

Working Protocol between Children’s Social Care and Legal Services

The purpose of this document is to provide clarity for social workers and lawyers so that both parties are clear about what they can expect of each other.

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1. Context

The purpose of this document is to ensure that all lawyers and staff with Children and Young People’s Services are clear about each other’s role and there is a clear framework for legal advice to be sought and received. It has been updated in light of learning from recent Serious Case Reviews.

2. Advice

Local Authority lawyers provide advice on all aspects of legislation relating to children. A key part of their role is to provide advice on whether the threshold is met to issue care proceedings and if so, whether the family should be asked to work in partnership with the local authority in accordance with the Public Law Outline, or whether care proceedings should be issued without further delay.

It is the role of the social work team to determine what action they believe to be in the best interests of the child or young person and instruct the legal team on the approach they wish to take. The responsibility for care planning remains with the social work team.

The legal team have lawyers allocated to specific social work teams to. This is to ensure efficient use of resources, opportunity to build up relationships and consistency of advice. Therefore, when advice is sought it should be directed to the allocated lawyer for that team. If urgent advice is required and the usual solicitor is

unavailable, the team manager should contact one of the other solicitors in the team.

Cases where there is a need for legal advice will always be complex, therefore all legal advice should be sought in writing. This provides the lawyer with the opportunity to review the information available, before providing advice in writing, so there is clear audit trail for this process.

Prior to seeking legal advice, the situation should have been discussed with the team manager and the operations manager. Legal advice Must be sought within a legal planning meeting (LPM), where discussions around threshold and the plan will be clearly recorded.

There will be occasions where there is a need to seek legal advice or have a legal discussion outside of an LPM. There will need to be a clear record of the discussion and advise, this will need to be evident within the child's electronic case notes. The lawyer will need to agree any communication that is to be recorded within LCS. Emails should not be uploaded into case notes. The is the same applies to IRO's when recording discussions/ communications with lawyers.

LEGAL ADVICE MUST NOT BE SHARED WITH PARENTS WHO MAKE A SUBJECT REQUEST ACCESS REQUEST TO VIEW CASE FILES.

3. Case preparation

The LPM template is used to form the basis of the decision making in relation to cases progressing to PLO and care proceedings. The social worker will need to complete relevant information in section1, which should be circulated to the lawyer, team manager and operations manager prior to the meeting. The discussion should be based on informed and analytical information. The threshold, views and decision of all attendee's should be clearly recorded within the template. The completed documents, including the legal advice, chairs recommendations and strategic managers views (care proceedings only) will be uploaded onto LCS. Agreement will need to be sought from the strategic manager where there is a recommendation to issue care proceedings.

Pre-Proceedings

There is an expectation that the draft letter before proceedings will be available at the legal planning meeting. The letter should set out what is expected of the parents/carers to address the concerns for their child, what assessments and support they will be expected to engage with and the timescales for so doing as part of next steps. The contents of the letter will be agreed and finalised within the LPM.

The Lawyer will be responsible for sharing arranging the PLO meeting. The team manager will be responsible for chairing PLO meetings and ensuring minutes are taken and circulated. A date for a review PLO meeting will be set at the end of each PLO meeting.

The progress of the PLO will be monitored within operational legal clinic within 4 weeks of the LPM and at regular intervals. The case will be reviewed at strategic panel at the 16 week point.

Care Proceedings

When the decision is made to commence care proceedings, the social worker must complete a statement, using the SWET template on LCS and a care plan. Legal services cannot issue care proceedings without these documents, (other than in limited circumstances i.e. where child has been injured and there is a medical report which confirms that the injury is non-accidental.)

Before the court paperwork is submitted to legal services, it must be reviewed by the team manager/social work consultant, before being sent to the Operations Manager who must read the paperwork and endorse the care plan by signing it.

It is the responsibility of the social work team manager or social work consultant to ensure that all paperwork submitted to the operations manager is of good quality and is consistent with the decisions that were made when initial legal advice was given. Once the operations manager has QAd the paperwork will be submitted to legal services via LCS pathway.

Once care proceedings have been issued and the timetable fixed, the social worker must arrange to complete the documentation at least 7 days prior to the filing date fixed agreed at court, to allow time for documents to be quality assured by the team manager or social work consultant and Operations Manager, before being forwarded to the legal services, to be read by the solicitor running the proceedings. The documents must be sent to legal services within the LCS pathway, this will allow comments to be made on the document, if necessary, before it is finalised.

Documents should not usually be sent directly to legal services unless they have been QAd. The documents can only be sent directly to the lawyer when the application is urgent and legal services agree to receive the statement before it has been QAd. Documents need to reach legal services at least 3 working days before the filing date. If the lawyer does not believe the paperwork is of good enough quality or does not provide sufficient evidence to support the agreed course of action it will be returned to the operations manager via the LCS pathway with feedback detailing what needs to be amended or strengthened, within 1-2 days of receipt. It is not the role of the lawyers to re-write this paperwork, although minor amendments will be made.

IRO comments should be added to initial SWETs when they have been involved and have a knowledge of the case. If the application is urgent there may not be the opportunity for comments to be added. IRO comments are required to be added to final care plans before they are submitted to the operations manager for sign off and agreement.

