve the applications and supporting evidence on the parents and, if instructed, their respective solicitors;
 - Should have sought an initial hearing date from the court, or the best estimate that its solicitors could have provided.

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4. Documentation

4.1 Local Authority Documentation

Documents to be Filed with the Court

The following documents must be attached to the application filed with the court **on Day 1**:

- The social work Chronology;
- The social work statement and Genogram – this is using the Social Work Evidence Template (SWET) from the 1st of April 2019.
- Any current Assessment relating to the child and/or the family and friends of the child to which the social work statement refers and on which the local authority relies;
- The Care Plan;
- Index of Checklist documents.

Documents to be Served on the Other Parties (but not filed with the court)

On Day 2 the local authority must serve on the other parties (but must not file with the court unless expressly directed to do so) the application form and annex documents as set out above, together with the 'evidential checklist documents'. These are evidential and other documents which already exist on the local authority's files, including:

- Previous court orders (including foreign orders) and judgments/reasons;
- Any assessment materials relevant to the key issues, including capacity to litigate, Section 7 or Section 37 reports;
- Single, joint or inter-agency reports, such as health, education, Home Office and Immigration Tribunal documents.

Documents to be Disclosed on Request by any Party

- Decision-making records, including:
 - Records of key discussions with the family;
 - Key local authority minutes and records for the child;
 - Pre-existing Care Plans (e.g. Child in Need Plan, Looked After child plan and Child Protection Plan);
 - Letters before proceedings;

- Any issued as to jurisdiction/international element should be flagged with the court.

Principles

In the revised Public Law Outline, both the filing and service of documents is more focused, with a concentration on what is relevant, central and key, rather than what is peripheral or historical. Local authority materials are expected to be much shorter than previously, and they should be more focused on analysis than on history and narrative. Even if there has been local authority involvement with the family extending over many years, both the social work Chronology and the summary of the background circumstances as set out in the social work statement must be kept appropriately short, focusing on the key significant historical events and concerns and rigorously avoiding all unnecessary detail.

Documents must be recent - restricted to the most recent, limited to those from the last two years. Documents need not be served or listed if they are older than two years before issue of the proceedings, unless reliance is placed on them in the local authority's evidence.

Documents must be focused and succinct.

The social work Chronology is a schedule containing:

- A succinct summary of the length of involvement of the local authority with the family and in particular with the child;
- A succinct summary of the significant dates and events in the child's life in chronological order, i.e. a running record up to the issue of the proceedings, providing such information under the following headings:
 - i. Serial number;
 - ii. Date;
 - iii. Event-detail;
 - iv. Witness or document reference (where applicable).
- The social work statement is to be *limited* to the following evidence:
 - Summary:
 - The order sought;
 - *Succinct* summary of reasons with reference as appropriate to the Welfare Checklist.
 - Family:

- Family members and relationships especially the primary carers and significant adults / other children;
- Genogram.
- Threshold:
 - Precipitating events;
 - Background circumstances:
 - Summary of children's services involvement. This must be cross-referenced to the Chronology;
 - Previous court orders and emergency steps;
 - Previous assessments.
 - *Summary* of Significant Harm and / or likelihood of significant harm which the local authority will seek to establish by evidence or concession.
- Parenting capacity:
 - *Assessment* of child's needs;
 - *Assessment* of parental capability to meet needs;
 - *Analysis* of why there is a gap between parental capability and the child's needs;
 - Assessment of other significant adults who may be carers.
- Child impact:
 - Wishes and feelings of the child(ren);
 - Timetable for the child;
 - Delay and timetable for the proceedings.
- Permanence and contact:
 - Parallel planning;
 - Realistic placement options by reference to a welfare and proportionality analysis;
 - Contact framework.
- Case management:
 - Evidence and assessments necessary and outstanding;

- Any information about any person's litigation capacity, mental health issues, disabilities or vulnerabilities that is relevant to their capability to participate in the proceedings (see **Practice Direction 3AA - Vulnerable Persons: Participation in Proceedings and Giving Evidence**);
- Case management proposals.

The local authority materials must be succinct, analytical and evidence-based. Assessment and analysis are crucial. They need to distinguish clearly between what is fact and what is professional evaluation, assessment, analysis and opinion, and between the general background and the specific matters relied on to establish 'threshold'.

Threshold Statement

'Threshold Statement' means a written outline by the legal representative of the local authority in the application form, of the facts which the local authority will seek to establish by evidence or concession to satisfy the threshold criteria under s31(2) of the Children Act 1989, limited to no more than 2 pages.

