 

 

 **DISCHARGE OF CARE ORDER**

 **FAST TRACK PROCEDURE**

 **The Family Court - Worcester**

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1. **Objective**

To minimise delay and the number of hearings in applications for the discharge of care orders.

1. **Aims**

The aims are:

* To frontload the preparation of the case by the local authority.
* For the local authority to ensure that applications are based on proportionate and properly evidenced conclusions and decisions.
* For Cafcass to carry out a pre proceedings management review and recommendation as to suitability for the fast-track process.
* For the Court to make decisions in 2 hearings or less.

1. **Pre-Application**

**Social Work Actions before the Looked after Children Review:**

Establish the position at the point the final care order was made with reference to key documents: -

* Final orders of the Court.
* Agreed threshold document.
* Any judgment.
* Final approved care plans for all children.
* Key expert reports.

Establish the views of significant people: -

* The child.
* The parents/other person/s with parental responsibility.
* Key Professionals involved with the child and family.

To frontload and to ensure accurate reporting, **written reports** should be obtained from key professionals and agencies on their involvement and views on an application to discharge the Care Order. These should be available to the Looked after Children Review.

Where professionals raise objections, these should be fully understood and considered in reports and discussions.

Social work conclusions and recommendations in the report for Child in Care review should particularly consider:

* The reasons for seeking a Care Order at the time of the final hearing of the care proceedings.
* The continuing relevance of these issues detailing how they have been addressed.
* Have any further assessments taken place?
* Have support services been put in place and utilised?
* Has the family been monitored over a long enough period?
* Were there any issues around contact between the child and a significant adult and have these been addressed?
* Are the issues simply no longer relevant?
* Whether recommendations from previous care proceedings being implemented and reviewed?

**Looked after Children Review**

All the key documents obtained and the social work report recommending discharge should be provided to the Independent Reviewing Officer (IRO) for the review.

**Post Looked after Children Review Social Work Actions**

The plan to discharge the Care Order must be ratified in accordance with the Local authority’s scheme of delegation following a Legal Planning Meeting (LPM) taking place.

Take any pre – application actions identified at the Child in Care review and in the Child’s plan before drafting the documents needed for the application.

Obtain the consent of relevant persons to disclosure of documents to Cafcass. The Social Work Team should ensure that documents are available to those giving consent so that consent is fully informed. If consent cannot be obtained, this fast-track route to discharge is not possible.

Write to the parties to the care proceedings notifying them of the decision to apply for discharge of the Care Order.

Following the LAC review ratifying the care plan a LPM must be convened. Please ensure you follow the correct process for discharge of a care order. Add LINK to LA process

**Post Child in Care** **Review Escalation in the Event of Delay**

If the recommendation to discharge the Care Order has not been implemented by the next Looked after Children Review the IRO will automatically initiate the Dispute Resolution Process (DRP).

If the recommendation to discharge the Care Order has not been implemented by the following or any subsequent Child in Care Review the IRO will automatically escalate to the Director.

**Children’s Legal Team**

The Legal Team will allocate the case to a lawyer at the point of the LPM.

The Lawyer will give initial advice on the application and documents provided on the suitability for the fast-track process.

* Likely issues arising that may prevent/delay the order being discharged.
* Lack of planning.
* Issues not properly addressed e.g., contact arrangements post discharge of order.
* Support not provided.
* Evidence not provided by key professionals in up-to-date reports.
* Parties informed and positions known.
* SGO as an outcome is not an option through the fast-track route. However, lesser orders such as Child Arrangement Orders can be.

Where there is advice that the case is suitable for fast-track process the lawyer will: -

* Identify the previous child’s guardian.
* Prepare a core bundle of documents to be disclosed from the previous proceedings.

The discharge proceedings will usually include the following court documents: -

* Judgment where available.
* Agreed threshold document.
* Chronology since conclusion of care proceedings.
* Final Care Order.
* Final Social Work Statement.
* Parent’s final evidence.
* Final Care Plan.
* Child’s Guardian’s Report.
* Relevant expert assessments.
* Statement in support of discharge from social worker.

Prepare an application for disclosure of documents from care proceedings into the Care discharge application if necessary.

