**Local Practice Note:**

**Getting Back to the Public Law Outline on the South Eastern 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. Section 32(5) allows the court to extend the timetable ‘*only if the court considers that the extension is necessary to enable the court to determine the proceedings justly’.*

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 South Eastern 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 formal application within public law proceedings should be issued on the correct court form and the correct fee paid and issued through FPL before the court will deal with the application. Save where the DFJ or the allocated judge has made different provision documents should be uploaded via FPL.

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, save for instance in relation to simple requests to excuse the personal attendance of a guardian or a party or other quasi-administrative issues or where the DFJ has made different local arrangements.

**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. A case which is listed as an urgent matter but which is not capable of determination or is otherwise not urgent wastes the resources of all concerned and prevents other work being undertaken.

9. 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.

**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. 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’. We are conscious of the fact that issues with availability of interpreters and intermediaries, administration delays and other factors contribute to this and that part of the increase in hearings per case relates to Covid 19. However returning to the 3 hearings per case model is worth striving for, freeing up as it does space for other cases and thus reducing delay for children.

11. All public law cases will now return to the much tighter procedural template required by the PLO. Each case will, save where necessary to deal with the case justly, be limited to the three hearings provided for by the PLO. It is intended that each order should record the date of the next hearing.

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. The Local Authority MUST provide their Threshold document in accordance with the PLO (no more than 2 pages in the Application) and the parents MUST provide their response before the CMH. The Threshold included in the Application should be regarded as the definitive statement of the LA case and is amendable only where the court determines that is required to enable the proceedings to be determined justly.

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. However due to the current shortage of judges and consequent listing delays each DFJ area will adopt the approach which allows for the quickest listing of a final hearing. In some areas this may be by listing cases which don’t settle at IRH for final hearing at that stage (this is more likely to be possible where a final hearing can be undertaken in a matter of weeks). In other areas some cases may be listed for Final Hearing at the CMH; such hearings will not (save in exceptional circumstances) be listed for longer than 3 days. If such cases do not settle at IRH the time estimate will be reviewed at that stage.

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 the Case Management Hearing within their Response document. 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 Case Management 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, *all* Case Management Hearings will now be listed as attended hearings in the first instance. The Issues Resolution Hearing and any Final Hearing will *always* proceed as an attended hearing.

23. Each DFJ will determine locally whether an application for a Case Management hearing to be conducted remotely, or for one or more parties to attend remotely at a Case Management Hearing, should be made by C2 application and a fee paid or whether a more informal process can be adopted.

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 not be accepted and will not be dealt with.

**Compliance**

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. The need for Compliance Lists will be considered by each Designated Family Judge area.

27. The precise format of a compliance hearing will be for each DFJ to decide.

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

**Mr Justice Williams**

**HHJ Bedford**

**HHJ Davies**

**HHJ Moradifar**

**HHJ Perusko**

**HHJ Raeside**

**3 February 2023**