Local Authority Case Summary

A document prepared by the Local Authority legal representative for each case management hearing in the prescribed form.

4.2 Case Analysis

A written (or, if there is insufficient time, an oral) outline of the case from the perspective of the child's best interests prepared by the Children's Guardian or Welsh family proceedings officer for the CMH or FCMH (where one is necessary) and IRH or as otherwise directed by the court, incorporating an analysis of the key issues that need to be resolved in the case including:

- A threshold analysis;
- A case management analysis highlighting any gaps in the evidence and additional assessments / actions required, including an analysis of the timetable for the proceedings, an analysis of the Timetable for the Child and the evidence which any party proposes is necessary to resolve the issues;
- An analysis of parenting capacity to meet the child's needs, including any gaps and whether these gaps can be bridged within the child's timescales;
- A child impact analysis, including:
 - An analysis of the ascertainable wishes and feelings of the child and the impact on the welfare of the child of any application to adjourn a hearing or extend the timetable for the proceedings;

- Interim contact needs of the child.
- A contingent, early permanence analysis (by reference to a welfare and proportionality analysis) including:
 - An analysis of the proposed placements, whether by family member/family friend; adoption; or other long-term care;
 - The way in which the long-term plan for the upbringing of the child would meet the current and future needs of the child, (including needs arising out of that impact of any significant harm, or likelihood of it);
 - Contact framework,
 - Any additional support that the placement will require from partner agencies.
- Whether and if so what communication it is proposed there should be during the proceedings with the child by the court.

4.3 Parents' Response

A document from either or both of the parents containing:

- In no more than two pages, the parents' response to the Threshold Statement;
- The parents' placement proposals including the identity and whereabouts of all relatives and friends they propose be considered by the court;
- Information which may be relevant to a person's capacity to litigate including information about any referrals to mental health services and adult services.

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5. Flexible Powers of the Court

Although the Public Law Outline sets out a prescribed set of stages, it also provides for flexibility at any stage of the proceedings. Steps, which the court will ordinarily take at the various stages of the proceedings, may be taken at another stage if the circumstances of the case so merit.

The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing, to give directions without a hearing including setting a date for the Final Hearing (or a period within which the final hearing will take place), or to take oral evidence at the Case Management Hearing, Further Case Management Hearing or Issues Resolution Hearing. Where it is anticipated that oral evidence may be required at the Case Management Hearing ('CMH'), Further Case Management Hearing ('FCMH') or Issues Resolution Hearing ('IRH'), the court must be notified well in advance and directions sought for the conduct of the hearing.

Where a party has requested an urgent hearing:

- a. To enable the court to give immediate directions or orders to facilitate any case management issue which is to be considered at the CMH; or
- b. To decide whether an ICO is necessary.

The court may list such a hearing at any appropriate time before the CMH and give directions for that hearing. It is anticipated that an urgent preliminary case management hearing will only be necessary to consider issues such as jurisdiction, parentage, party status, capacity to litigate, disclosure and whether there is, or should be, a request to a Central Authority or other competent authority in a foreign state or consular authority in England and Wales in an international case. It is not intended that any urgent hearing will delay the CMH.

It is expected that full case management will take place at the CMH. It follows that the parties must be prepared to deal with all relevant case management issues, as identified in **Stage 2 - Case Management Hearing**. A FCMH should only be directed where necessary and must not be regarded as a routine step in proceedings.

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6. Case Management Hearing

A greater emphasis is placed on the first hearing, which is renamed Case Management Hearing ('CMH') (previously Case Management Conference). It is vital that the first Case Management Hearing is effective in order to meet the 26-week deadline.

The first Case Management Hearing should take place not before Day 12 and not later than Day 18.

It is expected that full case management will take place at the Case Management Hearing. The parties must be prepared to deal with all relevant case management issues, as identified in **Stage 2 - Case Management Hearing**. A Further Case Management Hearing ('FCMH') should only be directed where necessary and must not be regarded as a routine step in proceedings.

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7. The Timetable for the Child and the Timetable for Proceedings

7.1 The Timetable for the Child

The Timetable for the Child is the timetable set by the court which takes into account dates which are important to the child's welfare and development.

The Timetable for the Proceedings is set having particular regard to the Timetable for the Child, and the Timetable for the Child needs to be reviewed regularly. Where

adjustments are made to the Timetable for the Child, the Timetable for the Proceedings will have to be reviewed consistently with the aim of resolving the proceedings within 26 weeks or the period of time specified by the court. If proceedings can be resolved sooner than 26 weeks, then they should be.

