

Resetting Public Law Case Management Post-COVID

Stoke-on-Trent and Staffordshire

I am exceptionally grateful to everyone within the local family justice system for their extraordinary efforts in the face of the ongoing challenges we face. I recognise that everyone is working well beyond capacity and the system is in many ways at breaking point.

The legacy of the pandemic is clear to see. However, as we try to recover, we will have to work within the limitations of the resources we have. That means, given the very high volume of work in the system and the delays being experienced in individual cases, we need to ensure we are working as efficiently and effectively as possible to focus our limited resources where they are most needed. Much of what follows is an attempt to reset public law case management to help address the delays and manage the pressures of the current workload. It is intended to decrease, not increase workloads by getting back to some of the core principles of good case management. It also draws on the recommendations of the Public Law Reform Group to ensure cases are dealt with fairly but proportionately.

As ever, I am grateful for your support as we try to move forwards positively.

Issue of proceedings:

Urgent applications: Applications seeking a first hearing outside 12-18 days should be genuinely urgent. If a matter does require an urgent hearing all efforts should be made to ensure the first hearing can be effective, with parents given sufficient notice to seek legal advice. Applications seeking a same-day hearing should be truly exceptional. The C110a must set out clearly the grounds on which an urgent hearing is requested. If reasons are not provided or deemed inadequate the application will be sent back and will not be gatekept.

Minimising delay at the outset of proceedings: We will continue with the triage process if it is unclear whether a contested hearing is required. This must be stated on the C110a. If the position of the parents is unknown an urgent application will usually be listed in the first instance for a remote hearing for one hour but there will be a standard direction for an additional 90 minutes for pre-hearing discussions to narrow issues and allow advocates to confirm instructions.

If a contested hearing is required, the matter will be listed with the clear expectation that it will be dealt with on that day and not be further adjourned. As soon as we are able, we will prioritise listing all contested interim care orders back in court.

We will endeavour to ensure better Judicial continuity with a case allocated to either two District Judges or two Circuit Judges to case manage as a 'team'.

First Case Management Hearing:

Compliance with gatekeeping orders: The standard directions on the gatekeeping order must be complied with to ensure the first CMH is effective. The court will expect the parents' responses to threshold to have been filed.

The Local Authority will be directed within the standard gatekeeping order to file an assessment plan in advance of the CMH so it is clear what they propose (both with respect to parents and connected carers). This should set out clearly what assessments have already

been completed pre-proceedings, what work/support, if any, has been identified for parents and set out the Local Authority's proposals for any updating assessments. Any Part 25 applications must be made in advance of the CMH and in sufficient time to enable filing dates etc... to be obtained.

If third party agencies such as health do not comply with directions for disclosure, an immediate request should be made for the matter to be listed for a non-compliance hearing.

Experts: We need to re-focus on the statutory test of whether an expert assessment is **necessary** to dispose justly of the proceedings. The fact it may be helpful is not the test.

Connected carer assessments: Local Authorities will be expected to carry out an 'all possibilities' assessment of kinship carers so all alternative orders are available to the court at final hearing. Parents must be clearly advised that connected carers identified late in the process may not be assessed if it will cause delay for the child. There is no entitlement to assessment.

In most straightforward matters the court will expect to set a clear timetable for the child at the first CMH through to the IRH.

Further Case Management Hearings:

Avoiding repeated FCMHs: FCMHs should be regarded as the exception not the rule and require specific justification. From the outset the child's timetable needs to be clearly set out to avoid slippage, sequential assessments and late applications for experts/alternative carer assessments.

Time estimates: A FCMH should usually be listed for one hour unless there is a particularly complex application to be determined requiring a judgment of the court. Rarely should a FCMH exceed two hours.

Advocates meetings: Careful thought should be given as to whether an advocates meeting is the best use of time as opposed to pre-hearing discussions. The court can be invited to list pre-hearing discussions in advance of the listed hearing giving time for discussions, instructions to be taken and a draft order prepared (at least in outline). The court recognises flexibility is required given the more rigid listing of remote hearings and the challenge of accommodating pre-hearing discussions, particularly for the earlier listings. There may be the possibility for a case to be stood down and brought back later in the day if pre-hearing discussions are constructive and progress is being made.

