THE FAMILY COURT SITTING AT BIRMINGHAM

MAKING CASES SMALLER AND MAKING EVERY HEARING COUNT IN BIRMINGHAM

Introduction

1. I apologise for adding to your inbox at such a busy time, but the attached messages are important, and many are designed to reduce your workload not to add to it.

2. May I start with a heartfelt thank you to all solicitors, barristers, social workers, children's guardians and Judges for all that you are doing in the welfare best interests of children and for all that you have done, in such exceptionally difficult circumstances, over the last two years. Every day you are all going the extra mile, which is very much appreciated.

Making Cases Smaller and Making Every Hearing Count

3. Since the conference of the Midland Circuit's Designated Family Judges in December 2021 all the family Judges on the Midland Circuit have been endeavouring to make cases smaller and to make every hearing count, which means having fewer and shorter hearings in each case. In his 'View from The President's Chambers: March 2022' and 'Making Every Hearing Count: Case Management Guidance in Public Law Children Cases: March 2022' Sir Andrew McFarlane, the President of the Family Division (PFD), has stressed the importance of this and the reasons for it. I attach these documents for ease of reference. They are available, together with all the Birmingham documents and template orders, on the West Midlands Family Law Bar Association website.

4. There is, as we all know, a statutory requirement for each public law application to be concluded within 26 weeks [Children Act 1989, section 32(1)]. The Children Act 1989, section 1(2) requires a court to have regard to the general principle that any delay in determining a question regarding the upbringing of a child is likely to prejudice that child's welfare.

5. As the PFD sets out at paragraph 8 of the 'Guidance', the statutory focus of any public law case must be confined to two issues **only**:

i. Are the Children Act 1989, section 31 threshold criteria established, and, if so, on what basis?

ii. By affording paramount consideration to the child's welfare, and taking account of:

(a) 'the permanence provisions' in the child's care plan [Children Act 1989, section 31(3A)]; and

(b) the arrangements for contact [Children Act 1989, section 34(11)];

but **no other part of the care plan**, what final order, if any, is to be made.

The Threshold

6. In the vast majority of cases in Birmingham there is no real issue in respect of the threshold criteria and no dispute that it is crossed. Both local authorities, Birmingham and Solihull, are working to ensure that when proceedings are issued the local authority has a clear and properly considered threshold, to which the parents can then respond. Thresholds should be short and focused on what the local authority seeks to prove, with reference to the evidence relied upon.

7. Responses to the threshold document should be clear, indicate whether it is accepted that the threshold is established and ensure that all aspects of the local authority's document is responded to. The response that 'This is for the first / second respondent to respond to' when, for example, the parties live together in the same house and know whether the other is drinking to excess and / or using drugs, is not an acceptable response. Each has the advantage of separate representation and should, therefore, provide a separate and complete response.

8. There is a continuing issue that some responses to threshold are being drafted as responses to an interim threshold. The interim threshold will almost always have been dealt with at the initial hearing and after that hearing, at which the application for an interim care order is dealt with, written responses to threshold should only address the threshold (and not the interim threshold).

9. Since January 2022 some of the parents in Birmingham who have not responded adequately to the threshold have been required to attend court in person to explain to the Judge why they have failed to do so, and how any extension will fit into the timetable. In other cases where the parents have not responded they are taken as not disputing the threshold criteria as pleaded by the local authority [paragraph 13(e) of the Birmingham case management order template]. The requirement to attend court is approved by the PFD at paragraph 12(f) of the 'Guidance'.

Assessments

10. The local authority is expected to lodge an assessment plan, setting out assessments which have already been completed pre-proceedings and a timetable for any other

assessments, which fits into the overall timetable [see the PFD's 'Guidance' at paragraph 12(c)].

11. Applications pursuant to Part 25 of the Family Procedure Rules frequently do not comply with the Rules and, in particular, the questions for the proposed expert are discursive rather than focused and preliminary enquiries have not been made of the proposed expert [PD25B paragraph 6.1 and PD25C paragraph 3.2]. Whilst it is recognised that such applications are frequently prepared under considerable pressure of time, it is important that they provide the court with the required material to enable the court to apply the statutory test in the Children and Families Act 2014, section 13.

12. Guidance in respect of assessments by independent social workers and psychologists is provided by the PFD at paragraph 12(g) of the 'Guidance'. I have had recent experience of expert evidence where the report was limited to no more than 25 pages in 12-point typeface. It was the view of all the parties in the case that the report was particularly helpful and focused and that its conclusions could be easily understood by the parents.

Compliance

13. Non-compliance due to sickness or other unforeseen circumstances is, of course, unavoidable but non-compliance for other reasons is not acceptable. Whilst it is well known that there is a national shortage of social workers the PFD makes it clear in the 'Guidance' that local authorities must provide the court with a timetable which fits into the statutory timetable for the proceedings and the timetable for the child(ren) with an explanation in respect of any difficulties.

14. The Compliance Court was re-introduced following the relaxation of Covid restrictions and cases will either be listed before me or the allocated Judge where a hearing is necessary. At a time when everyone is so busy extra hearings are not a good use of professional time. It is, therefore, imperative that the timetable for the proceedings is kept under review so that non-compliance does not take the parties by surprise. It is also important that timely applications are, when necessary, made to extend the timetable for the proceedings, albeit that our aim is to conclude as many cases as possible within 26 weeks.

