



## **THE FAMILY COURT SITTING AT BIRMINGHAM**

### **AGREED LOCAL PROCEDURE 4<sup>TH</sup> JANUARY 2022**

#### **ACCELERATED PROCEDURE FOR APPLICATIONS TO DISCHARGE CARE ORDERS**

The procedure is an agreement between Birmingham Children's Trust, Solihull MBC, Cafcass and the Birmingham Family Court, which is applied to specific applications to discharge care orders.

#### **Purpose of the accelerated procedure**

This procedure is designed to streamline and accelerate the court process upon an application being made to discharge a care order.

#### **The aims of the procedure**

- a. To reserve the procedure for cases where the position has changed since the making of the care order and where families now only require universal services, with the agreement of the local authority, the parents and the extended family.
- b. To allow Cafcass to carry out a 'pre-proceedings management review' and make a recommendation as to suitability for the accelerated procedure thereby negating the need for a children's guardian to be appointed, subject to the court's approval.
- c. For the court to make decisions at one hearing where possible.

#### **The accelerated procedure applies where:**

- a. The local authority issues the application to discharge the care order;
- b. The local authority files a certificate on issue that the accelerated procedure is appropriate because the circumstances make it unlikely that the other parties will oppose the application; and
- c. The local authority files with the application the documents listed in Appendix B.

#### **Where the accelerated procedure does not apply:**

- a. The local authority has reasonable grounds to believe that the application is likely to be opposed;
- b. Where there are likely to be difficult issues of law or fact; or
- c. The discharge application is made by anyone other than the local authority – even though the application is unlikely to be opposed - unless accompanied by a supporting letter from the local authority.

The court retains the discretion to determine whether the application lodged by the local authority is one which is suitable to be dealt with under the accelerated procedure or should otherwise be processed in the usual way.

### **The benefits of the accelerated procedure:**

- a. a significant reduction in the overall time spent on the case by the court, local authorities and Cafcass;
- b. the need for only one court hearing if at all possible;
- c. a shortened discharge document (analysis) filed by the children's guardian (not anticipated to exceed 2 pages in length) where a children's guardian is appointed by the court when the application is issued;
- d. dispensing with the attendance of the children's guardian at the final hearing, if deemed appropriate by the court;
- e. the local authority will file written consent from the parents, together with the minutes of the last child in care review including the recommendation of the independent reviewing officer.

## **PROCEDURE**

### **1 Pre-issue procedure**

1.1 Where, following a child in care review and a decision by the appropriate senior officer, it has been deemed by Birmingham Children's Trust or Solihull MBC that the case is suitable for the accelerated procedure, a bundle will be prepared to include:

- (i) a certificate in the form set out in Appendix A;
- (ii) a paginated and indexed bundle consisting of copies of all the documents listed in Appendix B.

1.2 The local authority will indicate in the application if it intends to invite the Court to dispense with service of the application upon any respondent(s) to the original care proceedings.

1.3 Where required, the local authority lawyer will prepare an application for the disclosure of documents from the care proceedings into the discharge application.

1.4 The local authority lawyer will then send the core bundle to Cafcass for pre-proceedings management review prior to issue and approval for the accelerated procedure.

1.5 Upon reviewing the bundle, Cafcass will provide the local authority lawyer with a letter of recommendation as to whether the case is suitable for the accelerated procedure and their view on the appointment of a guardian.

- 1.6 The letter of recommendation will be provided to the local authority lawyer within two weeks after receipt of the bundle by Cafcass.
- 1.7 Where safeguarding issues are identified in the Cafcass pre-proceedings management review, these will be raised by Cafcass with the local authority lawyer and social worker. The application will not be progressed while these matters are further considered.
- 1.8 If fresh information emerges during the review by Cafcass, that information should be sent to the other agencies involved upon receipt and without delay. Cafcass is to advise the local authority lawyer where there is further evidence relevant to the decision.

## **2. Issue of the application**

- 2.1 On receipt of the Cafcass letter of recommendation under the accelerated procedure, the local authority lawyer will make the application on the FPL Portal and upload the supporting evidence, draft case management order and the letter of recommendation from Cafcass.
- 2.2 The local authority shall include provision in the draft case management order for HMCTS to refer the matter to the allocated Judge not less than five working days prior to the final hearing in order to consider:
- (i) whether the case remains suitable for the accelerated procedure;
  - (ii) whether the attendance of the children's guardian, if appointed, can be dispensed with at the final hearing.
- 2.3 The application shall be made within fourteen days of receiving the letter of recommendation from Cafcass.
- 2.4 When the application with supporting documents is made Cafcass will receive automatic notification of the application from HMCTS.
- 2.5 The allocated lawyer will indicate in the application on the Portal that the case is appropriate for the accelerated procedure and that both the local authority and Cafcass believe that the involvement of a children's guardian is not necessary, as a result of the pre-proceedings management review by Cafcass and the letter of recommendation.

**NB:** It is important for local authorities to note that the court staff have been instructed not to accept applications under the accelerated procedure unless the pre-issue requirements above are complied with.

