

LINCOLNSHIRE FAMILY COURTS

LOCAL PRACTICE GUIDANCE

Private Law Applications. Covid-19 Modified Local Procedures

Following consultation with Cafcass, the Judiciary, Legal Advisers and Magistrates I have adopted the vast majority of the Private Law Working Group’s Suggestions and the procedures set out below will be implemented from Monday 6 July until 30 October 2020 when matters will be reviewed.

In this document the term “domestic abuse” is used as defined in PD12J ie as including “any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual financial or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment”

Issue Stage

1. HMCTS staff should use their best endeavours to ensure that all new applications contain a valid email address and/or telephone number for all parties.

Gatekeeping.

Listing FHDRAs

2. Only cases assessed as NO or LOW risk and where resolution is a possibility are to be listed for a FHDRA. Where a FHDRA is listed, the Safeguarding Letter should be filed no later than 3 working days prior to the hearing.
3. In all other cases (save as dealt with below) the case should be listed for a “Second Gatekeeping Appointment” when a decision can be taken as to whether to list for a FHDRA in the light of the contents of the Safeguarding Letter. Second Gatekeeping Appointments are to be listed 10 weeks ahead with the Safeguarding Letter to be filed no later than 3 working days prior to the appointment. A template Order appears at Appendix 2.
4. Safeguarding letters from Cafcass should continue to be directed in all cases save in respect of some returning cases (see below) or where the application is supported by the Local Authority and evidence from the Authority has been filed with the application. If the latter applies, Gatekeepers should consider ordering a letter/brief report from the Local Authority in place of a Cafcass Safeguarding Letter. The need

for a Cafcass Safeguarding Letter should be kept under review as the proceedings progress.

Covid-19-Related Cases

5. Where it appears that:

- the only issue(s) in the case relate to Covid-19 eg self-isolation, restrictions/difficulties in travel etc arising out of Government Guidance in response to the pandemic; and
- the case does **not** involve allegations of domestic abuse

the Guidance Letter attached at Appendix 1 should be sent out to both parents and the following procedure adopted:

- 1) The Court Order or letter which accompanies the application sent to Cafcass should indicate that the Gatekeepers have identified the application as one which has arisen as a result of the Covid-19 pandemic so as to alert Cafcass to the need to carry out the steps below.
- 2) During safeguarding enquiries, in addition to the usual discussion about risk, Cafcass will discuss the Covid-19 issues with the parties and the possibility of resolving matters and/or withdrawal of the application if the parties conclude that the court cannot assist.
- 3) **Gatekeepers and Cafcass should be particularly vigilant for cases where domestic abuse is alleged or emerges.**
- 4) If, following discussion with the parties, the Applicant/parties agree that they do not require a court determination, Cafcass will set this out in the Safeguarding Letter. A Legal Adviser/District Judge should then be asked to make an Order granting permission to the Applicant to withdraw the application in accordance with rule 29.4 of the FPR 2010. **NB it has now been confirmed that fee refund may be granted where a case concludes in this manner.**
- 5) A template Allocation Order is attached at Appendix 3.
- 6) A template Final order is attached at Appendix 4
- 7) If there is no agreement, Cafcass will inform the Court and the case will proceed in the normal way.

Returning Cases (including Enforcement & Variation Applications)

6. If the application form mentions previous proceedings, Court staff should be asked to provide the Final Order in those proceedings (if not on the digital file).
7. Where the case is not related to Covid-19, new safeguarding checks may not be required or immediately required, if previous proceedings concluded recently (within the last 6 months or so) and there are no indicators on the face of the application which suggest that such checks are necessary such as:

