

## **President's Guidance on Continuity and Deployment (Private Law)**

### **Introduction**

1. This Guidance is issued by the President of the Family Division.
2. This Guidance applies to all private law proceedings under Part II of the Children Act 1989 (private children proceedings) heard in the Family Court.
3. Deployment is a judicial function which includes the patterning of judges and lay justices, the management of the workload of the court, allocation and listing.
4. The purpose of this Guidance is to ensure that family proceedings are accorded the appropriate level of priority in their listing and that they are case managed and heard by judges (including lay justices) and legal advisers who provide continuity of the conduct of the proceedings.

### **Continuity and Docketing**

5. In accordance with the Guidance given by HMCTS on the introduction of a system for the docketing of cases (which is annexed to this Guidance) all private children proceedings are to be allocated to a case management judge in the Family Court who will be responsible for any case management hearings in the proceedings.
6. For the lay justices, the case manager is the justices' clerk or assistant justices' clerk (legal adviser) who manages the case. Continuity of the case manager for hearings before lay justices is as essential as continuity of the case management judge for other judges of the Family Court.
7. The name of the case manager(s) or case management judge must be recorded on the outside of the court file by the court staff immediately after the FHDRA or other first hearing.
8. Where possible, the case management judge or the case manager sitting with lay justices is to conduct any contested hearing including the final hearing in all proceedings allocated to them
9. No hearing at any stage of the proceedings should conclude without a date for the next hearing having been fixed for the earliest possible date, and communicated to the parties at court.

10. It is not good practice for proceedings to have to wait until the case manager or the case management judge is available. Discussions must take place during the FHDRA, DRA or other hearings (and with HMCTS) to ensure that one of the two case managers or the case management judge is available to hear the proceedings on the date fixed for the next appointment. Legal advisers and judges must fit their availability around the case, not the other way around. Although continuity of representation is important, lawyers will be expected to organise their diaries to ensure that cases are heard without delay.
11. The allocation of private children proceedings is to be undertaken in accordance with the President's Guidance on Allocation and Gatekeeping (Private Law), and the Family Court (Composition and Distribution of Business) Rules 2014.

### **Deployment**

12. Circuit Judges and District Judges hearing private children proceedings should be patterned so as to be able to sit in private children proceedings with a gap of no more than a month so as to provide continuity for their allocated proceedings.
13. District Judges (Magistrates' Court) who sit on private children proceedings are identified by the Chief Magistrate and authorised by the President. The deployment of DJSMC is determined by the Chief Magistrate in consultation with Presiding Judges and the Family Division Liaison Judge (FDLJ) on each Circuit.
14. Legal advisers are generally to be patterned so that they are available to the Family Court for not less than 40% of their time. Those sitting as case managers must sit for 40% or more of their time in public and private law. Each private law application which is allocated to the lay justices must have one and not more than two allocated case managers who are legal advisers.
15. Justices' clerks will be expected to agree the deployment of their lay justices with Designated Family Judges (DFJs) and this should be done in direct meetings between the DFJ and the justices' clerk and his/her tier 4 specialists. Any disagreements are to be referred immediately to the FDLJ and the Regional Delivery Director through his/her Head of Civil, Family and Tribunals
16. The deployment of Circuit Judges and District Judges in the Family Court (i.e. their patterns and itineraries) is decided by the Presiding Judges in consultation with and on the advice of the FDLJ, and the Designated and Resident Judges. DFJs are encouraged to agree a protocol with Resident Judges for the patterning of mixed ticketed judges and their availability to provide judicial continuity.

### **Continuity by Lay Justices**

17. The following arrangements will apply to proceedings heard by lay justices in the Family Court for case management and hearing.
18. Lay justices are patterned to sit by their justices' clerk. Continuity should be provided for in the individual case, where a decision of fact has been made which renders a case theoretically or actually part heard, in accordance with the guidance in *Re B (Children)* [2008] UKHL 35, and rule 8 of the Family Court (Composition and Distribution of Business) Rules 2014. Wherever possible, the court which resumes a hearing shall be composed of the same lay justices as dealt with the previous part of the hearing; alternatively, continuity is to be provided by at least one of the lay justices (preferably the Chairman) as well as the legal adviser who is the case manager for the proceedings.

### **Appeals**

19. Appeals within the Family Court are to be allocated to judges in accordance with the Family Court (Composition and Distribution of Business) Rules 2014. Appeals from Circuit Judges and second appeals will continue to be heard by the Court of Appeal.

