

The Family Court at Birmingham

Wellbeing Protocol

Ensuring Family Practice is Consistent with Health and Wellbeing

INTRODUCTION

The President of the Family Division has reminded us that the Family Justice System is dealing with an unprecedented workload. That increased workload affects litigants, professionals, practitioners, court staff and members of the judiciary, that is everyone who works, practises or attends court here.

The impact of this workload has been magnified through the development and use of electronic communication, which tempts many into a ‘by return, twenty-four seven, last minute’ culture of working.

If we are to manage our workload effectively and continue to serve the children and families who come before the Family Court at Birmingham, all those working in the system **must** ensure that they are mindful of their own wellbeing and that we all endeavour to ensure that we comply with the suggestions made in this Protocol.

This document is intended to benefit all professionals, practitioners, court staff and members of the judiciary involved in the administration of Family Justice with a view to increasing wellbeing, reducing unnecessary stress and achieving a better work life balance.

The Family Court at Birmingham endeavours to ensure that all those involved in the Family Justice System work together to ensure that decisions are made in the welfare best interests of the children who are at the heart of proceedings, whether public law or private law, or in respect of financial issues following family breakdown.

It is the hope and expectation of the Local Family Justice Board that professionals, practitioners, court staff and members of the judiciary will work together to achieve the steps set out in this document. We all recognise that a courtroom is a stressful environment, particularly for those who are not used to it. Everyone is reminded of the need to remain professional, polite and understanding at all times.

LISTING

- (1) Listing is and remains a judicial function.
- (2) Listing should be in accordance with available judicial resources and should take into account, where possible, the availability of social workers, family court advisers, professionals and practitioners.

- (3) Any temptation to over-list to ‘get through the work’ is to be resisted. Where there is pressure on the list, it is the **list** that should give way and **not** the wellbeing of professionals, practitioners, court staff and judges.
- (4) Professionals, practitioners, court staff and judges have a reasonable entitlement to a lunch break. Lunch breaks should be used for lunch. The time for such a break in Birmingham must take account of the fact that most people will need to leave the court building to obtain their lunch as there is no café in the Birmingham Civil and Family Justice Centre. Ideally the lunch break should be between 1pm and 2pm and, in any event, for an hour.
- (5) Court hearings should not commence before 10am and should end at 4.30pm, with an absolute cut off at 5pm, save in **exceptional** circumstances (such as an urgent removal hearing) or **with the agreement of all those involved**. It is not unreasonable for professionals, practitioners, court staff and judges to expect to be able to return home in time to fulfil childcare or other caring commitments. No one should be expected to have to reveal details of their personal or professional commitments.
- (6) Time estimates for final hearings should always include reading time and time for preparing and delivering the judgment.

WORKING PRACTICES

- (7) There should no longer be an expectation that professionals, practitioners and judges will work late into the night and for significant parts of a weekend or while on leave, in order to deal with their workload or to meet deadlines.
- (8) A ‘last minute’ work culture increases stress. The availability of electronic communication does **not** justify the late delivery of instructions, evidence, information etc. Such an approach creates a high level of pressure on professionals, practitioners, court staff and judges and increases the need to work outside what are reasonably regarded as work hours.
- (9) Within this context, Practice Direction 27A requires that a paginated bundle be delivered to advocates not less than three working days before the hearing (paragraph 6.2) and that the bundle be lodged with the court not less than two working days before the hearing (paragraph 6.3). It is not reasonable to expect anyone to digest hundreds of pages of evidence the night before a hearing or, worse, on the morning of the hearing.
- (10) The sending of work-related emails should ideally be confined to business hours. However, it is appreciated that some practitioners may keep different working hours due to caring responsibilities or other factors. **In any event**, there should be no expectation of a **response** after 6pm or before 9am. There should be no expectation of a response if someone is on holiday and has an ‘out of office’ reply that is active.
- (11) ‘Reply All’ responses to emails should be avoided where possible. **Only** those directly concerned with the relevant communication should be included.

DOCUMENTATION

- (12) Case summaries should be short and should focus on the issues with which the listed hearing is concerned.
- (13) Position statements should omit summaries of the background (which can be placed in the case summary) and ordinarily should be limited to one side of A4 and to a maximum of three sides of A4, setting out the parties' position using bullet points in respect of the issues for that hearing. Bullet points can be expanded upon in submissions. Position statements should ordinarily be provided by no later than 4pm on the day prior to the hearing. For hearings before the Circuit Judges in Birmingham, the email address urgentfamilyprep@justice.gov.uk should be used in accordance with the guidance that has previously been issued.
- (14) Witness statements should avoid the repetition of matters which are contained in earlier statements and should concentrate on the issues that they are directed to deal with. There is no need to repeat the same information within the same document.

CASE MANAGEMENT

- (15) This document does not, of course, change the statutory requirement to complete public law proceedings in 26 weeks. However, the Court should be careful only to approve realistic timescales which can be achieved by practitioners, social workers and family court advisers, which will take account of their professional and personal circumstances and commitments (e.g. team meetings).
- (16) With a view to ensuring that hearings are as effective as possible, advocates' meetings need to be attended by the advocate or legal representative who will be attending the next hearing or who is fully instructed. Draft orders should, wherever practicable, be available for discussion at advocates' meetings. Effective advocates' meetings should always decrease the amount of time advocates need to spend at Court.
- (17) Non-compliance with orders adds to the pressure on professionals, practitioners, court staff and judges. Case management orders **must** be complied with and where compliance is not going to be achieved an application to vary the relevant direction must be made **before** the time for compliance expires. The C2 Reduction Project Version 2 March 2019 provides a set of template orders which set out what is required in the draft court order and which make it clear what information should be included in the correspondence to the court. They have titles which will enable practitioners to choose the most appropriate template.

ORDERS

- (18) Pending the report of the President's Working Party on re-drafting order templates, and in line with the attached templates for 'short form orders', orders should simply set out the following information:
 - (i) the header (the court; the case number; the name, gender and date of birth of each child with whom the court is concerned (in accordance with

- the child's birth certificate); the identity of the judge; the date of the hearing; and the type of hearing);
 - (ii) the parties, the representatives and their contact details;
 - (iii) any penal notice or warning notice;
 - (iv) any recitals; and
 - (v) the orders made.
- (19) The applicant should provide a draft order to all parties prior to the hearing and preferably sufficiently in advance of the hearing to enable the representative for each party to have considered it in advance of their arrival at court.
- (20) Unless the circumstances are exceptional, amendments to orders should be drafted and approved by the Court **before** the parties leave the court in order to avoid lengthy and time-consuming email exchanges following the hearing.

Those attending the meeting of the Wellbeing Committee when this Protocol was agreed:

Her Honour Judge Thomas (Designated Family Judge for Birmingham)

Alexander Kemp (Joint Chair of the Local Family Justice Board and Assistant Director, Cafcass)

Jas Tamber (Solicitor representative on the Local Family Justice Board)

Mark Cooper (Barrister representative on the Local Family Justice Board and secretary of the West Midlands Branch of the Family Law Bar Association)

Jerome O’Ryan (Birmingham Children’s Trust)

Alison Frost (Solihull Metropolitan Borough Council)

Stephen McAuley (HMCTS)

Jane Bevan (Judicial HR Regional Adviser)

This Protocol will be kept under review and any proposed addition or amendment should be sent to the Designated Family Judge or to any member of the Wellbeing Committee, as should any concern in respect of wellbeing.

10th January 2020

**Her Honour Judge Thomas
Designated Family Judge for Birmingham**