## **3. Post issue procedure**

- 3.1 Upon the local authority lodging the application to discharge the care order, HMCTS will:

- a. issue, seal and return copies of the application to the applicant local authority for service on the appropriate parties, including Cafcass (where appropriate);
- b. at the gatekeeping stage the gatekeeper will contact the allocated Judge for consideration as to whether the application is one which falls within the accelerated procedure and give appropriate directions.

3.2 The Judge will, upon deciding that the application is appropriate for the accelerated procedure:

- a. consider if a guardian is required in light of the pre proceedings management review by Cafcass and the letter of recommendation;
- b. appoint a children’s guardian where the court deems it is necessary and further investigations are still required in respect of the application;
- c. direct the respondents to file and serve evidence in response to the discharge application by a specified date, where appropriate;
- d. direct the children’s guardian to carry out the investigations set out in Appendix C to the accelerated procedure;
- e. direct the children’s guardian to file and serve a short discharge document (analysis) (not exceeding 2 pages) by a specified date;
- f. set the matter down for a final hearing with a time estimate of 1 hour, allowing a minimum period of 12 weeks for the children’s guardian to file their analysis where one is required;
- g. review the file not less than 5 working days prior to the final hearing in order to consider whether the case remains suitable for the accelerated procedure and whether the attendance of the children’s guardian, if appointed, can be dispensed with at the final hearing.

#### **4. The children’s guardian’s duties if appointed by the Court**

4.1 The overriding duty of the guardian is the duty to safeguard the interests of the child and to carry out the investigations and enquiries set out in Appendix C to the accelerated procedure.

4.2 If, at any point during the guardian’s investigations, it is considered that the discharge application may not be dealt with appropriately under the accelerated procedure, the guardian shall inform the court of this view and the court will set the matter down for a directions hearing to consider the relevant issues.

4.3 The analysis to be prepared and filed by the guardian, as directed, shall follow the following format:

- a. the document shall not exceed 2 pages of A4 unless the circumstances are exceptional;
- b. the analysis shall set out, in brief, the nature and extent of their investigations and enquiries;
- c. the analysis shall advise on the best interests of the child and, in particular, whether the guardian supports the discharge application;

- d. the analysis may contain a request for the discharge of the appointment of the children's guardian on the ground that their continued involvement is not necessary to safeguard the child's interests; and
- e. the analysis shall address only those items of the welfare checklist that are directly relevant to the particular circumstances of the child, provided that the guardian confirms that they have considered the matters relevant to the child.

This procedure is approved by Her Honour Judge Thomas, Designated Family Judge for Birmingham

Dated: 4<sup>th</sup> January 2022

**Appendix A**

**Accelerated Procedure Certificate**

In the Family Court sitting at Birmingham

Case Number: BM...

Birmingham City Council/Solihull MBC

Applicant

and

Respondent

and

Respondent

I, *(name of solicitor for the local authority)* certify:

- (i) that this local authority application to discharge the care order(s) made on..... under case number ..... is suitable to be dealt with under the accelerated procedure because it is unlikely to be opposed by any party;

AND

- (ii) copies of all the documents listed in Appendix B of the accelerated procedure for applications to discharge care orders, in so far as they may be relevant, accompany this application.

Date:

Signature:



**BIRMINGHAM  
CHILDREN'S TRUST**

## Appendix B

### **Documents to be lodged on issue in a local authority application to discharge a care order under the Accelerated Procedure**

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The application shall be accompanied by a bundle comprising copies of the following documents:

#### **The previous proceedings, to include:**

- Judgment, where available;
- Agreed threshold document;
- Care order;
- Care plan;
- Final analysis of the guardian.

#### **Current proceedings, to include:**

- Application to seek to discharge the care order and details of any further order which should be made.
- A brief relevant chronology.
- Statement in support by the social worker, setting out:
  - the reasons for the application and whether it is intended to apply for a child arrangements, special guardianship or other order, should the care order be discharged;
  - the current circumstances;
  - the current and proposed future arrangements for the care and upbringing of the child;
  - the matters which led to the care proceedings;
  - any outstanding concerns;
  - the number of times the child has been seen by children's services in the 24 months prior to issue;
  - the current arrangements for the child's care and education;
  - any change in the child's circumstances since the conclusion of the care proceedings;
  - the views of relevant agencies;
  - the views of the parents and any future carer and exhibiting the written consent to the application of the parents and the carers;
  - a consideration of the factors in the welfare checklist.
- An assessment of the parents if relevant.
- Child in need plans, where relevant.
- Where the court will be invited to make an SGO, the SGO assessment together with the agreed support plan.
- A signed consent from the parents and/or carers to the application being made and the orders sought.
- A signed consent from the parents and the carers to the disclosure of the pre-proceedings information to Cafcass.
- The minutes of the last child in care review, including the recommendation of the independent reviewing officer.
- Certificate form at Appendix A.

## Appendix C

### **Investigations and enquiries to be carried out by the children's guardian under the Accelerated Procedure if appointed by the Court**

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The children's guardian will be required to:

- (i) consider all the documentation which accompanied or should have accompanied the discharge application on issue [see Appendix B];
- (ii) ascertain the child's wishes and feelings;
- (iii) visit the child in their placement and observe the child with the current carers;
- (iv) ascertain the views of the parents and carers;
- (v) consider the factors in the welfare checklist and, in particular, whether the child would be at risk of significant harm if the care order were to be discharged.