Examples of the dates the court will take into account when setting the Timetable for the Child are the dates of:

- Any Looked After Review;
- Any significant educational steps, including the child taking up a place at a new school and, where applicable, any review of a statement of the child's Special Educational Needs;
- Any health care steps, including assessment by a paediatrician or other specialist;
- Any review of local authority plans for the child, including any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;
- Any change or proposed change of the child's placement;
- Any significant change in the child's social or family circumstances; or
- Any timetable for the determination of an issue in a case with an international element.

Information about these significant steps in the child's life must be provided in the Application Form and the social work statement, and this information must be updated regularly, taking into account information received from others involved in the child's life such as the parties, members of the child's family, the person who is caring for the child, the children's guardian, the Independent Reviewing Officer, the child's key social worker and any Central Authority or competent authority in a foreign state or a consular authority in England and Wales in a case with an international element.

Where more than one child is the subject of the proceedings, the court should consider and will set a Timetable for each child. The children may not all have the same timetable, and the court will consider the appropriate progress of the proceedings in relation to each child.

Where there are parallel care proceedings and criminal proceedings against a person connected with the child for a serious offence against the child, linked directions hearings should where practicable take place as the case progresses. The timing of the proceedings in a linked care and criminal case should appear in the Timetable for the Child. The time limit of resolving the proceedings within 26 weeks applies unless a longer timetable has been set by the court in order to resolve the

proceedings justly. In these proceedings, early disclosure and listing of hearings is necessary.

7.2 The Timetable for the Proceedings

The court will draw up a Timetable for the Proceedings with a view to disposing of the application:

- Without delay; and
- In any event, within 26 weeks beginning with the day on which the application was issued.

The court will have regard to:

- The impact which the timetable or any revised timetable would have on the welfare of the child; and
- The impact which the timetable or any revised timetable would have on the duration and conduct of the proceedings.

The court will use the Timetable for the Child to assess the impact on the welfare of the child, and to draw up and revise the Timetable for the Proceedings.

A standard timetable and process is expected to be followed in respect of the giving of standard directions on issue and allocation and other matters which should be carried out by the court on issue, including setting and giving directions for the Case Management Hearing.

7.3 Extensions to the Timetable for Proceedings

Having regard to the circumstances of the particular case, the court may consider that it is necessary to extend the time by which the proceedings are to be resolved beyond 26 weeks but may do so only if it considers that the extension is necessary to enable it to resolve the proceedings justly. This may be on application or the court's own initiative. Extensions are not to be granted routinely and require specific justification. When deciding whether to extend the timetable, the court must have regard to the impact of any ensuing timetable revision on the welfare of the child.

Applications for an extension should, wherever possible, only be made so that they are considered at any hearing for which a date has been fixed or for which a date is about to be fixed. Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing)

and, if possible, the other parties of the nature of the application and the reason for it. The party should then make the application orally at the hearing.

The reason(s) for extending a case should be recorded in writing in the Case Management Order and orally stated in court, so that all parties are aware of the reasons for delay in the case. The Case Management Order must contain a record of this information, as well as the impact of the court's decision on the welfare of the child.

An initial extension may be granted for up to eight weeks (or less if directed). A further extension of up to eight weeks may be agreed by the court. There is no limit on the number of extensions that may be granted. If a further extension is granted, the Case Management Order should:

- State the reason(s) why it is necessary to have a further extension;
- Fix the date of the next effective hearing (which might be a period shorter than a further eight weeks); and
- Indicate whether it is appropriate for the next application for an extension of the timetable to be considered on paper. Extensions should generally be considered at a hearing - this can be by telephone or by any other method of direct oral communication.

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8. Use of Experts

One of the threads of the overall aim of reducing the time taken to deal with proceedings is a change in the emphasis on, and a resulting reduction in, the use of expert evidence.

Revised Rules and Practice Directions came into force on 31 January 2013 relating to expert evidence. These were put onto a statutory footing by Section 13 of the Children and Families Act 2014.