- Specific allegations of harm/risk of harm to the child;
 - Risks arising from the broader context, including disputed issues which have given rise to the fresh application;
 - The application refers to a new partner or adult in the child's life, for whom safeguarding checks are required;
8. If in doubt, Gatekeepers should consult with Cafcass by telephone (see contact details at para. 20).
 9. If the conclusion is that a Safeguarding Letter is not required, a hearing should be listed and the case will not be sent to Cafcass. The need for a Safeguarding Letter should be kept under review as the proceedings progress.
 10. Gatekeepers should look out for cases which concern issues on existing orders which have arisen as a result of the Covid-19 pandemic. In such cases the same process should be adopted as that set out at para. 5 above for new applications **except where domestic abuse is a feature of the application.**

When Safeguarding is Complete

Alternatives to FHDRA

11. Consider whether the case is one where a hearing for Directions only is indicated as opposed to a full FHDRA. This might be the case where a judicial decision is obviously required eg in leave to remove or relocate cases or where it is **absolutely clear** that a fact-finding hearing is necessary.
12. If the Safeguarding Letter positively identifies that further assessment is required and a remote hearing is impractical/impossible because of technical or other impediments, consideration should be given to directing a s.7/Child Impact Analysis Report and listing straight to DRA with narrative/position statements from both parties. Cafcass should be consulted and agreement sought about the proposed way forward unless this is clearly dealt with in the Safeguarding Letter. (Cafcass contact details at para. 20)
13. **All orders made in the absence of the parties must contain a statement of the right of any party to apply to set aside, vary or stay the Order in accordance with rule 4.3(5) of the FPR 2010.**
14. In an appropriate case and **where there is no indication of harm or domestic abuse**, consider adjourning the case under FPR 2010 rule 3.4 and directing the parties to consider non-court dispute resolution.

At the FHDRA

15. Where a case has been listed for a FHDRA in the usual way because it has been identified as no/low risk and resolution is a possibility, consider the following:

- If the issue is a simple one, obtain the parties' agreement to a decision being made on paper. Each side could be asked to file a short letter/statement for a decision to be made in writing.
- If no contact is taking place and the parties are able to agree some interim arrangements, consider whether the case could be brought back for review within a shorter timeframe than that necessary for a s7/Child Impact Analysis Report. The parties may then be able to reach an agreement which the court is able to approve taking into account any risk/safety issues without the need for the Report.
- Where a s7/Child Impact Analysis Report is ordered, the attendance of the FCA at the DRA is not routinely required. However, in appropriate circumstances, the author of the Report should be invited to be available by telephone/video conference call for the DRA so that if any party wishes to raise an issue about the Report it can be canvassed there and then rather than listing for a hearing.
- Where a s7/Child impact Analysis Report is ordered consider whether to direct that the DRA could be used as a Final Hearing.

DRA

16. In the more straightforward cases consider using the DRA as a Final Hearing.

Consider:

- Listing a longer hearing than might usually be the case;
- Directing brief narrative/position statements in response to the s7/Child Impact Analysis Report;
- Request the author to attend remotely only if required;
- Warn the parties clearly in advance of the hearing (in the Hearing Notice or in the FHDRA Order) that the hearing may be used as a Final Hearing and that the Court may take evidence and may make final Orders. Those hearing the case on the day will need to satisfy themselves that they can fairly take this approach in an Article 6-compliant way. The views of the parties **must** be taken into account. A suggested template paragraph appears at Appendix 5.
- Invite the parties to take the Oath/Affirmation at the commencement of the hearing so that everything that is said is sworn evidence.
- Permit limited cross-examination of the other parties/Cafcass.
- Give a short, reasoned judgment to finalise the case or some of the issues but only if it is safe and fair for final orders to be made on some or all issues which do not justify a full hearing.

Fact-Finding Hearings

17. It is recognised that it is problematic to conduct these hearings remotely, particularly where LIPs are involved, special measures are needed and/or interpreters/intermediaries are required. If a case has to be taken out of the list because a fact-find hearing cannot fairly take place, consider:

- Listing the case for an early paper review before a District Judge with a sufficient time estimate for the District Judge to familiarise him/herself with the case papers.
- The District Judge can double-check that any fact-finding hearing is appropriate/necessary especially if evidence has now been filed or circumstances have changed.
- The District Judge can consider whether any directions are needed for interim contact, even if it is indirect.
- Ensure that directions have been complied with, time estimate is realistic allocation is correct etc.
- Make sure the case is re-listed so that it does not get “lost” in the system.