[end]

## Guidance to Staff on the Introduction of a System for the Docketing of Cases

### What is “Docketing”?

1. Lord Justice Jackson's Review of Civil Litigation Costs and the Family Justice Review chaired by David Norgrove both identified the need for greater docketing of cases and for more judicial continuity. The two phrases have the same meaning, although in this Guidance the word “docketing” is generally used when referring to both the civil and family jurisdictions.
2. Both the present and past Presidents of the Family Division have emphasised the need for greater judicial continuity in the handling of both public and private family law cases. With effect from 1<sup>st</sup> April 2013 the Master of the Rolls is introducing a docketing system in civil cases.
3. This Guidance is being made available to the judiciary and has been agreed with the Master of the Rolls and the President of the Family Division.
4. This Guidance is intended to apply in both the civil and family jurisdictions in all county courts and district registries in England and Wales. It does not apply to High Court work being conducted at the Royal Courts of Justice in any of the three Divisions. However, it is hoped that listing officers would be able, for instance, to ensure that a section 9 judge would be available at his / her home court to hear a consequential relief application following a sitting at the Royal Courts of Justice.
5. In relation to civil cases, the effect of a docketing system is that the interim case management of a complex case will be conducted by the one judge. In the family jurisdiction, judicial continuity will ensure the identification of the judge and/or case manager responsible for the conduct of all case management and interim hearings as well as the early identification of the judge or bench to conduct the final hearing.
6. There are many benefits to be achieved through docketing. Only one judge need read the case papers. It is easier to identify the relevant issues in the case. The judicial control exercised over a case is firmer; the case management is more consistent. Practitioners and other court users have repeatedly said that they prefer repeat interim applications to be heard by the same judge.
7. Experience has also shown that judges to whom cases are docketed accept a greater responsibility for the speedy timetabling of cases. The progress of cases is checked and urgent applications can be heard in a timely manner.

### **Should all cases be docketed?**

8. Docketing of civil cases will only occur in the minority of defended claims. It would be very rare to docket either a small claim or a fast-track case, or a housing case. Equally, many of the more straightforward personal injury cases in the multi-track ought not to be docketed. The simple test is whether docketing “adds value” to the case management of the particular case.
9. Examples of the types of case where docketing has proven successful in the past are Chancery cases, clinical negligence cases, complex personal injury cases, mesothelioma claims and other lengthy and involved cases. There is a suggested list at Appendix B but that should not to be applied rigidly. Local circumstances might make it desirable to docket other types of cases. Or new types of claim might arise. Similarly, it might be appropriate for a judge to docket to himself a legally simple case where the court had, by way of example, spent half a day hearing an unsuccessful application for summary judgement under CPR Part 24 which had involved consideration of many of the factual aspects of the case.
10. On the other hand, judicial continuity should apply in all public and private family law children cases.
11. There is no one-size-fits-all solution to the need for more docketing of cases. Different considerations apply as between a large civil trial centre and a one-judge court.
12. Staff at each court are encouraged to hold discussions with their local judiciary both to decide how best to implement the docketing system in their local court and to discuss whether any amendment is necessary to that court’s Listing Policy. For sound constitutional reasons, Listing remains a judicial function; the local judiciary will ultimately be responsible for the docketing arrangements to apply at their court. But they will inevitably look to you to implement the system on a day-to-day basis. Questions or problems will arise from time to time: these should clearly be resolved in discussion with the local judiciary although it might be necessary, in a very few number of cases, also to involve in those conversations either the Designated Civil Judge, the Designated Family Judge or, where appropriate, a Specialist Circuit Judge.

### **What is the difference between docketing and reserving a case?**

13. The intention behind **docketing** is that the same judge will deal with all interim hearings and possibly also the final hearing unless released in relation to family cases. However, there has to be a balance between bringing a case back before the same judge every time it needs to be listed for hearing and achieving the effective and efficient disposal of all judicial business. There

may be occasions when a judge to whom a case is docketed is not available. In those circumstances the particular case ought to be considered by and, if necessary, listed for hearing before another judge.

14. **Reserving** a case to a specific judge generally means that all hearings are listed before that judge. Another judge can only hear the case if it is released to him.

### **What is the first step?**

15. The staff and judiciary in each court need to identify the specialisms and aspirations of its judiciary. Some judges may already be considered experts in particular fields. Others may have a wish to develop a particular expertise. How this is achieved will vary from one court to another.
16. You also need to give consideration to the balance of work as between salaried judges (circuit and district judges) and fee-paid judges (Recorders and deputy district judges) as all fee-paid judges are entitled to expect a reasonable spread of work.
17. In the Court of Appeal, all new lord justices are required upon appointment to fill out a questionnaire stating their specialist areas. Whilst this might be unnecessary in a small court with only one or two judges, in larger court centres it might be beneficial to adopt a more formulaic system. By way of example, two forms (Appendices A and B) are attached which are based on forms in use at Leeds County Court; they show how it might be possible — in the civil jurisdiction — to capture judges' individual preferences and present that information on a single sheet of paper. The particular columns of the grid should be adjusted to suit the workload and types of cases passing through the particular court. A similar grid could be used to capture specialisms and authorisations in the family jurisdiction depending on whether or not the particular court hears public law, as well as private law and ancillary relief, cases. Ultimately, however, it is for the local judiciary and staff to agree between themselves how best to capture information in relation to individual judges' specialisms and how that information is to be made available to all the staff dealing locally with allocation and case management work.
18. It would also be sensible to plan ahead of time. Cases are, as you well know, listed some time in advance. It would not be appropriate to wait until 1<sup>st</sup> April 2013 before considering with your judiciary how best to introduce a docketing system in your court. Planning for implementation should start now.