The changes include:

- A change to the test for permission to put expert evidence before the court from 'reasonably required' to 'necessary to assist the court to resolve the proceedings justly'. This new test also applies to permission to instruct an expert and for a child to be examined or assessed for the purpose of the provision of expert evidence;
- The inclusion of specific factors to which the court is to have particular regard in reaching a decision whether to give permission relating to expert evidence, including:

- Any impact which giving permission would be likely to have on the child(ren);
 - The impact on the timetable and conduct of the proceedings;
 - The cost;
 - What other expert evidence is available (whether obtained before or after the start of the proceedings), and whether evidence could be given by another person, such as a social worker or the Children's Guardian.
- An application for permission to instruct an expert should state the questions which the expert is required to answer and the court will give directions approving the questions that are to be put to the expert.

Decisions about commissioning such evidence should be made early in the proceedings, usually at the Case Management Hearing.

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9. Good Local Authority Practice During Proceedings

Throughout the proceedings, the local authority must comply with court directions made regarding the timetabling and conduct of the case and the delivery of additional information and any specialist reports or up-dated assessments relevant to the local authority's case which the court decides are necessary. This additional material should be delivered within the timeframes set by the court. Where compliance becomes problematic the local authority will notify the court without delay and in advance of the deadline and seek an extension.

Both the local authority social worker and the local authority advocate should be in command of the essential evidence and equipped to present this clearly and confidently to the court. The social worker should also be clear on the degree of certainty in the conclusions they have drawn and have to hand the key facts and dates to support their judgements.

Where significant new factors or circumstances bearing on the case emerge late in the proceedings, the local authority (or the children's guardian or parent/ lawyer) will draw these to the court's attention, sharing the information with other parties at the earliest opportunity and seeking to reach a common approach on handling before the next court hearing.

Pending final decisions by the court, children's need for stability and security remains a priority and will be reflected in any interim care plans, including plans for contact, which the local authority puts forward to the court. The local authority should ensure appropriate, high quality and stable placements are provided, where necessary, while a child's future is decided.

It is essential that the social worker and the local authority legal adviser have regular contact during the course of the proceedings, and that the progress of the case is kept under constant review.

This will include discussion of any disclosure issues, which may need to be the subject of directions by the Court. Any correspondence received by the social worker from solicitors/experts during court proceedings, should be forwarded as soon as possible to the local authority solicitor, together with detailed instructions for the reply.

The social worker must keep the local authority legal adviser and Children's Guardian up to date with any changes in relation to the child during the proceedings, for example, placement, contact, school/education, health. Arrangements **must not** be made for any change to the child's placement without prior consultation with the Children's Guardian.

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10. Parallel Planning within proceedings

During proceedings a number of assessments must progress alongside each other to ensure the timely completion of the case within the aim of 26 weeks.

This includes:

- any assessment of parents or those with parental responsibility
- any assessment of possible kinship carers (see 4.1.4 Permanence Planning Guidance, 5.2.16 Fostering for Adoption, Concurrent Planning and Temporary Approval as Foster Carers of Approved Prospective Adopters, 5.1.1 Fostering Panel)
- planning for adoption (if appropriate) (see 5.2.3 Placement for Adoption, 4.1.4 Permanence Planning Guidance). See flowchart Achieving Permanency Flowchart updated 20/02/19)

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11. Final Care Plans

A Key Decision Discussion meeting is held to determine and agree the local authorities final care plan. This meeting needs to take place before final evidence is due and allow for other decision-making forums if they are required, such as permanency looked after child review, fostering panel or a view by the agency decision maker.

This meeting is chaired by the Service Manager, and is attended by the Social Worker, Team Manager, and any other worker who has been involved with the case,

for instance a support and assessment worker. A representative from legal services should also be invited to this meeting for formal advice and this is particularly important in relation to complex cases.

If a case is particularly complex, the final care plan can be determined by review and discussion at the Children's Decision-Making Panel.

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12. Case Management Checklist and Flowcharts

12.1 Pre-Proceedings

PRE-Proceedings

PRE-Proceedings CHECKLIST

Annex Documents are the documents specified in the Annex to the Application Form which are to be attached to that form and filed with the court:

- Social Work Chronology;
- Social Work Statement and Genogram – SWET template to be used from 01/04/19
- The current assessments relating to the child and/or the family and friends of the child to which the Social Work Statement refers and on which the LA relies;
- Care Plan;
- Index of Checklist Documents.

Checklist documents (already existing on the LA's files) are:

(a) Evidential documents including:

- Previous court orders including foreign orders and judgments/reasons;
- Any assessment materials relevant to the key issues including capacity to litigate, Section 7 and 37 reports;
- Single, joint or inter-agency materials (e.g. health & education/Home Office and Immigration Tribunal documents).