Generally & Recovery Mode

18. A number of factors are key to the above:

- 1) Good communication between Legal Advisers, District Judges and Cafcass is essential. When in doubt, consult.
- 2) Cases involving domestic abuse are to be brought before the Court at the earliest opportunity for those features of the case to be explored.
- 3) Modified procedures are only to be adopted where it is fair to all parties to do so and where there is no increased risk of harm as a result.
- 4) In all cases where orders are made in the absence of the parties, the parties are informed of their right to apply to set aside, vary or stay pursuant to FPR 2010 rule 4.3(5).

19. We are endeavouring to put in place systems for records to be kept of cases that have had to be adjourned off with information relevant to the urgency of those cases so that as and when we are able to resume a more normal service, the most urgent cases can be prioritised.

Cafcass Contacts

20. Where the need for consultation with Cafcass arises please contact the relevant Service Managers for the EIT Teams via email (marked urgent)

- Michael Kemp: Michael.Kemp@cafcass.gov.uk 07786190226
- Sam Harris: Sam.Harris@cafcass.gov.uk 07979742565

21. If the above are not available please contact:

- Anya Phillips: Anya.Phillips@CAFCASS.GOV.UK 07920295280

Her Honour Judge B. Clark

Designated Family Judge for Lincolnshire.

6.7.20

Appendix 1



**HM Courts
& Tribunals
Service**



Important information for families about how family courts will work during coronavirus (Covid19)

Message from our judges: You've been sent this guidance because we've looked at your application and think it's about **how to manage your child arrangements during the coronavirus pandemic**. We understand this is a worrying time for lots of parents. We've worked with Cafcass (Children and Family Court Advisory and Support Service) and Cafcass Cymru in Wales, to create guidance to help support you during this difficult time. This includes important information you need to know about how your case will be managed.

Important Note: *Due to the coronavirus pandemic, the courts are experiencing significant delays. It is likely that your wait time for a First Hearing is **over 12 weeks**.*

The law on coronavirus restrictions states that no person may leave the place where they are living without reasonable excuse. It is a reasonable excuse, however, for children and parents who do not live in the same household to continue arrangements for contact.

Whether and when children move between households is subject to the [Government's separate guidance](#) on what to do if an individual or household is isolating, or if it is necessary to shield a person who is extremely vulnerable on medical grounds.

There is advice about staying safe and reducing the spread of infection which is issued and updated by [Public Health England](#) and [Public Health Wales](#).

Our advice to parents on how to manage arrangements during the pandemic:

- We encourage parents and carers to deal with these difficult situations by **talking with each other about your worries, and any safe, sensible solutions that work for you all**. Many people are worried about coronavirus and even if some parents think it's safe for contact to take place the other parent may have a genuine reason for concern.
- If you decide that your child should not move between households, we **advise that you make other arrangements** so that children can keep in contact with their care network. FaceTime, WhatsApp, [Skype](#), [Zoom](#) or phone, could be

used (but we feel video is better). **Shorter, more frequent contact, to catch-up with what your child has done that day, might be easier for children rather than a long conversation.**

- Cafcass has developed a website called [Co-Parent Hub](#), which has lots of information that you can access to help support you to manage arrangements for your child during the coronavirus pandemic.

