

President's Guidance on Allocation and Gatekeeping in respect of Proceedings  
relating to Children in the Family Court

Issued in accordance with rule 21 of the Family Court (Composition and Distribution of  
Business) Rules 2014

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Introduction

1. This guidance is issued by the President of the Family Division following consultation with, and where applicable the agreement of, the Lord Chancellor, in accordance with rules 15(2) & 21(1) of the Family Court (Composition and Distribution of Business Rules) 2014 ("the 2014 Rules") to provide guidance as to the application of Part 5 of the Rules. It replaces the President's Guidance on Allocation and Gatekeeping for Care, Supervision and Other Proceedings under Part IV of the Children Act 1989 (Public Law) (2014) and

the President's Guidance for Proceedings under Part II of the Children Act 1989 (Private Law) (2014).

2. This guidance applies to all proceedings relating to children issued in the Family Court on and after [date], including proceedings issued pursuant to the Children Act 1989, the Adoption and Children Act 2002 & the Family Law Act 1986.
3. This Guidance is to be read and applied in accordance with the 2014 Rules, PD12A The Public Law Outline ('PLO'), PD12B The Child Arrangements Programme ('CAP'), PD36Z ('Pathfinder') and the Family Listing Guidance. In this Guidance (i) the term 'magistrates' is used and has the same meaning as 'lay justices' as defined in FPR rule 2.3; and (ii) the term 'a judge of District Judge level' includes a District Judge (Magistrates' Court).
4. The Guidance applies to the allocation of all relevant proceedings to the judiciary of the Family Court, which includes magistrates. The purpose of the Guidance is to ensure that all cases are allocated to the appropriate level of judiciary and, where appropriate, to a named case management judge or case manager who shall provide continuity for the proceedings.
5. Nothing in this Guidance changes the listing arrangements for Welsh language cases heard by the family judiciary in Wales.

#### Gatekeeping Teams

6. The Designated Family Judge ('DFJ') leads a gatekeeping team in each Designated Family Centre. The gatekeeping team will consist of the Designated Family Judge, their nominated deputy, district judges nominated by the DFJ and legal advisors identified by the Head of Legal Operations (or their nominated deputy) in agreement with the DFJ (see rules 4 & 20 of the 2014 Rules and the table in FPR PD2C). The numbers of District judges and legal

advisors is to be consistent with the needs of the Designated Family Centre and the expertise of those nominated. Members of the gatekeeping team are referred to in this Guidance as ‘gatekeepers’.

7. All applications received before 4pm on any working day will, where practicable, usually be issued that day and be referred to a member of the gatekeeping team. Any application received after 4pm will usually be issued on the next working day and be referred to a member of the gatekeeping team.
8. Members of the gatekeeping team are to be available each working day to allocate all relevant proceedings that have been issued. The gatekeepers will have access to information about existing allocated case volumes in the Designated Family centre to help inform allocation decisions and information about when and where Case Management Hearings can be listed. In accordance with the Family Court (Composition and Distribution of Business) Rules 2014) and this Guidance the gatekeepers will determine the level of judiciary and, where possible, the identity of the judge to which the proceedings are to be allocated. The allocation decision must be formally recorded.
9. Any issue about the allocation of a case should be referred to the DFJ or their nominated deputy.
10. A party to the proceedings may make an application for a review of the allocation decision made by the gatekeepers.
11. The DFJ should establish and maintain a procedure for the regular monitoring of the allocation and gatekeeping process.
12. The DFJ may issue local protocols or directions to modify or supplement the allocation guidelines set out in the Public Law Schedule and/or the Private Law Schedule to this Guidance to take account of the availability of judiciary and/or resources in their Designated Family Centre [link to Template to be included in final version].

