

LINKED CARE AND PLACEMENT ORDER APPLICATIONS

UPDATED GUIDANCE

At the end of January 2007 the FJC issued a guidance paper on this subject. At that stage we undertook to continue monitoring the problem.

Our impression is that many LFJCs have established sensible working arrangements which actively address the avoidance of unnecessary delay. Practical difficulties do however remain. We have, for example, discussed with BAAF, the DCSF and the DoH the lengthy waiting lists for a child's medical assessment which occur in some areas.

We understand that there is to be no specific PLO practice direction dealing with linked placement order applications at present, but are conscious that the emphasis within the PLO upon a speedier and more focused process will place greater strains upon the Local Authority panel process. We are also aware of a number of important and relevant decisions in the Court of Appeal. Much of the earlier guidance remains valid. However, we hope that this updated version may prove helpful.

There will be some, perhaps few, cases where, even before the Local Authority commences care proceedings, it has a clear plan for adoption. In these cases it is incumbent on the Local Authority to ensure that a placement order application is issued simultaneously with, or as soon as possible after, the issue of the care proceedings. We note the decision in **C v XYZ County Council 2007 EWCA Civ 1206** which emphasises that care and placement order proceedings are likely to be inappropriate in cases where the only parent with parental responsibility is willing to consent to placement for adoption.

This paper addresses the more usual situation where the Local Authority has issued care proceedings and is likely to present a plan for adoption to the court, but is unable to issue an application for a placement order at the outset. **Re P-B (A Child) [2006] EWCA Civ 1016** makes it clear that the Local Authority cannot issue a placement order application without the adoption panel having considered the case and made a recommendation to the agency decision maker. The adoption panel is in turn usually

unable to make such a recommendation until all relevant assessments directed by the court during the care case are concluded. The potential for harmful delay is obvious.

We hope that each Local Family Justice Council now has in place interdisciplinary arrangements which promote cooperation on this issue. Care judiciary, Local Authority solicitors, Senior Children's Services Managers, parents' legal advisors, CAFCASS, HMCS, adoption workers and, critically, adoption panel chairs and administrators all have their role to play. Different participants in the process must develop an understanding of the other pieces of the jigsaw and how each of those pieces can be made to fit together.

At each hearing the PLO requires that the court consider "The Timetable for the Child" (Para 3.3). The progress of any linked placement order application, or potential application, involves significant steps in the life of the child and accordingly constitutes an important facet of the timetable for the child which the court should record and take into account.

Essentially, we maintain our clear view that in the overwhelming majority of cases, the court should strive to determine the placement order application at the same hearing as the care case without any undue delay. The advice which follows is designed to achieve that objective. We do recognise that there will still be cases where full investigation and assessment will not take place until after the commencement of proceedings and it is important that the PLO timescale provides an opportunity for such work to be undertaken properly

In judicial case management terms we respectfully suggest:

- At the latest, at the CMC in the care proceedings, try to anticipate the shape of the case if the Local Authority ultimately decide to issue a placement order application. Timetabling cannot wait until that decision has actually been reached since that is now likely to be at a very late stage in the proceedings.

- Identify and record on the order (Form PLO 3)
 - (a) the proposed date of the relevant adoption panel - dependant on local procedures it may be necessary to have confirmation that it has been booked.
 - (b) who will be preparing the documentation for panel?
 - (c) when will the child have his/her adoption medical?
 - (d) what is the last date upon which the date on which the documentation must be submitted to panel?
 - (e) What is the latest date upon which any placement order application will be issued, making it clear that the application must be accompanied by a full Statement of facts and Annex B report.

None of these dates should be permitted to fall outside the [protocol] PLO timetable for the care case without very good reasons. It is not, for example, acceptable for a court to be told that the next panel with an empty slot is “X” if that incorporates unnecessary delay for the child.

- Consider whether it is feasible to give uncontroversial prospective directions in relation to any placement order application when/if it is issued e.g. directing the appointment of the guardian, the filing of a response by the parents and listing for further directions at the IRH
- Fix key stages in the timetabling for the care proceedings so that the panel processes can run alongside. This will inevitably involve some delay in achieving a realistic final hearing but the aim should be to keep that delay to an absolute minimum, certainly within the [protocol] PLO time limits. Thus, for example,
 - (a) It must be acknowledged that any expert evidence directed in the care case will need to be available for the panel
 - (b) Any professionals’ meeting will probably need to fall just before the panel date and the filing of Local Authority final statements and care plans immediately thereafter.
 - (c) There is little point in requiring the guardian’s final report until the Local Authority’s position has been fully ratified.
- Try to identify and resolve at the CMC any of the issues which might preclude the adoption panel from reaching a timely decision. Most of this

is ordinary good practice and it is to be hoped that the encouragement given by the PLO to thorough pre-proceedings social work will assist. For example, has a father without parental responsibility been notified of the proceedings; have appropriate directions been given to identify potential family members as carers etc.