Next steps with your application

- 1. A Cafcass or Cafcass Cymru officer will contact you by phone to discuss this application** and any concerns you may have. They will do safeguarding checks with the police and local authorities and identify any risks in your case, and help you consider options for agreeing matters without the court's help if that could settle things more quickly and safely for you and your child(ren).
- 2. Before this call**, it might be a good idea to speak to the other parent or carer about what you think is safe for your child, both families and both households. **If you have concerns** about a risk of harm to your child, for example from domestic abuse or for any other reason, or there are court orders in place that prevent contact, we do not think you should contact each other directly. If you have immediate concerns about the safety of yourself or a child you should contact your local authority or, the police if it's an emergency.
- 3. If you think you can sort out arrangements without the court's help** you may decide to withdraw your application. A judge must agree with the decision; please let your Cafcass or Cafcass Cymru Officer know if you want to think about withdrawing your application.
- 4.** If you don't think that you can agree arrangements for your child without the Court's help, or you have concerns about risk which prevent you being able to agree, the court will write to you with the next steps.

Please click to view the following websites: [Public Health England](#), [Public Health Wales](#), [Cafcass](#), [Cafcass Cymru](#), [Co-Parent Hub](#)

Appendix 2



In the Family Court

Case No:

sitting at Leicester Lincoln Northampton

The Children Act 1989

THE CHILDREN

| Names | Girl /Boy | Dob. |
|--------------|------------------|-------------|
| | | |
| | | |
| | | |
| | | |

**DIRECTIONS ON ISSUE AND ALLOCATION MADE BY SITTING IN PRIVATE
ON**

**THIS CASE HAS BEEN IDENTIFIED AS SUITABLE FOR A SECOND
GATEKEEPING APPOINTMENT IN ACCORDANCE WITH LOCAL PRACTICE
GUIDANCE ISSUED ON 6 JULY 2020**

Right to apply

**As these directions have been made without a hearing you may ask the court to
reconsider this order. You must do that within seven days of receiving this order by
writing to the court (and notifying any other party) and asking the court to reconsider.**

Alternatively, the court may reconsider the directions at the first hearing.

The parties

1. The applicant is the Father Mother
The respondent is the Father Mother
2. The Child is living with the Mother Father
3. The Applicant has applied for:
 - a. A Child Arrangements Order (to spend time with/to live with)
 - b. Prohibited Steps Order
 - c. Specific Issue Order
 - d. Parental Responsibility Order

Allocation

1. The application is allocated to:-

- a. legal adviser and lay justices
- b. a District Judge

If any party wished to raise any objections in respect of the court venue then they should make representations within 7 days of the date of service of this order upon them.

Hearings

2. A Second Gatekeeping Appointment will take place on [the first available date in 10 weeks' time.]
3. At the Second Gatekeeping Appointment the application will be further considered by a nominated Legal Adviser/District Judge in the light of the contents of the Cafcass Safeguarding Letter and further Directions given as appropriate. The parties are NOT required to attend the Appointment.
4. The application for an urgent hearing is refused because *there is no risk of:*
 - *imminent harm to the applicant or the child.*

Safeguarding and other information

5. Cafcass must send a Safeguarding Letter to the court and to the parties, unless considered inappropriate by Cafcass, by no later than three working days prior to the Second Gatekeeping Appointment.
6. Cafcass must advise the court of the need for an urgent hearing if Safeguarding Checks indicate one is required
7. **Compliance**

No documents apart from those specified shall be filed or sent to another party unless the court gives permission.

Any application to set aside or vary this order should be made to the court in writing.

The court address for all communications (regardless of where hearings are held) is

Leicester County Court, 90 Wellington Street, Leicester, LE1 6HG

Northampton County Court, 85-87 Lady's Lane, Northampton, NN1 3HQ

Lincoln County Court, 360 High Street, Lincoln, LN5 7PS

family.leicester.countycourt@justice.gov.uk

family.lincoln.countycourt@justice.gov.uk

family.northampton.countycourt@justice.gov.uk

When emailing the Court please ensure the case number, any future hearing date and also a brief description of the content of the email is in the subject matter, failure to do so could result in delays in dealing with your case.

The relevant email address for CAFASS is A10A11BusinessServices@cafass.gov.uk and the email must include the case number and CAFASS reference number.

