

## **Court Documents under the Revised Public Law Outline (2014)**

### **Pre-proceedings Checklist**

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Under the PLO (2014) there is an emphasis on the shared responsibility of the judiciary, CAFCASS, the Local Authority, and legal representatives to avoid unnecessary delay in care proceedings and make decisions within children's timescales.

### **Principals of the Public Law Outline (2014)**

The PLO (2014) Key themes of the reforms, namely robust case management, fewer experts and the deadline of 26 weeks; the PLO has attempted to resolve the key systemic issues that cause delay in Care Proceedings by streamlining the processes. The Case Management Hearing (first hearing) is crucial to ensuring that the timetable for the child, which takes into account dates which are important to the child's welfare and development, underpins the court timetable.

There is a greater emphasis on the pre-proceedings stage of the PLO (2014) is to ensure that adequate preparation is undertaken before the Case Management Hearing. The pre-Proceedings Checklist prescribes the preparation that must be achieved before the Case Management Hearing. (Please also see: Best Practice Guidance – CMH Checklist)

The key documents known as **Annex Documents** that need to be prepared in advance of issuing and required to be *filed* with the **Application** are:

Additional **Checklist documents** are categorised as

- (a) **Evidential documents** which need to be *served* on the other parties with the application and
- (b) **Decision-making records** which need to be *disclosed upon request* by any party.

### **The Annex Documents**

The documents listed below need to be filed with the application. Most of these documents are prepared by the Social Worker:

- **Chronology:** a succinct social work chronology using the prescribed template that sets out the significant events in the child's life, and other significant events that are directly relevant to the key issues – **Social Worker**
- **Statement:** an evidence-based statement using the prescribed template that provides an analysis of the evidence, a clear timetable for the child with a clear summary of the Care Plan, and details of any further assessments proposed in respect of the parents and/or family and friends, and any *necessary* expert assessments – **Social Worker**
- **Genogram:** This should be incorporated into the statement (as per the template). If the family structure is complex, a separate genogram may be appended to the statement – **Social Worker**
- **Care Plan for each child:** This incorporated into the initial & final social work evidence, it should clearly set out the interim plan, and the preferred long-term plan taking account of the child's timetable and with details of parallel planning, using the prescribed subheadings – **Social Worker**
- **Current Assessments:** relating to the child and/or parents and/or family and friends to which the Statement refers. Assessments should not usually be more than two years old – **Social Worker**
- **Index of Checklist Documents:** Index of evidential documents and decision-making records. These should be no more than two years old, unless the LA relies on particular documents as part of its evidence – **Social Worker/Legal**

- **Threshold Statement:** Sets out the evidence that meets the threshold criteria – **Legal**
- **Allocation Proposal Form:** Proposes the most appropriate level of Court to hear the application – **Legal**

### **The Checklist Documents**

#### **a) Evidential documents**

- Previous Court Orders and judgments/reasons
- Any assessment materials relevant to the key issues, including Section 7 and Section 37 Reports
- Single, joint, or inter-agency materials (e.g. health & education reports/Home Office and Immigration Tribunal documents);

#### **b) Decision-making records**

- Records of key discussions with the family
- Key LA minutes and records for the child (e.g. LAC reviews)
- Pre-existing care plans (e.g. LAC plan; CP plan)
- Letters before Proceedings

### **Applications for an Emergency Protection Order**

The revised PLO (2014) does not alter the procedure for applying for an Emergency Protection Order. Use of EPOs is appropriate in cases where there is reasonable cause to believe that the child may suffer significant harm unless immediately accommodated by the Local Authority. Guidance and good practice in the application of EPOs is set out in Chapter 4 of the Children Act 1989 Regulations and Guidance, Volume 1. Relevant case law includes *X Council v B (Emergency Protection Orders)* [2005] 2 FLR 341 and *Re X (Emergency Protection Orders)* [2006] 2 FLR 701.

### **Documentation in urgent, high risk cases**

Guidance is provided in the PLO Practice Direction 12A (Annex A).  
Where an EPO is not appropriate, but where

- The child's welfare needs and circumstances are such that immediate or very rapid recourse to the courts is essential
- Attempting to complete, prior to application, all the standard pre-proceedings work with the family, or all the documentation which the PLO requires at the outset of the case, is not possible because of the circumstances in the individual case, and where delaying an application would be likely to place the child's welfare or safety at unacceptable risk

As much of the essential documentation as is available should be submitted along with the application. As a minimum, the application should normally include a brief supporting social work statement, an interim care plan for the child, and a chronology which, together, provide:

- a) confirmation of the essentials in the case – what order is sought and why, the details of the child and main parties involved
- b) reasons why the missing information/documentation cannot be supplied
- c) confirmation of any additional steps already taken to protect the child
- d) sufficient evidence in relation to the harm or risk of harm to the child and parenting capacity/capacity to change to enable to court to conclude that there are reasonable grounds for believing that the threshold criteria are met and that making an interim order, pending completion of the outstanding documentation, is justified in the child's interest.

The application and statement must make clear what additional information/documentation the LA proposes to collect, the actions it plans to take to deliver this, and the timeframe within which it will be completed.

It should be noted that it is expected that such applications will be infrequent.