(b) Decision-making records including:

- Records of key discussions with the family;

	<ul style="list-style-type: none"> • Key LA minutes and records for the child; • Pre-existing care plans (e.g. child in need plan, looked after child plan and child protection plan); • Letters Before Proceedings. <p>Only Checklist documents in (a) are to be served with the application form.</p> <p>Checklist Documents in (b) are to be disclosed on request by any party.</p> <p>Checklist documents are not to be:</p> <ul style="list-style-type: none"> • Filed with the court unless the court directs otherwise; and • Older than 2 years before the date of issue of the proceedings unless reliance is placed on the same in the LA's evidence.
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12.2 Stage 1 - Issue and Allocation

STAGE 1 ISSUE AND ALLOCATION

DAY 1 AND DAY 2

On Day 1 (Day of issue):

- The LA files the Application Form and Annex Documents and sends copies to Cafcass/CAFCASS CYMRU;
- The LA notifies the court of the need for an urgent preliminary case management hearing or an urgent contested ICO hearing where this is known or expected;

- Court officer issues application.

Within a day of issue (Day 2):

- Court considers jurisdiction in a case with an international element;
- Court considers initial allocation to specified level of judge in accordance with the Allocation Rules and any President's Guidance on the distribution of business;
- LA serves the Application Form, Annex Documents and evidential Checklist Documents on the parties together with the notice of date and time of CMH and any urgent hearing;
- Court gives standard directions on Issue and Allocation including:
 - Checking compliance with Pre-Proceedings Checklist including service of any missing Annex Documents;
 - Appointing Children's Guardian (to be allocated by Cafcass/CAFCASS CYMRU);
 - Appointing solicitor for the child only if necessary;
 - Appointing (if the person to be appointed consents) a litigation friend for any protected party or any non subject child who is a party, including the OS where appropriate;
 - Identifying whether a request has been made or should be made to a Central Authority or other competent authority in a foreign state or a consular authority in England and Wales in a case with an international element;
 - Filing and service of a LA Case Summary;
 - Filing and service of a Case Analysis by the Children's Guardian;
 - Filing and Serving the Parents' Response;
 - Sending a request for disclosure to, e.g. the police or health service body;
 - Filing and serving an application for permission relating to experts under Part 25 on a date prior to the advocates meeting for the CMH;
 - Directing the solicitor for the child to arrange an advocates' meeting no later than 2 business days before the CMH;
 - Listing the CMH.

- Court considers any request for an urgent preliminary case management hearing or an urgent contested ICO hearing and where necessary lists the hearing and gives additional directions;
- Court officer sends copy Notice of Hearing of the CMH and any urgent hearing by email to Cafcass/ CAFCASS CYMRU.

12.3 Stage 2 - Case Management Hearing

STAGE 2 - CASE MANAGEMENT HEARING	
ADVOCATES' MEETING (including any litigants in person)	CASE MANAGEMENT HEARING
No later than 2 business days before CMH (or FCMH if it is necessary).	CMH: Not before day 12 and not later than day 18. A FCMH is to be held only if necessary, it is to be listed as soon as possible and in any event no later than day 25.
<ul style="list-style-type: none"> • Consider information on the Application Form and Annex documents, the LA Case Summary, and the Case Analysis; • Identify the parties' positions to be recited in the draft Case Management Order; • Identify the parties' positions about jurisdiction, in particular arising out of any international element; • If necessary, identify proposed experts and draft questions in 	<p>Court gives detailed case management directions, including:</p> <ul style="list-style-type: none"> • Considering jurisdiction in a case with an international element; • Confirming allocation; • Drawing up the timetable for the child and the timetable for the proceedings and considering if an extension is necessary; • Identifying additional parties, intervenors and representation (including confirming that Cafcass/CAFCASS CYMRU have