Dated:

Appendix 3



In the Family Court

Case No:

sitting at Leicester Lincoln Northampton

The Children Act 1989

THE CHILDREN

| Names | Girl /Boy | Dob. |
|-------|-----------|------|
| | | |
| | | |
| | | |
| | | |

DIRECTIONS ON ISSUE AND ALLOCATION MADE BY SITTING IN PRIVATE ON

THIS CASE HAS BEEN IDENTIFIED AS SUITABLE FOR A SECOND GATEKEEPING APPOINTMENT IN ACCORDANCE WITH LOCAL PRACTICE GUIDANCE ISSUED ON 6 JULY 2020

THE APPLICATION HAS BEEN IDENTIFIED AS ONE WHICH HAS ARISEN AS A RESULT OF THE COVID-19 PANDEMIC

Right to apply

As these directions have been made without a hearing you may ask the court to reconsider this order. You must do that within seven days of receiving this order by writing to the court (and notifying any other party) and asking the court to reconsider.

Alternatively, the court may reconsider the directions at the first hearing.

The parties

- 4. The applicant is the Father Mother
The respondent is the Father Mother
- 5. The Child is living with the Mother Father
- 6. The Applicant has applied for:
 - a. A Child Arrangements Order (to spend time with/to live with)
 - b. Prohibited Steps Order
 - c. Specific Issue Order
 - d. Parental Responsibility Order

Allocation

8. The application is allocated to:-
- a. legal adviser and lay justices
 - b. a District Judge

If any party wished to raise any objections in respect of the court venue then they should make representations within 7 days of the date of service of this order upon them.

Hearings

9. A Second Gatekeeping Appointment will take place on the [first available date in 10 weeks' time.]
10. At the Second Gatekeeping Appointment the application will be further considered by a nominated Legal Adviser/District Judge in the light of the contents of the Cafcass Safeguarding Letter and further Directions given as appropriate. The parties are NOT required to attend the Appointment.
11. The application for an urgent hearing is refused because *there is no risk of:*
- *imminent harm to the applicant or the child.*

Safeguarding and other information

12. Cafcass must send a Safeguarding Letter to the court and to the parties, unless considered inappropriate by Cafcass, by no later than three working days prior to the Second Gatekeeping Appointment. Cafcass shall discuss with the parties the Covid-19 issues and explore the possibility of resolving matters and/or withdrawal of the application.
13. Cafcass must advise the court of the need for an urgent hearing if Safeguarding Checks indicate one is required
14. **Compliance**

No documents apart from those specified shall be filed or sent to another party unless the court gives permission.

Any application to set aside or vary this order should be made to the court in writing.

The court address for all communications (regardless of where hearings are held) is

Leicester County Court, 90 Wellington Street, Leicester, LE1 6HG

Northampton County Court, 85-87 Lady's Lane, Northampton, NN1 3HQ

Lincoln County Court, 360 High Street, Lincoln, LN5 7PS

family.leicester.countycourt@justice.gov.uk

family.lincoln.countycourt@justice.gov.uk
family.northampton.countycourt@justice.gov.uk

When emailing the Court please ensure the case number, any future hearing date and also a brief description of the content of the email is in the subject matter, failure to do so could result in delays in dealing with your case.

The relevant email address for CAFASS is A10A11BusinessServices@cafcass.gov.uk and the email must include the case number and CAFASS reference number.

Dated:

Appendix 4



**In the Family Court Case No: *[Case number]*
sitting at *[Court name]***

Children Act 1989

The child[ren]

[Name of child] [Girl] / [Boy] [dob dd/mm/yy]

[Name of child] [Girl] / [Boy] [dob dd/mm/yy]

ORDER ON GRANT OF PERMISSION TO WITHDRAW AN APPLICATION FOR AN ORDER SOUGHT DURING AND RELATED TO THE COVID-19 PANDEMIC, MADE BY [NAME OF JUDGE] SITTING IN PRIVATE [WITH LEGAL ADVISER [NAME]] ON [DATE]

The parties

7. The applicant is [name], the [relationship to child]
The [first] respondent is [name], the [relationship to child]
[The second respondent is [name], the [relationship to child]]