Separate fact-finds:

Split hearings cause delay. They should be reserved for those truly 'single issue' cases or where welfare planning cannot proceed (including on an either/or basis) without core disputed facts first being determined.

Conduct of Case Management Hearings:

Engaging the parents: All parties should be in attendance unless previously excused by the court for good reason. All remote hearings should be by MS teams so all parties and the Judge are visible. Parents who cannot access the technology can still be dialled into the MS teams hearing via their mobile phones. If it is necessary for a vulnerable party to attend court, their legal representative should always attend with them.

Consent orders: During the pandemic, and for good reason, we introduced a 'standing order' for consent orders to be filed, if possible, to save court time. That practice now needs to be reconsidered to ensure proper judicial scrutiny and oversight of case management. Whilst in some straightforward matters a consent order leading to a hearing being vacated may be appropriate, that should no longer be the expectation.

Bundles, case summaries and a reading list: Bundles must comply with PD27A – that includes electronic bundles! Case summaries need to be focused on updating information and the issues that need to be addressed at that hearing. A recommended reading list should be provided for the Judge. The bundle, case summary and reading list must be filed with the court at least 24 hours before the hearing.

Effective Issue Resolution Hearings:

We need to ensure IRHs are as effective as possible despite the limitations of remote hearings. Parties should expect to be stood down to discuss matters or take further instructions. If a neutral evaluation will help narrow any issues it should be actively sought. Issues capable of resolution on submissions (such as a narrow dispute on contact) should be dealt with at the IRH. All parties should attend the IRH ready to conclude matters if possible.

If a matter is contested, parties will be expected to attend the IRH having thought carefully about the time estimate and witnesses required. The availability of experts should have been obtained in advance. The court will also require detailed information about listing requirements to ensure a matter can be effectively listed without further administrative burdens (a listing checklist will be circulated for completion by the Local Authority).

A gentle reminder that the permission of the court is required for an expert to be called to give oral evidence and you will be required to justify it as necessary and proportionate.

Time estimate: an IRH should be listed for a maximum of two hours. In many straightforward matters a one-hour listing may suffice.

Listing Final Hearings:

We currently face three challenges: 1) lack of courtroom accommodation; 2) lack of full-time judiciary; 3) the restricted numbers of part-time judiciary physically able to sit in Stoke or Stafford. It is therefore imperative we continue to list as many final hearings as possible remotely until the court buildings are fully open and we have cleared the volume of work still 'stuck' in the system. We need to ensure that parents are properly supported through the process by using 'hubs' where we can ensure a parent can access a remote hearing reliably and can be supported by his/her advocate/intermediary/interpreter. Hubs can be located at solicitors' offices, chambers, LA buildings or the court. Everyone else, including the Judge can then sit remotely so we do not need to find a large courtroom or a judge able and willing to sit in situ.

For the moment we will continue with our current practice of only listing final hearings following IRH. This allows us to make most effective use of judicial time.

Cafcass are invited to consider carefully whether Guardians are required to attend to hear all of the evidence at fact-finds and/or final hearings and to seek permission for Guardians to be excused where appropriate.

Widespread non-compliance:

For reasons we all understand, there has been widespread non-compliance with court orders during the Pandemic. However, the non-compliance now has to stop before it becomes entrenched. Cases need to be brought back within children's timescales. Whilst the court is acutely aware of the pressures on everyone, repeated non-compliance just generates more work across the system. Moving forwards the court will therefore be much less tolerant of non-compliance and resulting delays. Any default should be brought immediately to the court's attention and a non-compliance hearing listed.

Matters of non-compliance can be drawn to the court's attention by a simple email headed 'ALERT TO NON-COMPLIANCE'. The email will be referred to the case manager or DFJ and a short non-compliance hearing listed to address it. Defaulting parties will be ordered to attend.

HHJ Harris

Designated Family Judge for Stoke on Trent and Staffordshire

June 2021