

ANNEX TO PRACTICE DIRECTION 36C

PILOT PRACTICE DIRECTION 12A

CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT

1. THE KEY STAGES OF THE COURT PROCESS

1.1 The Public Law Outline set out in the Table below contains an outline of—

- (1) the order of the different stages of the process;
- (2) the matters to be considered at the main case management hearings;
- (3) the latest timescales within which the main stages of the process should take place in order to achieve the aim of resolving the proceedings within 26 weeks.

1.2 In the Public Law Outline—

- (1) “CMH” means the Case Management Hearing;
- (2) “FCMH” means Further Case Management Hearing;
- (3) “ICO” means interim care order;
- (4) “IRH” means the Issues Resolution Hearing;
- (5) “LA” means the Local Authority which is applying for a care or supervision order or a final order in other Part 4 Proceedings;
- (6) “OS” means the Official Solicitor.

1.3 In applying the provisions of FPR Part 12 and the Public Law Outline the court and the parties must also have regard to-

(1) all other relevant rules and Practice Directions and in particular-

- FPR Part 1 (Overriding Objective);
- FPR Part 4 (General Case Management Powers);
- FPR Part 15 (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);
- FPR Part 22 (Evidence);

- FPR Part 25 (Experts) and the Experts Practice Directions;
- FPR 27.6 and Practice Direction 27A (Court Bundles);

(2) President's Guidance issued from time to time on

- Allocation and Gatekeeping;
- Judicial continuity and deployment;
- Prescribed templates and orders;

(3) Justices' Clerks Rules 2005 and FPR Practice Direction 2A (Functions of the Court In The Family Procedure Rules 2010 And Practice Directions Which May Be Performed By a Single Justice of the Peace).

PUBLIC LAW OUTLINE

PRE-PROCEEDINGS	
PRE-PROCEEDINGS CHECKLIST	
<p><u>Annex Documents</u> are the documents specified in the Annex to the Application Form which are to be attached to that form and filed with the court:</p> <ul style="list-style-type: none">• Social Work Chronology• Social Work Statement and genogram• The current assessments relating to the child and/or the family and friends of the child to which the Social Work Statement refers and on which the LA relies• Threshold Statement• Care Plan• Allocation Proposal Form• Index of Checklist Documents	<p>Checklist documents (already existing on the LA's files) are –</p> <p>(a) Evidential documents including-</p> <ul style="list-style-type: none">• Previous court orders and judgments/reasons• Any assessment materials relevant to the key issues including Section 7 and 37 reports• Single, joint or inter-agency materials (e.g., health & education/Home Office and Immigration Tribunal documents); <p>(b) Decision-making records including –</p> <ul style="list-style-type: none">• Records of key discussions with the family• Key LA minutes and records for the child• Pre-existing care plans (e.g., child in need plan, looked after child plan and child protection plan)• Letters Before Proceedings <p>Only Checklist documents in (a) are to be served with the application form</p> <p>Checklist Documents in (b) are to be disclosed on request by any party</p> <p>Checklist documents are <i>not</i> to be–</p> <ul style="list-style-type: none">• filed with the court unless the court directs otherwise; and• older than 2 years before the date of issue of the proceedings unless reliance is placed on the same in the LA's evidence

STAGE 1 ISSUE AND ALLOCATION

DAY 1 AND DAY 2

On Day 1 (Day of issue):

- The LA files the Application Form and Annex Documents and sends copies to Cafcass/CAFCASS CYMRU
- The LA notifies the court of the need for a contested ICO hearing where this is known or expected
- Court officer issues application

Within a day of issue (Day 2):

- Court considers allocation, and if appropriate, transfers proceedings in accordance with the President's Guidance on Allocation and Gatekeeping
- LA serves the Application Form, Annex Documents and evidential Checklist Documents on the parties together with the notice of date and time of CMH
- Court gives standard directions on Issue and Allocation including:
 - Checking compliance with Pre-Proceedings Checklist including service of any missing Annex Documents
 - Appointing Children's Guardian (to be allocated by Cafcass/CAFCASS CYMRU)
 - Appointing solicitor for the child only if necessary
 - Appointing (if the person to be appointed consents) a litigation friend for any protected party or any non subject child who is a party, including the OS where appropriate
 - Filing and service of a LA Case Summary
 - Filing and service of a Case Analysis by the Children's Guardian
 - Making arrangements for a contested ICO hearing (if necessary)
 - Filing and Serving the Parents' Response
 - Sending a request for disclosure to, e.g., the police
 - Filing and serving an application for permission relating to experts under Part 25 on a date prior to the advocates' meeting for the CMH
 - Directing the solicitor for the child to arrange an advocates' meeting 2 days before the CMH
 - Listing the CMH
- Court officer sends copy Notice of Hearing of the CMH by email to Cafcass/CAFCASS CYMRU