<p>accordance with Part 25 and the Experts Practice Directions;</p> <ul style="list-style-type: none"> • Identify any disclosure that in the advocates' views is necessary; • Immediately notify the court of the need for a contested ICO hearing and any issue about allocation; • LA advocate to file a draft Case Management Order in prescribed form with court by 11a.m. on the business day before the CMH and/or FCMH. 	<p>allocated a Children's Guardian and that a litigation friend is appointed for any protected party or non-subject child);</p> <ul style="list-style-type: none"> • Giving directions for the determination of any disputed issue about litigation capacity; • Identifying the key issues; • Identifying the evidence necessary to enable the court to resolve the key issues; • Deciding whether there is a real issue about threshold to be resolved; • Determining any application made under Part 25 and otherwise ensuring compliance with Part 25 where it is necessary for expert(s) to be instructed; • Identifying any necessary disclosure and if appropriate giving directions; • Giving directions for any concurrent or proposed placement order proceedings; • Ensuring compliance with the court's directions; • If a FCMH is necessary, directing an advocates' meeting and Case Analysis if required; • Directing filing of any threshold agreement, final evidence and Care Plan and responses to those documents for the IRH; • Directing a Case Analysis for the IRH;
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	<ul style="list-style-type: none"> • Directing an advocates' meeting for the IRH; • Listing (any FCMH) IRH, Final Hearing (including early Final Hearing) as appropriate; • Giving directions for special measures and/or interpreters and intermediaries; • Issuing the Case Management Order.
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12.4 Stage 3 - Issues Resolution Hearing

STAGE 3 - ISSUES RESOLUTION HEARING	
ADVOCATES' MEETING (including any litigants in person)	ISSUES RESOLUTION HEARING (IRH)
No later than 7 business days before the IRH.	As directed by the court, in accordance with the timetable for the proceedings.
<ul style="list-style-type: none"> • Review evidence and the positions of the parties; • Identify the advocates' views of: <ul style="list-style-type: none"> ○ The remaining key issues and how the issues may be resolved or narrowed at the IRH including by the making of final 	<ul style="list-style-type: none"> • Court identifies the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the IRH; • Court considers whether the IRH can be used as a final hearing; • Court resolves or narrows the issues by hearing evidence; • Court identifies the evidence to be

<p>orders;</p> <ul style="list-style-type: none"> ○ The further evidence which is required to be heard to enable the key issues to be resolved or narrowed at the IRH; ○ The evidence that is relevant and the witnesses that are required at the final hearing; ○ The need for a contested hearing and/or time for oral evidence to be given at the IRH. <ul style="list-style-type: none"> • LA advocate to: • Notify the court immediately of the outcome of the discussion at the meeting; • File a draft Case Management Order with the court by 11a.m. on the business working day before the IRH. 	<p>heard on the issues which remain to be resolved at the final hearing;</p> <ul style="list-style-type: none"> • Court gives final case management directions including: <ul style="list-style-type: none"> ○ Any extension of the timetable for the proceedings which is necessary; ○ Filing of the threshold agreement or a statement of facts/issues remaining to be determined; ○ Filing of: <ul style="list-style-type: none"> ▪ Final evidence & Care Plan; ▪ Case Analysis for Final Hearing (if required); ▪ Witness templates; ▪ Skeleton arguments. ○ Judicial reading list/reading time, including time estimate and an estimate for judgment writing time; ○ Ensuring Compliance with PD27A (the Bundles Practice Direction); ○ Listing the Final Hearing. • Court issues Case Management Order.
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13. Parallel Criminal Investigations

The **Protocol and Good Practice Model: Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Direction Hearings (October 2013)** provides guidance and good practice in relation to the disclosure of evidence between local authorities, the police and the Crown Prosecution Service ('CPS'):

- The local authority should ensure that documents relating to family court proceedings are not included in the files to be examined by the police. Instead, the local authority will provide a list of such documents without describing what they are (e.g. by providing a copy of the redacted court index), in order for the police and/or the CPS to apply to the family court for disclosure;
- The local authority **can** disclose to the police, documents relating to family court proceedings where the police officer to whom disclosure is made is a member of a dedicated child protection unit and/or is exercising powers of Police Protection under Section 46 of the Children Act 1989, and the disclosure is for the purposes of child protection and not for the purposes of the criminal investigation;
- The local authority can disclose to the police, documents which are lodged at court or used in the proceedings which already existed prior to the commencement of the family court proceedings (e.g. pre-existing medical reports);
- The text or summary of a judgment given in the family court proceedings can be included in the files to be examined by the police;
- Where material is disclosed to the police, it cannot be further disclosed to any other parties (e.g. the CPS) for the purposes of the criminal investigation without the express permission of the family court.

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Appendices

Appendix 1: Letter Before Proceedings.

Appendix 2: Letter of Issue.

1.4.3 Childrens Decision Making Panel

RELATED CHAPTER

**Protocol and Good Practice Model: Disclosure of Information in Cases of
Alleged Child Abuse and Linked Criminal and Care Direction Hearings
(October 2013)**

RELATED GUIDANCE

**Statutory Guidance for Local Authorities on Court Orders and Pre-Proceedings
(2014)**

AMENDMENT

This chapter has been updated in March 2017 to reflect the outcome of a judgment following an application to remove a child at birth. The judge set out what were thought to be 'basic and good practice steps' (see **Section 2, Considerations**).

