Local Practice Note:

Getting Back to the Public Law Outline on the Northern Circuit

"It is now clear to me that there is a need for a radical resetting of the culture within the Family Court so that the system reconnects with the strictures of the PLO and, once again, aims to meet the statutory requirement of completing each public law case within 26 weeks"

Sir Andrew McFarlane P, View from the President's Chambers, November 2022

The Public Law Outline

1. Section 32(1)(a) of the Children Act 1989 requires the court to draw up a timetable with a view to determining public law proceedings without delay and, in any event, within 26 weeks. It sets out the *law* the Family Court is required to apply in this regard.

2. Part 12 of the FPR 2010 is a statutory code setting out the legal requirements for the case management of public law proceedings under the Children Act 1989. Again, it sets out the *law* the Family Court is required to apply in this regard.

3. PD12A (hereafter the PLO) is a self-contained code designed to assist the parties and the court to deal with care proceedings justly and efficiently. It places very considerable demands on all participants, but that is what Parliament has required of the courts for the benefit of the children and families concerned.

4. From 16 January 2023, the Public Law Outline *will* once again be applied rigorously by the family panel magistrates and the family judges on the Northern Circuit in all public law family proceedings. The primary consequences of this will be as follows.

Adherence to the FPR 2010

5. The Family Procedure Rules 2010 provide the definitive procedural code for the Family Court and *must* be adhered to by all parties.

6. In particular, any application within public law proceedings *must* be issued on the correct court form and the correct fee paid *before* the court will deal with the application.

7. It will no longer be acceptable for applications for case management directions or their variation to be made by way of email, avoiding the payment of the application fee. Emails requesting case management directions, or amendments thereto, will no longer be accepted and will not be dealt with.

Rigorous policing of 'Urgent' applications

8. It was, and should be again, *very* rare for a public law case to require an urgent first hearing. The courts will be rigorous in policing the question of urgency.

9. The courts will adhere strictly to the local Practice Direction of 5 November 2020 on urgent hearings (attached as an Appendix to this local Practice Note). Where an application is not, in fact, demonstrably urgent, the court will refuse to hear it as such, and it will be listed with a fixture in the ordinary way. It is *not* possible to circumvent the requirements of the local Practice Direction of 5 November 2020 by, for example, requesting the listing of a hearing in a number of days time in a case that does not otherwise meet the criteria for urgency in the Practice Direction.

Making cases smaller

10. During the course of the past two years there has been a marked increase in the number of hearings per case. This will cease. Cases will be made 'smaller' by reducing the number of hearings per case to that prescribed by the PLO and by making 'every hearing count'.

11. All public law cases will now return to the much tighter procedural template required by the PLO. Each case will, save where demonstrably necessary to deal with the case justly, be limited to the three hearings provided for by the PLO.

12. As such, and as required by the PLO, the first hearing will be the Case Management Hearing, held not before Day 12 and no later than Day 18, with an advocates meeting to be held no later than 2 days before the Case Management Hearing.

13. Thereafter, no other hearing should ordinarily be listed after the Case Management Hearing until the Issues Resolution Hearing. A final hearing will only be required where it is not possible to resolve the proceedings at the Issues Resolution Hearing.

14. This reinstated approach will, in particular, require a *far* greater focus on planning and preparation *ahead of* the Case Management Hearing and the effective use of the advocates meeting. It will no longer be acceptable, for example, for the case to be adjourned for a further Case Management Hearing because the parties seek permission to instruct an expert pursuant to FPR Part 25 but have not yet identified the expert to be instructed.

Stopping the "Start Again" culture

15. Adherence to the PLO pre-proceedings process, with the engagement of parents and a thorough assessment exercise following the DfE Guidance and the Public Law Working Group recommendations, is essential.

16. Where the court considers that the assessment completed by the local authority during the pre-proceedings stage is sufficient to determine the issues before the court justly, it will *not* order a further assessment to be undertaken within proceedings unless it can be demonstrated that such an assessment is *necessary*.

17. With respect to assessments of friends and family, the parents will be expressly required to identify any family members for assessment at, or within a week of, the Case Management Hearing. Each DFJ will agree with their local authorities a clear timeline that will apply to any 'viability' or full assessments of connected persons and that timeline will be adhered to.