### **When would the docketing occur?**

19. There is no simple answer. Most docketing in the civil jurisdiction will occur at the allocation stage. Based on the declared specialisms of each judge, you should refer cases falling within the particular specialism to one of the relevant judges. Care should be exercised to ensure a reasonable balance of work between the various judges at any court centre. The docketing can occur at other stages of the case such as on entry of judgment in default or on the referral of the case to a judge after the filing of a defence in a Part 8 claim.
20. In the civil context, the judge will direct "Case management shall be by District Judge X / HH Judge Y where possible". With family cases, the judge will direct "Case management shall be by District Judge X / HH Judge Y; the final hearing, if possible, to be listed before ....".
21. In some instances, a judge might not give directions but instead indicate that the case should be considered by another judge within whose area of specialism the case more appropriately sits. Should that arise, the file should be referred directly to the second judge as quickly as possible.
22. Depending on local practice, one particular point to capture with docketing is to try to ensure that any Pre-Trial Review is listed before the trial judge where his / her identity is known. Decisions made at a PTR can very often have a profound effect on the eventual trial and are best taken by the person who is to try the case.

### **What do I do when the file comes back from the judge?**

23. The outside cover of the file should be clearly marked with the name(s) of the judge(s) whom the file should be referred on subsequent occasions.
24. The intention is also that an upgrade will be made to CaseMan so that it will clearly record the name of the judge or judges to whom the case is docketed. Until this change is made please record the name of the judge by producing a 999 CaseMan event code.

### **What about listing?**

25. Judges to whom particular cases are docketed will have an understandable interest in ensuring that those cases are listed as quickly as possible. You should do your best to assist in that regard, if necessary by having direct discussions with the judge concerned. How this will be achieved will obviously vary from one court another and should be discussed with your

local judiciary. In essence, there needs to be frequent liaison between you and the local judiciary.

26. Whilst its use is neither mandatory nor necessary, courts may wish to consider the introduction of an own-listing system. At Leeds County Court, where docketing has been piloted, the district judges run a system of own-listing under which each district judge has the opportunity him/herself to list future hearings. Each district judge has included in their sitting pattern a specified number of days each week when the judge can himself list cases. It avoids having to liaise with the listing officer but it does place on the judge the burden of finding a timeslot suitable for the needs of the particular case. That does not prohibit judges sometimes listing short matters before the commencement of the day's list proper.

#### **How does docketing fit in with judicial profiling?**

27. All staff, whether in the county courts or in the Crown Court, are encouraged to be much more flexible than hitherto has been the case in relation to judicial profiling. There needs to be greater flexibility across the various jurisdictions. If necessary, cases must follow the judge. The judge has to make him/herself available.

#### **What about existing cases?**

28. There ought to be judicial continuity already in place in all public and private family law cases. In courts where this is not occurring, arrangements need to be put in place with the local judiciary to ensure that judicial continuity is applied to all relevant family cases as a matter of urgency.
29. A different consideration will apply to civil cases issued before 1<sup>st</sup> April 2013. It is not intended that all these cases should be considered for docketing. However, and in particular where docketing would "add value" to the future conduct of a particular case, consideration should be given to docketing a case issued before 1st April 2013.

**December 2012**



APPENDIX A

**DOCKETING AND SPECIALISATION QUESTIONNAIRE**

To be completed by:

**All circuit judges exercising a civil and / or family jurisdiction**

**All deputy circuit judges sitting in the civil and / or family jurisdictions**

**All recorders with a civil and / or family authorisation**

**All district judges**

**All deputy district judges (including district judges sitting in retirement)**

1. What are your name and your full time or part time judicial position?

2. What are or were your areas of specialisation in practice? How many years experience do you have of practice in these areas?

3. What are or were your areas of specialisation as a judge? How many years experience do you have of judicial work in these areas? What is your order of preference for each type of work?

4. Please list any judicial authorisations which you hold

5. In what other areas would you wish to develop a specialisation?

Name

Email address

Phone number (for fee-paid judiciary only)

Signature

Date

Appendix B

Civil preferences:

Judge*	MT RTA PI	MT RTA other	MT EL PI	MT ELD PI	MT PL PI	Clinical negligence	Professional negligence	Chancery	Commercial /mercantile	Housing disrepair
Circuit Judge A										
Recorder B										
District Judge C										
D										
E										

\* specify whether a Circuit Judge, Recorder, District Judge or Deputy District Judge

- Glossary:**
- MT Multi-track
  - RTA PI Road Traffic personal injury
  - RTA other Road Traffic bent metal / credit hire etc
  - EL PI Employers Liability personal injury
  - ELD Employers Liability personal injury industrial disease
  - PL PI Public liability personal injury

**Note:** Other columns could be added, according to work done at particular court centres