Contents

- **Purpose of Children's Decision-Making Panel**
- **Considerations**
- **Who can Convene Children's Decision-Making Panel**
- **Attendance at Children's Decision-Making Panel**
- **Timing and Duration of Children's Decision-Making Panel**
- **Recording of Children's Decision-Making Panel**
- **Review/Subsequent Children's Decision-Making Panel**

Local Information

1. Purpose of Children's Decision-Making Panel

Children's Decision - Making panel is the method by which Leicestershire County Council reviews and considers cases whereby there may be a need to commence pre-proceedings or proceedings.

Children's Decision Making Panel has other functions outside of the PLO in regard to other important decisions regarding the child's journey (please see Child's Journey Decision Making Guidance 2018, and Children's Decision-Making Panel TOR)

The Public Law Outline makes clear that Legal Planning meetings are an essential part of the process for dealing with public law children's cases under the Public Law Outline.

Within Leicestershire, the Children's Decision - Making panel review's the assessment in relation to the child needs and level of risk. They are held on agreed dates and chaired by a Head of Service or their representative.

The legal representative is a non decision making member of the panel whose role is to provide advice as to whether the legal threshold for proceedings is made.

Sir James Munby, President of the Family Division in '**The Process of Reform: the revised PLO and the Local Authority**', states that a properly organized legal planning meeting is invaluable and can be the key to achieving timely outcomes to

Care Proceedings. He also recommends that local authority lawyers be involved, advising and assisting their social work clients, at an early stage.

The Children's Decision-making Panel has been the agreed forum to make informed and timely decisions for children in Leicestershire. It is also recognised that some decisions may have to be made outside of this process.

Legal Planning Meetings will continue to take place when

- There is a situation that requires an immediate response to safeguard the child
- Legal advice is required prior to the next planned meeting
- Or the situation is complex and requires a decision that needs to be made to promote and safeguard the child's welfare.

Children's Decision-Making Panel (within Leicestershire) should be held to discuss the way forward in a case, where an application for a legal order may be required.

This can include:

- Following an application for an Emergency Protection Order when consideration is being given to an application for an Interim Care Order;
- When the protection or welfare of a child cannot be achieved by agreement with the parents, or the security of a legal order is necessary to ensure the viability of a plan for a child, or the existing court order is not providing adequate protection for the child;
- Where it is thought that a legal order may be required in order to assist in the permanence planning for children, whether that is a return to the family or to achieve permanence elsewhere.

At the meeting, a decision should be made in principle following legal advice given, about whether the Threshold Criteria have been met. The local authority should then decide, based on a robust analysis of the level of assessed risk, whether:

- It is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings; or
- Whether proceedings should be initiated immediately.

The meeting should also identify any evidence gaps, clarify whether additional assessments will be required, and consider what would be a suitable draft Care Plan for the child.

The Chair of the panel will then confirm on behalf of the Local Authority if the criteria is met for pre-proceedings.

Note: where children are already Section 20 Accommodated there should be no delay in issuing proceedings where this is required, (see [Decision to Look After and Care Planning Procedure, Section 20 Accommodation](#)).

Please refer to document Child's Journey Decision Making Guidance about its purpose and functions in detail.

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2. Considerations

The Children's Decision-making Panel is an opportunity to discuss a case fully, and to consult with colleagues to ensure that children are the subject of active case management. Specifically, to ensure that all actions are focused on promoting the welfare and safeguarding of the child.

The role of the Local Authority legal adviser at Children's Decision-Making Panel is to advise as to threshold and the legal possibilities for achieving the desired aim and to give a view about the quality of evidence available. That the decisions are made in the context of current legislation and practice.

To enable a full discussion to take place, the following must be available:

- Relevant assessment/s;
- An up to date Chronology;
- A Smart Plan or a clear indication that options for a plan have been considered;
- A Genogram.

The issues to be considered at the meeting will include the following:

- The reasons for the concerns and the evidential basis for establishing Significant Harm and the Threshold Criteria;
- Why Care Proceedings or pre-proceedings are necessary - what is their aim, objective and purpose?
- The steps already taken to clarify the issues of concern - i.e. Assessment, as well as other medical and other expert involvement;
- When will the Assessment and other supporting documentation be available, if not already?