STAGE 2 - CASE MANAGEMENT HEARING

ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5)))	CASE MANAGEMENT HEARING
No later than 2 clear days before CMH (or FCMH if it is necessary)	<p>CMH : by Day 12</p> <p>A FCMH is to be held only if necessary; it is to be listed as soon as possible and in any event no later than day 20 (week 4)</p>
<ul style="list-style-type: none"> • Consider information on the Application Form and Annex documents, the LA Case Summary, and the Case Analysis • Identify the parties' positions to be recited in the draft Case Management Order • If necessary, identify proposed experts and draft questions in accordance with Part 25 and the Experts Practice Directions • Identify any disclosure that in the advocates' views is necessary • Immediately notify the court of the need for a contested ICO hearing • LA advocate to file a draft Case Management Order in prescribed form with court by 11a.m. on the working day before the CMH and/or FCMH 	<ul style="list-style-type: none"> • Court gives detailed case management directions, including: <ul style="list-style-type: none"> - Confirming allocation and/or considering transfer - Drawing up the timetable for the child and the timetable for the proceedings and considering if an extension is necessary - Identifying additional parties and representation (including confirming that Cafcass/CAFCASS CYMRU have allocated a Children's Guardian) - Identifying the key issues - Identifying the evidence necessary to enable the court to resolve the key issues - Deciding whether there is a real issue about threshold to be resolved - Determining any application made under Part 25 and otherwise ensuring compliance with Part 25 where it is necessary for expert(s) to be instructed - Identifying any necessary 3rd party disclosure and if appropriate giving directions - Giving directions for any concurrent or proposed placement order proceedings

	<ul style="list-style-type: none">- Ensuring compliance with the court's directions- If a FCMH is necessary, directing an advocates' meeting and Case Analysis if required ;- Directing filing of any threshold agreement, final evidence and Care Plan and responses to those documents for the IRH- Directing a Case Analysis for the IRH- Directing an advocates' meeting for the IRH- Listing (any FCMH) IRH, Final Hearing (including early Final Hearing)- Giving directions for special measures and/or interpreters- Issuing the Case Management Order
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STAGE 3 - ISSUES RESOLUTION HEARING	
ADVOCATES' MEETING (including any litigants in person (FPR12.21E(5)))	IRH
No later than 7 days before the IRH	As directed by the court, in accordance with the timetable for the proceedings
<ul style="list-style-type: none"> • Review evidence and the positions of the parties • Identify the advocates' views of- <ul style="list-style-type: none"> - the remaining key issues and how the issues may be resolved or narrowed at the IRH including by the making of final orders - the further evidence which is required to be heard to enable the key issues to be resolved or narrowed at the IRH - the evidence that is relevant and the witnesses that are required at the final hearing - the need for a contested hearing and/or time for oral evidence to be given at the IRH • LA advocate to- <ul style="list-style-type: none"> - notify the court immediately of the outcome of the discussion at the meeting - file a draft Case Management Order with the court by 11a.m. on the working day before the IRH 	<ul style="list-style-type: none"> • Court identifies the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the IRH • Court considers whether the IRH can be used as a final hearing • Court resolves or narrows the issues by hearing evidence • Court identifies the evidence to be heard on the issues which remain to be resolved at the final hearing • Court gives final case management directions including: <ul style="list-style-type: none"> - Any extension of the timetable for the proceedings which is necessary - Filing of the threshold agreement or a statement of facts/issues remaining to be determined - Filing of: <ul style="list-style-type: none"> - final evidence & Care Plan <ul style="list-style-type: none"> ○ Case Analysis for Final Hearing (if required) ○ Witness templates ○ Skeleton arguments - Judicial reading list/reading time, including time estimate and an estimate for judgment writing time - Ensuring Compliance with PD27A (the Bundles Practice Direction) - Listing the Final Hearing • Court issues Case Management Order

2. FLEXIBLE POWERS OF THE COURT

2.1 Attention is drawn to the flexible powers of the court either following the issue of the application in that court, the transfer of the case to that court or at any other stage in the proceedings.