Position Statements

15. Position statements are invaluable to the other parties and the court in the preparation of cases. They are typically required to be filed 24 hours prior to a hearing. The Birmingham case management order template sets out that 'In accordance with PD27A, position statements should not exceed three pages in length. A single page with bullet points will suffice [paragraph 35(c)]. In this regard, brevity is a virtue and not a vice. In an effort to reduce the pressure on advocates I have made it clear, with the support of the Judges in Birmingham, that a detailed minute of the advocates' meeting which sets out the position of all the parties will obviate the necessity of a position statement. I have been provided with excellent examples of such minutes and the members of the

Case Management Group have indicated that this has resulted in a significant saving of time, both in preparing a position statement and in reading those prepared by others.

16. This is, of course, only possible if the advocates attending the advocates' meeting have up to date instructions, which may need to be instructions in respect of various alternative scenarios. If the advocate is not so instructed, then the minutes of the advocates' meeting may not be able properly to reflect the position of the parties, in which case position statements will need to be sent to the court no later than 2pm on the day before the hearing. If you are without instructions or are counsel who is instructed at the last minute, an email to the other parties and the court explaining the position is helpful, or as helpful as you are able to be. For the avoidance of doubt, it is expected that the court will receive either a detailed minute of the advocates' meeting which sets out the position of all the parties or a position statement – not neither!

17. I am very concerned that a large influx of documents at the very last moment, frequently when the advocates and the Judge are involved in another case listed earlier in the day, means that there is no possibility of a break between cases, no opportunity or certainly no proper opportunity to take instructions on these documents and no opportunity for reflection on the stance of another party. This also means that everyone has no alternative but to work at a time dictated by others and at the last minute. I am frequently told of advocates who have concluded their preparation of a case, then to receive more documents very shortly before the hearing. This is frequently my experience as well. None of us know the pressures in the lives of our colleagues and we all need to comply with the Rules and the orders of the court so that we are all enabled to work at a time of our choosing, rather than at a time dictated by others.

18. For the parties and the court to know the position of each party at least a day before the hearing is of great benefit, both professionally and personally in terms of time management for preparation, but also so that the **real issues** can be focussed upon, that is the issues which it is necessary for the court to determine to dispose of the case.

19. Last minute instructions or a change of instructions can, of course, only be communicated when the position is known, and we all appreciate this, but none of the matters which have been raised with me have involved such situations.

Case Plans and Witness Templates

20. The Public Law Working Group commended the Birmingham case plan and witness template. Those documents were prepared to deal with the circumstances of the pandemic. Simplified versions of both documents have been prepared following the lifting of the Covid restrictions, and I am very grateful to the Case Management Group for their considerable help with these.

21. The President's 'Guidance' stresses the importance of these documents at paragraph 12(k) and that no case should be timetabled for a final hearing (or if one is necessary, a finding of fact hearing) without **a fully completed witness template** – to include allocation of time (not a time estimate) for the cross-examination of each witness. It is important that breaks are factored in, particularly for lay parties who require additional breaks.

Hearings

22. The Circuit Judges in Birmingham will continue to list cases at set times and will not revert to listing all the cases in the list at 10:30am as was essentially the position prior to 23rd March 2020. The District Judges will continue listing in this way, as they have always done. All the family Judges are looking forward to conducting more cases in person and you are all reminded that such hearings can be more flexible, giving the parties the opportunity for useful discussions and the making of necessary enquiries.

23. Remote and hybrid hearings will, of course, continue where they are appropriate. May I draw your attention to the language, which is used in court hearings, particularly where the parties are not with their lawyers and do not, therefore, have the opportunity to ask what particular terms and acronyms mean. There is an interesting article in respect of the use of language in proceedings by Helen Adam in last August's Family Law Journal ([2021] Fam Law 1015).

24. The expectation of the Judges in Birmingham is that with the removal of Covid restrictions, that **the parents will be with their advocates** at court or at the solicitor's office or counsel's chambers, unless there is a very good reason why this is not possible.

25. Many of you have drawn my attention to the backgrounds used by others for remote hearings. I have been told of some that are wholly unsuitable, in that they have family photographs prominently displayed in cases where adoption is the plan for the child who is the subject of the proceedings. It is very easy to blur one's background and may I suggest that this is, perhaps, the most appropriate background for advocates and professionals who are not sitting in a courtroom or in the office or chambers. That said, at the time of writing, the blurring feature does not exist on the Cloud Video Platform (CVP).

Wellbeing

26. As the President indicated at the outset of his 'View', each and every one working in Family Justice is doing so at the extent of their capacity, and has been doing so, now, for over two years. It is, therefore, all important that we all work together to reduce the number of hearings, concentrate on the issues in each case and that we, therefore, make cases smaller. This approach will, hopefully, have an impact on the wellbeing of us all.

27. May I remind you all of Birmingham's Wellbeing Protocol, and of the relevant parts of Wellbeing in the Time of Covid, which continue to apply in the light of the volume of work that everyone is dealing with.

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Designated Family Judge for Birmingham

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