- Flexibility will be required. For example if the care case is identified at the first appointment as one which would otherwise require an Early Final Hearing (para 12.4) then the panel process may need to be expedited in order to meet that early hearing date. Where there will be an additional subsequent hearings outside of the PLO framework, for example a fact finding hearing or an application for s38 (6) assessment, it may be sufficient for consideration to be given to any prospective placement order timetable at that hearing rather than the CMC.
- In **Re PB** above, the application was issued on the 3rd day of the hearing of the care proceedings and the Court of Appeal held that there may be no unfairness to a parent in the late service of a placement order application, provided it has been made plain to them at a much earlier stage that such was the Local Authority's clear plan. However, it is to be hoped that the IRH will be fixed so that any application can be issued at least 7 days earlier so that all parties have a proper opportunity of considering their position prior to the advocates meeting and hearing. This will enable the court to treat the IRH as the first direction hearing under Rule 25 FP (A) Rules 2005 as well as considering the issues directly relevant to the hearing of the care case.

All of these steps will have to be approached with some sensitivity because it must be clear to the parents that these are preliminary steps which do not mean that the court has reached any final decision. Some thought should be given to communication with members of the extended family, whether they are parties to the proceedings or not.

In terms of Local Authority Procedures

- Adoption panels must be held with a sufficient frequency to ensure that all children can have their cases considered without unnecessary delay
- It is the responsibility of the Local Authority to ensure that their processes do not hold up proceedings. Flexibility is required and it should always be possible to convene an emergency panel when the needs of the child so demand
- It is incumbent upon the Local Authority to ensure that documents are presented to Panel in a timely fashion and that they are of the requisite quality
- It must be understood by Adoption Panel chairs that whilst delaying a decision by, say, a fortnight until the next panel meeting may not seem very significant, it may, in reality, result in lengthy delays for the child if a final hearing has to be adjourned and another slot found for the case to be heard.
- The panel medical advisor should be in a position to give advice upon a child's health needs without delay. This really should not give rise to the difficulties which it sometimes does. We continue to press this issue with the relevant Departments
- Local Authority decision makers must ensure that systems are in place to enable them to ratify (or not) panel decisions within a very short period of time, for example within 5 working days of the panel recommendation rather than the 7 working days set out in the Guidance. Of course, once a Local Authority is satisfied that a child ought to be placed for adoption it has a statutory duty to make the application for a placement order forthwith.
- Local Authority managers should ensure that there are clear arrangements which are understood by their social work staff as to the timely preparation of cases for panel, including referral for medical advice and the completion of relevant documentation.

Local authority solicitors

- Local Authority solicitors must ensure that they are able to issue a placement order application urgently once the decision has been made. This will mean having the documentation ready before the panel considers the matter.
- Given the increasing number of Litigants in Person, such as grandparents, careful attention must be paid to ensuring that they are kept informed as the case develops. We anticipate that this should be the responsibility of the Local Authority solicitor.

Parent's legal advisors

- Lawyers must explain to their clients the reality of the predicament they face. The issue of a placement order application at a comparatively late state in the care case should never come “out of the blue”. They could for example ensure that their clients understand the importance of trying to involve extended family members at an early stage without this compromising their position.

CAFCASS

- It is incumbent on the child's guardian to ensure, in effect, that both the care and placement order applications are kept “on track” and that appropriate and timely directions are given and implemented. We would hope that the child's guardian would now be routinely invited to panel meetings and Statutory Reviews, although they may not routinely need to attend.
- A separate report for the placement proceedings is policy in Cafcass, as the report will be required to address the Adoption and Children Act 2002 welfare checklist which has additional requirements for consideration, and to accommodate the differing rules about disclosure and filing. However, in combined proceedings this report may be brief. CAFCASS CYMRU

have developed a combined report template which can be used. However decisions on the provision of reports are taken on a case by case basis.

INDEPENDENT REVIEWING OFFICER

Where a child is looked after by the Local Authority the IRO should play an important role in the Local Authority decision making and reviewing processes. We fear that often their task is hampered by a lack of relevant documentation as well as a sense that they are “out of the loop” once the case has been brought before the court.

To that end we suggest that where the child is looked after the following directions are routinely given at First Appointment

- “1. The Local Authority shall forthwith serve on the Independent Reviewing Officer for the child[ren] a copy of the Local Authority case summary in the form PLO2 together with a copy of the Initial Social Work Statement , Schedule of Proposed Findings, Care Plan, allocation Record and timetable for the child[ren]
2. The Local Authority shall forthwith provide to the parties and the Children’s guardian the name and contact details of the Independent Reviewing officer together with the dates of any statutory reviews which have been arranged

Where the Local Authority intends to issue a placement order application, it should advise the IRO in advance of any factors which may impact on the timetable approved by the court.

HMCS

There need to be efficient systems in place which enable HMCS adoption staff to issue placement order applications and, where necessary, refer them to the allocated judge without delay. It is recognised that the opening of an adoption file is itself quite a time consuming process. However, we note with concern that in **Re F (A Child) EWCA Civ 439** it took the court 10 days to issue the father’s application for leave to apply to revoke a placement order. We understand that the

standard target for issue of any family application is 5 days but would hope that [adoption] placement order and related applications would be treated as a genuine priority.

Where a court has a case progression officer we suggest it should be a part of their function to ensure that placement order applications are managed expeditiously

As before, we are hopeful that sensible cooperation will enable local FJCs to devise arrangements which are appropriate locally and which may serve to mitigate the negative impact of unnecessary delay upon the children with whom we are all concerned.

We intend to continue to monitor this problem and would again welcome comment from Local FJCs and others as to progress – or even as to lack of progress

The Safeguarding Committee of the Family Justice Council

7.7.08