There is a requirement for the allocated social worker and lawyer to maintain regular contact throughout the duration of the proceedings. Legal services must be informed immediately of any significant developments in the case so that the parents and child's solicitors can be informed and if necessary, the court. Any significant decisions in relation to the care plan must involve legal services.

The social worker will also need to ensure that the IRO is made aware of any significant changes to a child's care plan during care proceedings.

The progress of the care proceedings will be scrutinised at Operational clinic and Strategic panel at regular junctures. The proposed final plan will need to be presented and agreed at strategic panel.

4. Representation in court

In all cases it is the expectation that the allocated social worker attends each hearing with the lawyer. If hearings are being conducted virtually the principles set out below still apply, albeit attendance is likely to be by phone or video.

All cases in court are complex and it is vital that any social worker attending court has had sufficient training and feels sufficiently confident to request advice from and provide instruction to the lawyer, respond to direct questioning from all parties during discussions at court (if the hearing is taking place in a court building rather than remotely) and give evidence where required.

The social worker attending the hearing needs to have sufficient understanding about decisions that may have a financial implication, or present a reputational risk to the local authority, so that they can seek necessary support and approval from a senior manager, before agreeing to any suggestions made at court. The social worker must inform the lawyer straight away that they do not have the authority to agree to what is being proposed, if there are cost implications for DCC.

It is good practice that the team manager or social work consultant participates in the court hearing to support the allocated social worker. If this is not possible, it is the responsibility of the team manager to ensure that the allocated social worker is sufficiently confident and competent to attend without support and a named Team

Manager must be available on an “on-call” basis for the duration of the Court Hearing

If a newly qualified social worker is attending a hearing, they must be accompanied by a social work consultant or team manager.

Wherever possible the legal team will notify the team manager and social worker who is representing the Local Authority in court if it is not the usual DCC lawyer.

Pre covid, a significant amount of discussion and negotiation would take place outside of the court hearing and it is vital that the allocated social worker and the lawyer are prepared for these. In the event that there is a need for a physical hearings, social workers should not enter into these discussions with other parties, without their lawyer present.

As most hearings currently involve the social worker participating by phone or video link, the social worker and lawyer need to agree in advance of the hearing how they will communicate with each other during the hearing – it is usually possible to maintain contact with each other by email. If the hearing is via video link, no comments should be made on the “chat function” on the video link as everyone involved in the hearing can read such messages.

Any proposed deviation from the court submitted care plans needs to be discussed and agreed with the operations manager before being agreed in court.

Following the hearing the lawyer will provide a copy of the order to the social worker and team manager and confirmation of dates when evidence is due to be filed at court.

5. Significant changes to a child’s care plan, post proceedings

It is important that the contingency plan should be set out clearly at the ratifying looked after review and within the final care plan presented to the court. Discussions should take place with the IRO where a child’s plan cannot be achieved or where there has been a significant change in circumstances since the care proceedings concluded and there is a proposed change of plan. A LPM should take place to consider whether the matter should be referred back to court, taking into account the judgment of HHJ Matthews QC in the case of re G, June 2019.

6. Challenge

If there is a fundamental disagreement between the lawyer and the social work team which cannot be resolved after discussion between the lawyer and team manager, this should be escalated by both the social work team and lawyer within working days to the relevant operations or strategic manager. If it is not possible to achieve a resolution at this stage this needs to be escalated to the relevant strategic manager and legal services manager within 2 working days. The resolution needs to be clearly recorded within the child's electronic records and the lawyer should make a note within their file. The lawyer will need to agree any communication that is to be recorded within LCS. Emails should not be uploaded into case notes.

7. Learning Process

A de-brief meeting will be convened within 3 working days where the outcome of the court proceedings is not in line with the Local Authority care plan. This should include as a minimum the operations manager, team manager, social worker, lawyer and IRO. This will provide an opportunity to decide whether there are grounds to appeal against the decision and also to reflect on whether anything could have been done differently during the proceedings.

8. Review

This document will be reviewed whenever necessary and at least once a year.

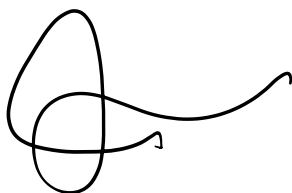
Signed: November 2020



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LEGAL PROCESS

Social worker discusses case with Team Manager or Social Work Consultant and it is identified that legal advice is required.

Discussion with Operations Manager to agree urgency of advice required.

Legal Planning Meeting convened between Social Worker, Team Manager/Social Work Consultant, Lawyer and Operations Manager, who should chair the meeting .

Lawyer's summary of advice to be added to the legal planning meeting template within 48 hours of the meeting taking place.

Is threshold met to enter into Public Law Outline or Issue Care Proceedings and is the Operations Manager in agreement (Strategic Manager for care proceedings only) with this course of action?

Yes

No

Is urgent action required?

Yes

No

Entry into care documentation completed and sent to Strategic Manager for approval.

Complete SWET documentation if Issuing Care Proceedings

Complete SWET documentation if plan is to Issue Care Proceedings

Complete PLO documentation if plan is to enter PLO.

All PLO & Care Proceedings tracked through Locality Operation and Strategic Panel's