2.2 The court may give directions without a hearing including setting a date for the Final Hearing or a period within which the Final Hearing will take place. The steps, which the court will ordinarily take at the various stages of the proceedings provided for in the Public Law Outline, may be taken by the court at another stage in the proceedings if the circumstances of the case merit this approach.

2.3 The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing. For example, if the issue on which the case turns can with reasonable practicability be crystallised and resolved by taking evidence at an IRH then such a flexible approach must be taken in accordance with the overriding objective and to secure compliance with section 1(2) of the 1989 Act and achieving the aim of resolving the proceedings within 26 weeks or the period for the time being specified by the court.

2.4 Where it is anticipated that oral evidence may be required at the CMH, FCMH or IRH, the court must be notified in accordance with Stages 2 and 3 of the Public Law Outline well in advance and directions sought for the conduct of the hearing.

2.5 It is expected that full case management will take place at the CMH. It follows that the parties must be prepared to deal with all relevant case management issues, as identified in Stage 2 of the Public Law Outline. A FCMH should only be directed where necessary and must not be regarded as a routine step in proceedings.

3. COMPLIANCE WITH PRE-PROCEEDINGS CHECKLIST

3.1 It is recognised that in a small minority of cases the circumstances are such that the safety and welfare of the child may be jeopardised if the start of proceedings is delayed until all of the documents appropriate to the case and referred to in the Pre-proceedings Checklist are available. The safety and welfare of the child should never be put in jeopardy because of lack of documentation. (Nothing in this Practice Direction affects an application for an emergency protection order under section 44 of the 1989 Act).

3.2 The court recognises that the preparation may need to be varied to suit the circumstances of the case. In cases where any of the Annex Documents required to be attached to the Application Form are not available at the time of issue of the application, the court will consider making directions on issue about when any missing documentation is to be filed. The expectation is that there must be a good reason why one or more of the documents are not available. Further directions relating to any missing documentation will also be made at the Case Management Hearing.

4. ALLOCATION

4.1 The court considers the allocation of proceedings in accordance with the Allocation Order and whether transfer is appropriate in accordance with this Order and the Guidance issued by the President on Allocation and Gatekeeping. When proceedings are issued in the magistrates' court the justices' clerk or assistant justices' clerk (with responsibility for gatekeeping and allocation of proceedings) will discuss allocation and transfer with a district judge of the county court (with responsibility for allocation and gatekeeping of proceedings as provided for in the Guidance issued by the President on Allocation and Gatekeeping) and will, where appropriate, transfer the case.

5. THE TIMETABLE FOR THE CHILD AND THE TIMETABLE FOR PROCEEDINGS

5.1 The timetable for the proceedings:

- (1) The court will draw up a timetable for the proceedings with a view to disposing of the application—
 - (a) without delay; and
 - (b) in any event with the aim of doing so within 26 weeks beginning with the day on which the application was issued.

- (2) The court, when drawing up or revising a timetable under paragraph (1), will in particular have regard to—
 - (a) the impact which the timetable or any revised timetable would have on the welfare of the child to whom the application relates; and
 - (b) the impact which the timetable or any revised timetable would have on the duration and conduct of the proceedings.

5.2 The impact which the timetable for the proceedings, any revision or extension of that timetable would have on the welfare of the child to whom the application relates are matters to which the court is to have particular regard. The court will use the Timetable for the Child to assess the impact of these matters on the welfare of the child and to draw up and revise the timetable for the proceedings.

5.3 The “Timetable for the Child” is the timetable set by the court which takes into account dates which are important to the child’s welfare and development.

5.4 The timetable for the proceedings is set having particular regard to the Timetable for the Child and the Timetable for the Child needs to be reviewed regularly. Where adjustments are made to the Timetable for the Child, the timetable for the proceedings will have to be reviewed consistently with the aim of

resolving the proceedings within 26 weeks or the period for the time being specified by the court.

5.5 Examples of the dates the court will record and take into account when setting the Timetable for the Child are the dates of—

- (1) any formal review by the Local Authority of the case of a looked after child (within the meaning of section 22(1) of the 1989 Act);
- (2) any significant educational steps, including the child taking up a place at a new school and, where applicable, any review by the Local Authority of a statement of the child's special educational needs;
- (3) any health care steps, including assessment by a paediatrician or other specialist;
- (4) any review of Local Authority plans for the child, including any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;
- (5) any change or proposed change of the child's placement; or
- (6) any significant change in the child's social or family circumstances.