Limiting expert evidence

18. The test for whether the court requires expert evidence to determine proceedings is clear and well established.

19. In the circumstances, the court will only permit the instruction of an expert where it is *demonstrated* to the court that to do so is '*necessary* to assist the court to resolve the proceedings justly' and not simply that it is merely desirable or helpful.

Limiting proceedings to their proper statutory scope

20. In order to determine the care proceedings, the court will limit its consideration to the following issues:

(a) whether the s 31 threshold criteria are satisfied;

(b) if so, consideration of the nature of the permanence provisions in the care plan;

(c) the arrangements for contact; and

(d) what order, having regarding to s.1 of the Children Act 1989, should be made.

21. The court is not required to consider any aspect of the care plan other than the permanence provisions. In the circumstances, the court will *not* consider aspects of the care plan beyond those provisions and the question of contact.

Attendance at hearings

22. The advantages of attended hearings, where all parties are present at court to engage in discussion and to engage with the court on robust case management are well established. In these circumstances, whilst the court will continue to have a discretion to list the Case Management Hearing as a remote hearing in an appropriate case, the Issues Resolution Hearing and any Final Hearing will *always* proceed as an attended hearing.

23. Any application for a Case Management hearing that has been listed as an attended hearing to instead be conducted remotely, or for one or more parties to attend remotely at a Case Management Hearing that has been listed as an attended hearing, *must* be made by C2 application and a fee paid. Requests for remote attendance made by email will no longer be accepted and will not be dealt with.

24. The Children's Guardian *must* attend all Issues Resolution Hearings. Any application made, *exceptionally*, to excuse the attendance of the Children's Guardian must be made by way of Form C2 and the required fee paid. Requests made by email will no longer be accepted and will not be dealt with.

Compliance lists

25. It is not acceptable for parties to wait for the next listed hearing before addressing any failure to comply with the case management timetable.

26. The family panel justices and family judges will now have the option of listing a non-compliance hearing in a compliance list where a party to care proceedings has failed to comply with a court timetable.

27. The precise format of a compliance hearing will be for each DFJ to decide. However, in broad terms a non-compliance hearing will be an attended hearing at which the relevant party will be required to explain why the relevant court order has not been complied with, and to explain what steps have been taken to mitigate the impact of such default.

28. All parties will be expected to monitor compliance with the court timetable and, if needed, report any failures to the court.

The North West PLO Toolkit

29. It is recognised that pressure on resources creates a challenge for agencies when seeking to comply with the imperatives of the PLO. To this end, the Northern Circuit has the benefit of a valuable resource that can assist in mitigating this recognised difficulty, in the shape of the North West PLO Toolkit created by the teams at Warrington Borough Council and Salford City Council.

30. The North West PLO Toolkit project takes a whole system approach that seeks to ensure that all parts of the system are working together to embed the core recommendations of the PLWG guidance and ensure the effective operation of the PLO. The toolkit contains resources to assist professionals in progressing public law cases in a timely manner by way of consistent good practice. Many of these resources are taken from, or are based on, the recommendations of the PLWG.

31. All local authorities across the North West have now launched the PLO Toolkit and all staff have access to key Pre-Proceedings and PLO documents, including Private Law templates. All local authorities have delivered joint training on the PLO Toolkit and have worked with their IT teams to embed parts of the Toolkit into Legal Gateway pathways on LCS systems. The North West PLO Team has shared with each local authority the November 2022 'View from The President's Chambers' with a view to reinforcing the importance of PLO Toolkit in achieving the goals set out in that document, and is continuing to assist local authorities in embedding guidance on better use of supervision orders and the deployment of best practice with respect to early identification of family members for assessment.

32. The North West PLO Toolkit Team continue to hold quarterly PLO Practice Hubs with all twenty-three local authorities on the Northern Circuit to ensure continued sharing of good practice. The Toolkits are regularly updated with examples of good practice and legal updates This updating will continue following the formal end of the PLO Toolkit project on March 2023, with the ADCS having been requested to ensure this work continues.