Note that with Pre-Birth situations a recent High Court judgment has set out good practice steps to include:

- A risk assessment of the parent(s) should be undertaken immediately the social workers are made aware of the mother's pregnancy and

should be completed 4 weeks before the mother's expected delivery date and disclosed to the parent(s) (and their solicitor where relevant);

- All relevant documentation should be then sent to the Local Authority Legal Adviser to issue proceedings

(See **Care and Supervision Proceedings and the Public Law Outline Procedure, Pre-Birth Planning and Proceedings**).

- The action/decisions already taken and where the decisions were made e.g. Strategy Discussion/Meeting, Child Protection Conference, Core Group meeting;
- The proposed Care Plan for the child, including the proposed placement and any cultural, language and ethnic issues, the need for a Twin Track Plan, consultation with parents and the wider family, whether any family members are available to care for the child on an interim or permanent basis, if so whether the required checks have been made, the proposals for contact;
- How the proposed Care Plan is to be achieved, including where appropriate arranging a date for the case to be presented to the Adoption Panel;
- Whether it may be appropriate to instruct any further expert assessment before the commencement of court proceedings - if so, what are the proposed remit of the instructions and the areas to be addressed, who should the assessment be done by and what are the likely timescales?
- Have there been previous Court proceedings in relation to the family? If so, what steps are required to obtain the papers in relation to the case from the Court? or another local authority?
- When will the social worker's Statement of Evidence be ready?

If Care Proceedings are recommended, the **Care and Supervision Proceedings and the Public Law Outline Procedure** should be followed.

Any potential issues/documentation regarding parental capacity to litigate should be flagged up at the meeting.

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3. Who can Convene Child Decision Making Panel

The decision to present a case to the Children's Decision - Making panel will be made by the social worker's line manager - the decision will usually be taken following a recommendation from a Child Protection Conference, as a result of a

Looked After Review, a Permanence Planning Meeting, or on the request of a social worker, manager, or other agency due to the concerns on the case.

The initial document requesting for the case to be heard at the panel is completed by the social worker. This is then checked and approved by the team manager, then service manager, and then head of service who gives formal approval for a case to be heard.

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4. Attendance at Child Decision Making Panel

The meeting will be chaired by the relevant Service Manager or Head of Service and will usually involve the following: the child's social worker; any other social worker (such as fostering social worker) completing an assessment with the family, a local authority legal adviser; and input from other agencies and professionals.

Where the child has been in foster care, the views of the foster carer should be sought by the child's social worker and taken into consideration. This may include information on the child's progress in their placement and on the impact of contact with their family.

The panel itself is made up of several representatives including service managers from Fostering, adoption and safeguarding. Alongside this, there are representatives from Early Help, Health and Education. This means that the decision making of this meeting is shared and given input by several service areas.

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5. Timing and Duration of Child Decision Making Panel

Children's Decision - Making panel is held on a fortnightly basis.

If, due to the urgency of a case, proceedings may need to be issued before this time, then an urgent legal planning meeting can be held to make the decision to issue proceedings.

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6. Recording of Child Decision Making Panel

Notes of Children's Decision - Making panel are recorded and then approved by the chair of the panel. These notes are recorded on the child's case file. These are legally privileged and should not be made available to parents or other parties in any potential proceedings without the permission of the chairperson or Director.

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7. Review/Subsequent Child Decision Making Panel

The meeting should consider whether the case needs to be brought again to the Children's Decision - Making panel in future, if so, when. It may be that new information emerges which requires a change of plan for the child. In this event, the case can be re-presented to the Children's Decision - Making panel order to consider the implications for the legal plan.

If a case is within pre-proceedings, the case will be presented at the Children's Decision - Making panel on a regular basis so that progress can be reviewed.

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8. Final Care Plans

If a case is complex, then the case can be presented back to Children's Decision - Making panel for discussion and review to determine final care plan which will be proposed by the Local Authority.

For all other cases, a Key Decision Discussion meeting is held to determine and agree the local authorities final care plan. This meeting needs to take place before final evidence is due and allow for other decision-making forums if they are required, such as permanency looked after child review, fostering panel or a view by the agency decision maker.

This meeting is chaired by the Service Manager, and is attended by the social worker, team manager, and any other worker who has been involved with the case, for instance a support and assessment worker. A representative from legal services should also be invited to this meeting for formal advice.

Local Information

[Local Resources](#) may also apply for this chapter.

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