5.6 To identify the Timetable for the Child, the applicant is required to provide the information needed about the significant steps in the child's life in the Application Form and the social work statement and to update this information regularly taking into account information received from others involved in the child's life such as the parties, members of the child's family, the person who is caring for the child, the children's guardian and the child's key social worker.

5.7 Where more than one child is the subject of the proceedings, the court should consider and will set a Timetable for the Child for each child. The children may not all have the same timetable, and the court will consider the appropriate progress of the proceedings in relation to each child.

5.8 Where there are parallel care proceedings and criminal proceedings against a person connected with the child for a serious offence against the child, linked directions hearings should where practicable take place as the case progresses. The timing of the proceedings in a linked care and criminal case

should appear in the Timetable for the Child. The aim of resolving the proceedings within 26 weeks applies unless a longer timetable has been set by the court in order to resolve the proceedings justly. In these proceedings, early disclosure and listing of hearings is necessary.

6. EXTENSIONS TO THE TIMETABLE FOR PROCEEDINGS

6.1 The court is required to draw up a timetable for proceedings with a view to disposing of the application without delay and with the aim of doing so within 26 weeks. If proceedings can be resolved earlier, then they should be. A standard timetable and process is expected to be followed in respect of the giving of standard directions on issue and allocation and other matters which should be carried out by the court on issue, including setting and giving directions for the Case Management Hearing.

6.2 Having regard to the circumstances of the particular case, the court may consider that it is necessary to extend the time by which the proceedings are intended to be resolved beyond 26 weeks to enable the court to resolve the proceedings justly. When making this decision, the court is to take account of the guidance that extensions are not to be granted routinely and are to be seen as requiring specific justification. The decision and reason(s) for extending a case should be recorded in writing (in the Case Management Order) and orally stated in court, so that all parties are aware of the reasons for delay in the case. The Case Management Orders must contain a record of this information, as well as the impact of the court's decision on the welfare of the child.

6.3 The court may extend the period within which proceedings are intended to be resolved on its own initiative or on application. Applications for an extension should, wherever possible, only be made so that they are considered at any hearing for which a date has been fixed or for which a date is about to be fixed. Where a date for a hearing has been fixed, a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice should as soon as possible inform the court (if possible in writing) and, if

possible, the other parties of the nature of the application and the reason for it. The party should then make the application orally at the hearing.

6.4 If the court agrees an extension is necessary, the intention is that an initial extension to the time limit may be granted for up to eight weeks (or less if directed) in order to resolve the case justly, meaning that the maximum time limit for proceedings will be 34 weeks. If more time is necessary, in order to resolve the proceedings justly, a further extension of up to eight weeks may be agreed by the court. There is no limit on the number of extensions that may be granted in a particular case.

6.5 If the court considers that the timetable for the proceedings will require an extension beyond the next eight week period in order to resolve the proceedings justly, the Case Management Order should—

- (1) state the reason(s) why it is necessary to have a further extension;
- (2) fix the date of the next effective hearing (which might be in a period shorter than a further eight weeks); and
- (3) indicate whether it is appropriate for the next application for an extension of the timetable to be considered on paper.

6.6 The expectation is that, subject to paragraph 6.5, extensions should be considered at a hearing and that a court will not approve proposals for the management of a case under FPR 12.15 where the consequence of those proposals is that the case is unlikely to be resolved within 26 weeks or other period for the time being allowed for resolution of the proceedings. In accordance with FPR 4.1(3)(e), the court may hold a hearing and receive evidence by telephone or by using any other method of direct oral communication. When deciding whether to extend the timetable, the court must have regard to the impact of any ensuing timetable revision on the welfare of the child.