Hearings

8. This order has been made without a hearing.

Nature of application (CV-19)

9. This appears to be an application for an order sought during and related to the Covid-19 pandemic. [Cafcass] / [Cafcass Cymru] has made such safeguarding checks as they deemed appropriate.
10. A representative from [Cafcass / [Cafcass Cymru], as part of the safeguarding checks, has spoken with the parties.
11. The representative from [Cafcass] / [Cafcass Cymru] and the Court are satisfied that this application was made to [seek an order] / [seek to vary an order] / [enforce an order] in circumstances where existing arrangements in relation to the child[ren] whether court-ordered or not, are not reasonably achievable or cannot reasonably be complied with during the period in which Government restrictions on movement (the 'Stay at Home Rules') during the coronavirus (Covid-19) pandemic are in place.

Agreement

12. Having spoken with a representative from [Cafcass] / [Cafcass Cymru], the parties have agreed
- a. arrangements for the child[ren] during the period in which the ‘Stay at Home’ rules are in place;
 - b. that no court order should, in the circumstances at the present time, be sought.
- The applicant accordingly requests permission to withdraw his/her application.

This agreement and request are reflected in the safeguarding letter/report from [Cafcass / Cafcass Cymru] to the court dated [date].

Domestic abuse issues

13. No issues of domestic abuse which may be relevant to the court’s determination have been raised on this application, nor in discussion with Cafcass.
14. The representative from [Cafcass] / [Cafcass Cymru] and the Court are satisfied that this is not an application to which the provisions of PD12J FPR 2010 apply.

Other safeguarding issues

15. The Court and [Cafcass] / [Cafcass Cymru] are satisfied that the arrangements for the child[ren] protect the safety and wellbeing of the child[ren] and the parent with whom they are living.

IT IS ORDERED BY CONSENT THAT

1. Under its case management powers under *rule 4.1 FPR*, the requirements in *FPR 29.4(3) and (5) and (6)* regarding written requests and representations be dispensed with.
2. [Name] has permission to withdraw [his] / [her] application for a
 - a. child arrangements order;
 - b. prohibited steps order;
 - c. specific issues order;
 - d. an order to vary an order listed at (a) to (c) made on [date]an order enforcing an order listed at (a) – (c) made on [date]and the application is recorded by the court as withdrawn.

3. There shall be no order as to costs as between the parties **save public funding assessment of the costs of any publicly funded party.**
4. The court is satisfied that:
 - a. this application [for] / [to vary] a **[a child arrangements order] [prohibited steps order] / [specific issue order] / [enforcement of an existing order]** was made because the restrictions of movement imposed as a result of the Government 'Stay at Home Rules' during the coronavirus (Covid-19) pandemic impacted upon the existing arrangements in relation to the child[/ren], court-ordered or otherwise; and that
 - b. the parties have agreed, in discussions with **[Cafcass] / [Cafcass Cymru]** that, in these particular circumstances the court should not be invited to adjudicate upon the application, and
 - c. the application is therefore to be withdrawn,
5. NOTE: This Order has been made without a Court hearing. If you do not agree with this Order, you can apply to the Court to set it aside or change it. You must make your application to the Court within 7 days of this Order being received by you.

Dated *[date]*

Appendix 5

“It is important for you to understand that at the Dispute Resolutions Appointment the Court may elect to treat the Dispute Resolution Hearing as a Final Hearing and may take evidence and make final Orders, if appropriate.

The Court will take account of the views of the parties when deciding how to proceed.

If you do not have legal representation, you may be asked to take an Oath/Affirmation at the commencement of the hearing so that what you say to the Court will stand as your sworn evidence. You MUST read the evidence of the other parties and any Reports filed prior to the hearing so that you are in a position to inform the Court which parts of the evidence you do not agree with and why.

You should also make a note of any questions you would want to ask (or would want the Judge to ask) the other party(ies) or the author of any Report so that you are well prepared for the hearing.”