## Principles

13. Allocation decisions must be made in accordance with the 2014 Rules and should reflect the wide variations in the level of experience and expertise in the Family Court. Cases should be allocated to the judiciary and case managers to ensure that judicial resources are used most effectively.
14. In determining allocation, the gatekeepers shall consider the application having regard to the information provided on and with the application form and shall determine the appropriate level of judiciary in accordance with the requirements of rule 20 of the 2014 Rules and based on consideration of the relative significance of the following factors:
  - (a) The need to make the most effective and efficient use of the available judicial resources in each court that is appropriate, given the nature and type of application;
  - (b) The need to ensure that cases are listed before the appropriate level of the judiciary with the minimum of delay, so that all proceedings are heard within a maximum of 26 weeks, for public law cases, or 20 weeks, for private law cases, or any extended timetable as may be directed by the case management judge;
  - (c) The need for judicial continuity;
  - (d) The complexity of the issues in the case;
  - (e) The location of the parties or of any child relevant to the proceedings and the need to list the matter at location that is suitable and safe for the parties, particularly if special measures are required or if special requirements or circumstances exist;
  - (f) Urgent applications will be allocated on the basis of the degree of urgency and judicial availability; and
  - (g) Achieving a fair and pragmatic allocation of the proceedings.
15. The schedules to this Guidance set out matters which are intended to assist in making the allocation decision. A combination of multiple issues may give rise to a level of complexity

that requires allocation to a different level of judiciary than is set out in the schedules to this Guidance.

16. Applications relating to the sibling of a child who is the subject of current proceedings should be ordinarily be allocated to the judge or magistrates dealing with that case. New or repeat applications in respect of a child who was previously the subject of proceedings and/or applications for the enforcement of an order should, where practicable, be allocated to the judge or level of judiciary which heard the original proceedings.
17. Active consideration must be given by the allocated judge or magistrates to the reallocation of the case in light of the circumstances of the case as it progresses. A decision on reallocation (see FPR r.29.19(5)) should be made in accordance with this Guidance, having particular regard to the principles at paragraph 14(a) – (g) above. The decision to reallocate a case should be made without any undue delay.

#### Public Law

18. Upon issue, all applications for care, supervision and other Part IV orders will be placed before a gatekeeper or two gatekeepers if working together, for consideration. Applications that are considered urgent will be allocated to the first available judge of the Family Court (in accordance with rule 16 of the 2014 Rules).
19. The applicant must complete the Allocation Proposal of the application form when issuing proceedings and unless impracticable, applicants should agree with the other parties, or their legal representatives, the proposed level of judiciary to which the case should be allocated. The proposal should be consistent with the principles set out in this document.
20. When the allocation decision has been made, the court will issue Standard Directions on Issue and Allocation in accordance with PD12A (PLO) together with the appropriate notice of hearing.

21. Urgent Hearing - an application for an urgent hearing is defined as a request for a hearing before the earliest date prescribed for a Case Management Hearing in the PLO (ie Day 12). Any application for an urgent must be justified for cogent reasons, which must be included in the application, on the basis that it is necessary for the welfare and protection of the relevant child. The applicant must also set out the potential alternative arrangements to be made in the event that the matter is not or cannot be listed for an urgent hearing. Any application for a same day hearing will only be granted where there are exceptional circumstances and the welfare of the relevant child cannot be protected other than by an immediate removal of the child from their carer(s) into care.
22. Urgent applications will be allocated to the first available judge of the Family Court in accordance with rule 16 of the 2014 Rules.

#### Private Law (CAP)

23. In proceedings under the CAP (which does not apply to proceedings issued in Wales) at the initial gatekeeping a safeguarding letter will be directed to be filed in 17 working days by Cafcass. Upon receipt of the safeguarding letter, a second gatekeeping shall be held at which an allocation decision will be made (see paragraphs 12-15 above). The matter will then be listed for a First Hearing Dispute Resolution Appointment ('FHDRA').
24. Urgent hearing - urgent applications are made by application to the court (a) to list the matter for a hearing without notice to the respondent and/or (b) to list the matter at short notice. Any application for an urgent and/or without notice hearing should be justified for cogent reasons, which should be included in the application, on the basis that it is necessary for the welfare and/or protection of the relevant child.
25. Urgent applications will be allocated to the first available judge of the Family Court in accordance with rule 16 of the 2014 Rules.

### Private Law (Pathfinder)

26. In proceeding under the Pathfinder, the application will be reviewed by a Case Progression Officer ('CPO') and will then be considered by a legal advisor at the first gatekeeping who will make directions for the filing of a Child Impact Report ('CIR') by Cafcass/Cafcass Cymru or the relevant local authority which will be filed between 6 to 8 weeks. The CIR will be considered by the gatekeepers (a district judge and a legal advisor) and either a final order will be made or the case is allocated to the appropriate level of judiciary (see paragraphs 13 to 16 above) and will be listed for an in court decision hearing or final hearing.