7. INTERPRETATION

7.1 In this Practice Direction—

“Allocation Proposal Form” is the proposal in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Care Plan” means a “section 31A plan” referred to in section 31A of the 1989 Act;

“Case Analysis” means a written or, if there is insufficient time for a written, an oral outline of the case from the perspective of the child's best interests prepared by the children's guardian or Welsh family proceedings officer for the CMH or FCMH (where one is necessary) and IRH or as otherwise directed by the court, incorporating an analysis of the key issues that need to be resolved in the case including _

- (a) a threshold analysis;
- (b) a case management analysis, including an analysis of the timetable for the proceedings, an analysis of the Timetable for the Child and the evidence which any party proposes is necessary to resolve the issues;
- (c) a parenting capacity analysis;
- (d) a child impact analysis, including an analysis of the ascertainable wishes and feelings of the child and the impact on the welfare of the child of any application to adjourn a hearing or extend the timetable for the proceedings; and
- (e) an early permanence analysis including an analysis of the proposed placements and contact framework;

“Case Management Order” is the prescribed form of order referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Day” means “business day”;

“Experts Practice Directions” mean-

- (a) Practice Direction 25A (Experts – Emergencies and Pre Proceedings Instructions);
- (b) Practice Direction 25B (The Duties of An Expert, The Expert’s Report and Arrangements For An Expert To Attend Court);
- (c) Practice Direction 25C (Children’s Proceedings – The Use Of Single Joint Experts and The Process Leading to An Expert Being Instructed or Expert Evidence Being Put Before the Court);
- (d) Practice Direction 25E (Discussions Between Experts in Family Proceedings).

“Genogram” means a family tree, setting out in diagrammatic form the child’s family and extended family members and their relationship with the child;

“Index of Checklist Documents” means a list of Checklist Documents referred to in the Public Law Outline Pre-Proceedings Checklist which is divided into two parts with Part A being the documents referred to in column 2, paragraph (a) of the Pre-Proceedings Checklist and Part B being those referred to in column 2, paragraph (b) of the Pre-proceedings Checklist;

“Letter Before Proceedings” means any letter from the Local Authority containing written notification to the parents and others with parental responsibility for the child of the Local Authority’s plan to apply to court for a care or supervision order and any related subsequent correspondence confirming the Local Authority’s position;

“Local Authority Case Summary” means a document prepared by the Local Authority legal representative for each case management hearing in the form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Parents’ Response” means a document from either or both of the parents containing

- (a) in no more than two pages, the parents’ response to the Threshold Statement, and

(b) the parents' placement proposals including the identity of all relatives and friends they propose be considered by the court;

"Section 7 report" means any report under section 7 of the 1989 Act;

"Section 37 report" means any report by the Local Authority to the court as a result of a direction under section 37 of the 1989 Act;

"Social Work Chronology" means a schedule containing—

- (a) a succinct summary of the significant dates and events in the child's life in chronological order- a running record up to the issue of the proceedings;
- (b) information under the following headings—
 - (i) serial number;
 - (ii) date;
 - (iii) event-detail;
 - (iv) witness or document reference (where applicable);

"Social Work Statement" means a statement prepared by the Local Authority limited to the following evidence—

Summary

- (a) The order sought;
- (b) Succinct summary of reasons with reference as appropriate to the Welfare Checklist;

Family

- (c) Family members and relationships especially the primary carers and significant adults/other children;
- (d) Genogram;

Threshold

- (e) Precipitating events;
- (f) Background circumstances;
 - (i) summary of children's services involvement cross-referenced to the chronology;
 - (ii) previous court orders and emergency steps;
 - (iii) previous assessments;

- (g) Summary of significant harm and or likelihood of significant harm which the LA will seek to establish by evidence or concession;

Parenting capacity

- (h) Assessment of child's needs;
- (i) Assessment of parental capacity to meet needs;
- (j) Analysis of why there is a gap between parental capacity and the child's needs;
- (k) Assessment of other significant adults who may be carers;

Child impact

- (l) Wishes and feelings of the child(ren);
- (m) Timetable for the Child;
- (n) Delay and timetable for the proceedings;

Early permanence and contact

- (o) Parallel planning;
- (p) Placement options;
- (q) Contact framework;

Case Management

- (r) Evidence and assessments necessary and outstanding;
- (s) Case management proposals;

“Standard Directions on Issue and Allocation” means directions given by the court on issue and upon allocation and/or transfer in the prescribed form referred to in any Guidance issued by the President from time to time on prescribed templates and orders;

“Threshold Statement” means a written outline by the legal representative of the LA of the facts which the LA will seek to establish by evidence or concession to satisfy the threshold criteria under s31(2) of the 1989 Act limited to no more than 2 pages;

“Welfare Checklist” means the list of matters which is set out in section 1(3) of the 1989 Act and to which the court is to have particular regard in accordance with section (1)(3) and (4).