Mr Justice MacDonald

16 January 2023

APPENDIX I

Local Practice Direction

Urgent Family Applications to the District and Circuit Bench on the Northern Circuit

The Meaning of 'Urgent'

1. An application made during business hours seeking a same day hearing, or an application made out of hours will be justified as being urgent *only* where an order is required to regulate the position between the point the order is made and the next available ordinary listing.

2. Listing is a judicial function. Where a case does not fulfil the criteria for urgency, the judge will decline to deal with it and the application will be given a listing in the ordinary way. The court will be rigorous in refusing to deal with cases that do not meet the criteria of urgency.

3. Applicants for urgent orders will be required to justify on evidence why a case is said to meet the criteria for urgency. Applications must be accompanied by a statement which includes an explanation of why the case is said to meet the criteria for urgency, and a draft of the order sought following the President's standard format

4. The following work may be dealt with as an urgent application where, but only where, the criteria for urgency as defined in paragraph 1 is fulfilled (this is not an exhaustive list):

    (a) Injunctions (including non-molestation injunctions, forced marriage protection orders and female genital mutilation orders) where without such an order the immediate safety of an individual would be compromised;

    (b) Applications under the Children Act 1989 where without such an order a child's immediate safety would be compromised, including where there is an immediate threat of child abduction.

    (c) Applications for Emergency Protection Orders where the criteria for such or order is met.

    (d) Other urgent applications where, without an order being made, an individual's immediate safety would be compromised.

    (e) Other urgent applications where, without an order being made, property that is the subject of a dispute may be disposed of, dissipated or destroyed.

5. Examples of cases that will *not* ordinarily fulfil the criteria for urgency include disagreements over holiday contact, applications for interim care orders where the

nature of the alleged harm concerns longstanding difficulties or applications in respect of property where there is not an immediate risk of disposal. Again, this is not an exhaustive list.

6. A case that is said to have become urgent simply by reason of delay on the part of the applicant will *not* ordinarily fulfil the criteria of urgency.

7. Where an applicant seeks to bring a matter before the court that is urgent only because the applicant has failed to act in a timely manner they can expect the court to refuse to deal with the application *unless* an individual's immediate safety would be compromised, or property disposed of if an order were not made.

Urgent Applications During Court Business Hours

8. The fact that an application made during court business hours fulfils the criteria for urgency does not absolve the applicant from presenting that application to the court in a timely manner.

9. Ordinarily, any urgent application made during court business hours should be ready to come before the Judge at 10.30am.

10. In any event, and save in exceptional circumstances, any urgent application made during court business hours must be ready to come before the Judge ***no later*** than 2pm.

Urgent Court Business Out of Hours

11. The Urgent Court Business service will operate out of hours between 4.00pm and 8.30am Monday to Friday and from Friday at 4.00pm to Monday at 8.30am each weekend.

12. Any application that fulfils the criteria for urgency but has not been made by 4.00pm *must* be made to the Urgent Court Business service and will be dealt with out of hours.

13. Any application that fulfils the criteria for urgency that has been made during court business hours but which, notwithstanding the requirements of paragraph 10 above, is not ready to come before the Judge by 4.00pm will at that point ordinarily be referred to the Urgent Court Business service to be dealt with as an out of hours hearing.

14. The application must be accompanied by a statement which includes an explanation of why the case is said to meet the criteria for urgency and a draft of the order sought following the President's standard format and sent in by email in word format.

15. The procedure for using the Urgent Court Business service for applications that fulfil the criteria of urgency is as follows:

    (a) Contact should be made with the Duty Court Business Officers on the appropriate number:

        Cumbria and Lancashire: - 07554 459606

Greater Manchester : - 07554 4596264

Cheshire & Merseyside: - 07876 034775

(b) The Duty Officer will answer if possible. If the Duty Officer does not answer a message must be left including the name and number of the person making the application and the Duty Officer will phone back.

(c) The Duty Officer will take details of the case and will then discuss the case with a member of the judiciary who will decide whether a hearing is necessary.

(d) The Duty Officer will inform the applicant of the judge's decision, including if there is to be a hearing, the time and venue of the hearing.

Mr Justice MacDonald

Family Division Liaison Judge for the Northern Circuit

5 November 2020