### High Court

27. This Guidance does not apply to proceedings which are to be issued and heard in the Family Division of the High Court or are reserved to be heard by a full judge of the Division: see paragraphs 16-19 of & the [Schedule to The President's Guidance Jurisdiction of the Family Court: Allocation of Cases within the Family Court to High Court Judge Level and Transfer of Cases from the Family Court to the High Court \(24 May 2021\)](#)
28. Where, exceptionally, a case is considered to merit or require listing before a full judge of the Division, the matter should be referred to the DJF who should consult with the Family Presider. The Family Presider will decide whether the matter should be re-allocated to a judge of the Division, should be released to be heard by a judge of Circuit Judge level sitting as a judge of the High Court pursuant to s.9 of the Senior Courts Act 1981 or should be heard by a judge of Circuit Judge level.

### Public Law Schedule

29. It is expected that proceedings described in paragraph 1 of this Schedule should be allocated to magistrates, however, there is an expectation that magistrates should not normally hear any contested hearing where the estimated length of the hearing is in excess of 3 days without the same having been approved from time to time by the Head of Legal Operations or their nominated deputy (which time estimate should include the time for writing reasons).
30. It is expected that proceedings described in paragraph 2 of this Schedule should be allocated to a judge of District Judge level.
31. It is expected that proceedings described in paragraph 3 of this Schedule should be allocated to a judge of Circuit Judge level or, exceptionally, to a judge of High Court Level and should not be allocated to a judge of District Judge level unless specifically released by the DFJ or their nominated deputy.

### Private Law Schedule

32. It is expected that proceedings described in paragraph 1 of this Schedule should be allocated to magistrates, however, there is an expectation that magistrates should not normally hear any contested hearing where the estimated length of the hearing exceeds 3 days without the same having been approved from time to time by the Head of Legal Operations or their nominated deputy (which time estimate should include the time for writing reasons).
33. It is expected that proceedings described in paragraph 2 of this Schedule should be allocated to a judge of District Judge level.



34. It is expected that proceedings described in paragraph 3 of this Schedule should be allocated to a judge of Circuit Judge level or, exceptionally, to a judge of High Court Level and should not be allocated to a judge of District Judge level unless specifically released by the DFJ or their nominated deputy.

## Public Law Schedule

### **A. Magistrates**

A public law case should be allocated to magistrates which raises issues concerning:

1. physical chastisement of a child;
2. exposure of a child to inappropriate sexual boundaries;
3. domestic abuse, including coercive control;
4. immigration or asylum status of a party or a child (save where the child is a national of another country);
5. litigation capacity issues related to learning difficulties;
6. the psychiatric condition of a party which is diagnosed and treated;
7. an unopposed declaration of parentage;
8. challenge to an expert report (e.g. in respect of drug or alcohol abuse);
9. an application for the discharge of a care order;
10. an application to make or revoke a placement order, or for a contact under s.26 of the ACA 2002, where care proceedings in respect of the same child are being or have been heard by magistrates; and
11. an unopposed application in adoption proceedings, save for proceedings involving an international element.

### **B. District Judges**

A public law case should be allocated to a judge of District Judge level which raises issues concerning:

1. disputed non-accidental injury save for those cases within paragraph C(1) below;
2. domestic abuse, including sexual abuse and strangulation or other behaviours involving injuries, subject to severity;
3. the sexual grooming of a child by a parent or relative;
4. a parent aged 16-18;
5. an application for a child to be made a party to the proceedings;
6. a child giving evidence whether the subject of or a party to the proceedings;
7. an application for the instruction of an intermediary;
8. a contested issue about the litigation capacity of a party;
9. challenged or conflicting evidence from two expert witnesses;
10. a declaration of parentage under s.55A FLA 1986;
11. a novel point of law (with consideration being given to allocation to a Circuit Judge);

12. an application to make or revoke a placement order, or for a contact under s.26 of the ACA 2002, where care proceedings in respect of the same child are being or have been heard by a judge of District Judge level; and
13. an opposed application in adoption proceedings, save for (1) an opposed application for an adoption order after leave to oppose the adoption has been granted (2) adoption proceedings involving an international element (3) an issue about withholding notice of proceedings to a father or other members of the birth family..