## **Assessments within proceedings**

### **Case Management Hearing CMH (first hearing)**

The Case Management Hearing (previously the first hearing) will occur by Day 12 and will be used to timetable to Issues Resolution Hearing (IRH). It is crucial that the Local Authority is adequately prepared to ensure that there are no unnecessary adjournments or delay and a clear plan can be agreed. (Please see: Practice Guidance – CMH Checklist)

To assist with this preparation an advocates meeting will take place no later than 2 days before the Case Management Hearing. The advocates will consider the information on the Application Form and Annex documents, the Local Authority Case Summary, and the Guardians Case Analysis with a view to narrowing the issues and agreeing a Draft Case Management Order prior to the Case Management Hearing.

The Case Management Order will set a clear plan and timetable for the Care Proceedings to conclude within 26 weeks from the date of the application.

The Case Management Order will include all directions, including:

- Any further assessment social work assessment or Connected Person Assessment; If required, instruction of external experts in accordance with Practice Direction 25;
- the timetable for filing Final Evidence and Care Plan, Guardians Analysis, Parents Responses, Threshold Documents, and any other evidence; If a Fact Finding is Required, dates for the hearing, and directions for the disclosure of documents;
- The timetable for Issues Resolution Hearing (IRH) and Final Hearing dates;
- The Judge will scrutinise and challenge the draft Case Management Order to ensure it is compliant with the PLO (2013) (Please see Appendix C for a full list of directions required at the Case Management Hearing).
- A Further Case Management Hearing (FCMH) will only be scheduled in exceptional circumstances by discretion of the Judge;
- Any necessary assessments within proceedings should be completed by week 12 from the date of issue. This means that any parenting and/or family and friends assessments should be

completed within a maximum of 10 weeks of the CMH (10 weeks includes any initial/viability assessment).

- Any psychological and/or psychiatric assessment of the parents, or assessment of the child(ren) by a Child and Adolescent Psychiatrist should be completed within 6 weeks of the CMH so that any parenting and/or family/friends assessment can take account of the outcome.
- Where the LA is proposing an expert assessment, the Social Worker, in conjunction with Legal, should prepare a draft Letter of Instruction (LOI). (please see practice guidance –letter of instruction) The Social Worker should draft the questions. Legal will draft the remainder of the LOI in the prescribed format. The LOI should preferably be available before the Advocates Meeting at Day 10, but in any event will need to be available for consideration and agreement at the CMH. The LA must also provide details of any proposed expert including CV, availability (date they can start the assessment and complete a report) and cost. Legal will need to make a written application seeking the Court's permission to instruct the proposed expert.

### **Fact-finding hearings/Additional hearings to deal with discrete issues**

The Issues Resolution Hearing (IRH) is utilised to resolve and narrow any key issues (if any), either by hearing evidence or considering the evidence before the court. An Advocates Meeting will take place prior to the IRH to consider the evidence and position of the parties, identify and narrow key issues, determine if there are any contested issues, and draft a Case Management Order for the IRH. The court will consider the draft Case Management Order and determine if the IRH can be used as a final hearing or will make directions in a final Case Management Order and timetable a Final Hearing if there are contested issues. If an updating statement is required to address a specific issue, use the prescribed template for updating statements. Do not repeat the information in the initial statement

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- At the IRH, the Court will identify the key issues (if any) to be determined, the extent to which those issues can be resolved or narrowed, and whether the IRH can be used as final hearing. Therefore, at the Case Management Hearing (CMH), the timetable for the filing of final evidence leading up to the IRH will have been directed. This will include the Final Statement (use the prescribed template for a Final Statement) .
- Where the plan is for the child(ren) to remain in the care of parent(s), or to be rehabilitated to the care of a parent(s), the care plan should set out the details of the support to be provided to achieve and maintain a positive outcome.
- Where the plan is for long-term/permanent alternative care, further evidence will depend upon the nature of the plan:
  - Plan is for placement with extended family/friends or other connected person(s) under an SGO: SG report (compliant with Regulation 21) and SG Support Plan will need to be filed
  - Plan to place for adoption: a Rule 29 Report will need to be filed (Annex A where prospective adopters identified, or Annex B where prospective adopters not yet identified) (and Legal will need to file a Placement Order Application)
  - Plan to place for adoption or long-term fostering: a statement from the family-finding team, setting out the family-finding steps that have/will be taken; the likely timescales to identify suitable carers/match/placement; and a realistic assessment of the prospect of identifying a suitable adoptive placement in the context of the child's age, specific needs and placement of siblings together where appropriate.

### **Where the Care Plan is adoption**

#### Plan of adoption

- A request for a pre-adoption medical should be made immediately after the CMH, and the paperwork completed and forwarded to the Looked After Children Specialist Nurse and the Looked After Children Administrator, who will arrange the appointment. It is

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preferable if the adoption medical is completed at the same time as the Initial Health Assessment. Parental consent will be required unless the LA has an ICO.

- The LA Agency Decision Maker (Managing Director of the Children's Trust) will need to make and record a decision regarding the plan of adoption, taking into consideration the outcome of the pre-adoption medical, the outcome of all assessments and the Child Permanence Report. This decision has to be prior to the LA completing its final evidence. The timing of the ADM is therefore crucial and will need to be booked with the Service Manager for Adoption and Fostering and the Administrator for that team, at least 3 weeks in advance of the date the LA final evidence is required.