

PROTOCOL FOR LOCAL AUTHORITY APPLICATIONS TO DISCHARGE CARE ORDERS

1. Introduction

1.1 By section 39(1) Children Act 1989 a care order may be discharged by the court on the application of:

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the local authority designated by the order.

1.2 This protocol only applies to applications which are:

- (a) made by the local authority under S39(1)(c);
- (b) unlikely to be opposed by parents/carers; and
- (c) unlikely to include contentious areas of fact or law.

1.3 It does not therefore apply, for example, to an application made by a parent for the discharge of a care order.

1.4 This protocol does not:

- (a) in any way alter the list of respondents to the application (as set out with FPR 12.3)
- (b) alter the fact that applications to discharge care orders are 'specified proceedings' for the purposes of s.41 Children Act 1989 (meaning that the court will appoint a Children's Guardian unless satisfied that it is not necessary to do so in order to safeguard the child's interests).

1.5 At any point the court may direct that the protocol does not or no longer applies in a particular case.

2. The Protocol and the process

2.1 Pre-issue:

When a local authority considers that this protocol should apply to an application for the discharge of a care order it must:

- (a) Include with the application a formal written request that the matter be considered in accordance with this protocol;
- (b) Include with such request the following documents and information, together with a paginated index -
 - (i) A copy of the care order (or a document stating when the order was made and by whom)
 - (ii) A copy of the s.31 threshold established at the time of the final order (unless included on the face of the care order itself)
 - (iii) If available, a transcript or transcripts of any judgment(s) delivered during the care proceedings
 - (iv) A copy of the final report of the Children's Guardian in the care proceedings
 - (v) A copy of the approved care plan and any subsequent amendments to it

- (vi) Minutes of any LAC reviews at which the question of discharge has been actively considered
 - (vii) Relevant current medical evidence
 - (viii) A statement from the allocated social worker or team manager including the matters set out in (c) below;
- (c) The social work statement shall include -
- (i) The reasons for the application
 - (ii) A summary of the concerns which led to the care proceedings
 - (iii) Any currently outstanding concerns
 - (iv) The number of times the child has been seen by children’s services in the 24 months prior to issue
 - (v) The current arrangements for the child’s care and education
 - (vi) Any change in the child’s circumstances since the conclusion of the care proceedings
 - (vii) The views of the parents and significant others as to the application to discharge the care order
 - (viii) A consideration of the Section 1 Children Act 1989 ‘welfare checklist’ factors
 - (ix) Up to date information from the child’s school where applicable (including, for example, attendance, punctuality, presentation, academic progress)
 - (x) Up to date information from the health visitor, if applicable
 - (xi) Up to date information from any other relevant services involved with the family
 - (xii) Details of the proposed arrangements for continuing post discharge support if relevant.
 - (xiii) **Also consider whether a PR order or CAO is needed for parents/step parent**

2.2 Upon Issue

- (a) At gatekeeping, a decision will be made as to whether the protocol will apply.
- (b) If the protocol is to apply:
 - (i) If the care order was made by a judge, the case will be allocated if possible to that judge - or to the most appropriate alternative if the original judge is no longer available.
 - (ii) If the care order was made by the Justices, the case will be allocated if possible to the Legal Adviser involved at the time – or to the most appropriate alternative if that Legal Adviser is no longer available. In either case, the expectation will be that those justices who originally made the care order will have the opportunity to sit on the discharge application.

2.3 Directions upon Issue

The directions given upon issue will normally include:

- (a) The subject child or children being made parties to the application;
- (b) The appointment of a Children’s Guardian, with a request to CAFCASS that the Children’s Guardian in the original care proceedings be appointed within the discharge proceedings – the order will name that original Children’s Guardian.

- (c) An invitation to the appointed Children's Guardian to consider instructing a solicitor to act for the child or children (appreciating that Public Funding may not always be available);
- (d) The listing of the application before the allocated Judge or the lay bench for 60 minutes, no later than 8 weeks from the date of issue;
- (e) The notice of hearing will confirm (and specifically require the parties to note)
 - (i) that the hearing will be used as a final hearing of the application if possible
 - (ii) that attendance of all parties is required
 - (iii) that the attendance of the Children's Guardian is not required unless he/she believes attendance to be necessary
 - (iv) that timetabling and other directions will be given if a final decision cannot be made;
- (f) A direction that the Children's Guardian undertakes enquiries as to the issues set out in paragraph 2.4 below and prepares a position statement dealing with those issues (ideally not longer than 6 pages in length) no later than 4 working days before the hearing. The position statement may be written and signed by the Children's Guardian or alternatively by the solicitor for the child in accordance with the instructions of the Children's Guardian;
- (g) A direction that all other parties – if they disagree with the position of the Children's Guardian – prepare a position statement in response (ideally not longer than 6 pages in length) no later than 2 working days before the hearing;
- (h) Provision for an advocates meeting to take place no later than the last working day before the hearing in the event that there is no agreement at that stage as to the application to discharge the care order.

2.4 Issues to be considered by the Children's Guardian and included in his/her position statement:

- (a) Whether the application is suitable to be resolved under this protocol;
- (b) A review of all the documentation which accompanied or should have accompanied the discharge application;
- (c) The child's wishes and feelings if and as appropriate;
- (d) A description of the Children's Guardian's visit to the child in his/her home and any observations of him/her with the current and proposed carers;

- (e) The views of the parents, carers and any other relevant persons;
- (f) A consideration of the relevant 'welfare checklist' factors and, in particular, whether the child would be at risk of significant harm if the care order were to be discharged;
- (g) A recommendation as to whether or not the care order should be discharged and, if not, a summary of any further issues which need to be addressed before any final decision is made;
- (h) Any other issues considered to be relevant.