### **C. Circuit Judges**

A public law case should be allocated to a judge of Circuit Judge level which raises issues concerning:

1. disputed non-accidental head injury; fabricated or induced illness or perplexing presentations; and complex medical cases, including those with conflicting medical evidence from two or more expert witnesses;
2. cases where there are concurrent criminal proceedings before the Crown Court which are relevant to the family proceedings;
3. a parent under the age of 16;
4. conflicting evidence from more than two expert witnesses;
5. sexual abuse of a child by a parent, relative or third party;
6. child sexual exploitation;
7. honour-based violence;
8. child trafficking;
9. a forced marriage protection order;
10. a female genital mutilation protection order;
11. permanent placement of a child out of the jurisdiction for adoption;
12. a child or more than one child giving evidence whether the subject of or a party to the proceedings;
13. a declaration as to parentage (s.55A FLA 1986), legitimacy or legitimation (s.56 FLA 1986) and adoptions effected overseas (s.57 FLA 1986);
14. a novel point of law;
15. an application to make or revoke a placement order, or for a contact under s.26 of the ACA 2002, where care proceedings in respect of the same child are being or have been heard by a judge of Circuit Judge level;
16. a complex application in adoption proceedings including (1) an opposed application for an adoption order after leave to oppose the adoption has been granted (2) adoption proceedings involving an international element (3) an issue about withholding notice of proceedings to a father or other members of the birth family.

## Private Law Schedule

### **A. Magistrates**

All private law cases will be allocated to magistrates save where a case falls within one or more of the categories set out in paragraphs B and C below.

For the avoidance of doubt, the allocation of cases to magistrates may include cases which raise issues concerning:

1. neglect of a child or children;
2. the physical chastisement of a child;
3. the exposure of a child to inappropriate sexual boundaries;
4. domestic abuse, including coercive control;
5. the immigration or asylum status of a party or a child;
6. temporary removal (up to 28 days) of a child from the jurisdiction to a Hague Convention country within Europe;
7. litigation capacity issues related to learning difficulties;
8. the psychiatric condition of a party which is diagnosed and treated; and
9. a challenge to an expert report (e.g. in respect of drug or alcohol abuse).

### **B. District Judges**

A private law case should be allocated to a judge of District Judge level which raises issues concerning:

1. disputed non-accidental injury save for those cases within paragraph C(1) below;
2. domestic abuse, including sexual abuse and strangulation or other behaviours involving injuries, subject to severity;
3. the sexual grooming of a child by a parent or relative;
4. a forced marriage protection order;
5. temporary or permanent removal of a child from the jurisdiction to a Hague Convention country within Europe;
6. restricting the exercise of parental responsibility;
7. a declaration of parentage under s.55A FLA 1986;
8. an application for a child to be made a party to the proceedings;
9. an application for the instruction of an intermediary;
10. a contested issue about the litigation capacity of a party;
11. challenged or conflicting evidence from two expert witnesses;

12. issues in relation to the disclosure of information to one or other of the parties (but excluding issues relating to the non-notification of proceedings or of an application to a party, a birth parents or to a person with parental responsibility for the child);
13. significant issues in relation to disclosure of documents to or from third parties;
14. immigration and asylum issues which are likely to be complex, difficult or unusual; and
15. enforcement of existing orders made by a judge of District Judge level (with allocation to the same judge where practicable).

### **C. Circuit Judges**

A private law case should be allocated to a judge of Circuit Judge level which raises issues concerning:

1. disputed non-accidental head injury; fabricated or induced illness or perplexing presentations; and complex medical cases, including those with conflicting medical evidence from two or more expert witnesses;
2. conflicting evidence from more than two expert witnesses;
3. sexual abuse of a child by parents, carers or third parties;
4. alleged or proven serious criminal activity where the issues are complex or severe;
5. complex physical and/or mental health issues in relation to the relevant adults or children;
6. honour-based violence;
7. child trafficking;
8. an application for a forced marriage protection order;
9. an application for a female genital mutilation protection order;
10. removal or prohibiting the exercise of parental responsibility;
11. temporary or permanent removal of a child from the jurisdiction to a non—Hague Convention country;
12. a child or children giving evidence whether the subject of or a party to the proceedings;
13. a declaration as to parentage (s.55A FLA 1986), legitimacy or legitimation (s.56 FLA 1986) and adoptions effected overseas (s.57 FLA 1986); and
14. enforcement of existing orders made by a judge of Circuit Judge level (allocation should be to the same judge where practicable).