The allocated lawyer will then send the core bundle and the documents provided by the Social Worker to Cafcass for management review and approval as a fast-track case.

**CAFCASS**

Cafcass requires that fully informed consent is given to the disclosure of the new information provided to Children Services in support of the application. Consent to disclosure of information from the old care proceedings is not needed.

CAFCASS will carry out a management review and will provide the WCC Lawyer with a letter of recommendation as to whether the case is suitable (if not suitable, recommended work to be set out in the letter) to be fast tracked within **4 weeks** of receipt of the case papers.

Where safeguarding issues are identified these will be raised by the Cafcass reviewer with legal services and Social Worker. The file will be returned while these matters are further addressed.

If fresh information emerges during the review by Cafcass this should be sent to the other agencies involved by Childrens Services. Cafcass is to advise legal services where there is further evidence relevant to the decision whether or not to apply for the Discharge of a care order and if it would still be likely to be successful.

1. **Issue of Application**

**Legal Team**

On receipt of the Cafcass letter of recommendation for the fast-track process, legal services will issue the application with supporting evidence and the letter of recommendation. Cafcass will be copied into the email to the Court. Children’s Service’s will also confirm that the case is appropriate to be fast tracked.

On return of the issued application and notice of hearing from the Court, notify the Social Work Team and give advice to the Social Worker as to service of the documents upon the Respondents.

In preparation for the first (and final) Court hearing, prepare the Court bundle and fast track draft directions.

**Her Majesty’s Courts and Tribunal Services (HMCTS) and Court**

Fast track applications should be listed between **7 and 14 days** of application.

The aim of the fast track route is to conclude with one hearing where possible.

Where another hearing is necessary, a final hearing should be listed within **4 weeks** of the initial hearing.

1. **First and Subsequent Hearings**

**Legal Team**

They will: -

* Attend the Initial Appointment.
* Advise the Social Worker of the Court timetable and forward copy of the Court Orders.
* Request any further evidence required in accordance with Court Directions.
* Ensure compliance with Court Directions and keep the Social Worker informed at all stages.
* File evidence that the local authority will rely upon at final hearing.
* Prepare bundles and case summary for final hearing.
* Attend final hearing.
* Send copy of final order and closing memo to the Social Worker.

**Social Work Team**

They will: -

* Attend the Initial Appointment.
* Comply with all Court directions.
* Ensure Legal Team is updated with any developments.
* Attend final hearing.

Approved

Designated Family Judge

Worcestershire County Council/WCF

Herefordshire Council

HMCTS

Cafcass

 

 

**Appendix 1: Legal Briefing – Discharge of Care Order**

**The Application**

Applications for Discharge are governed by Section 39 of the Children Act 1989 (the Act”)

The principles to be applied to an application under s39 are:

1. The decision must be made in accordance with s.1 of the Act, by which the child’s welfare is the court’s paramount consideration. The welfare evaluation is at large and the relevant factors in the welfare checklist must be considered and given appropriate weight.
2. Once the welfare evaluation has been carried out, the court will cross-check the outcome to ensure that it will be exercising its powers in such a way that any interference with Convention rights is necessary and proportionate.
3. The applicant must make out a case for the discharge of a care order by bringing forward evidence to show that this would be in the interests of the child. The findings of fact that underpinned the making of the care order will be relevant to the court’s assessment but the weight to be given to them will vary from case to case.
4. The welfare evaluation is made at the time of the decision. The s31(2) threshold, applicable to the making of a care order, is of no relevance to an application for its discharge. The local authority does not have to prove that it no longer applies. Any questions of harm and risk of harm form part of the overall welfare evaluation

The child’s welfare is the Court’s paramount consideration (Section 1(1) of the Act) when determining such applications and the Court will make its decision taking into consideration the welfare checklist (contained at Section 1(3) of the Act), namely: -

(a) The ascertainable wishes and feelings of the child, in light of their age and understanding.

(b) His physical, emotional and educational needs

(c) The likely effect upon him of any change in circumstances.

(d) His age, sex, background and any characteristics of his which the Court considers relevant.

(e) Any harm which he has suffered or at risk of suffering.

(f) How capable each of his parents and any other person in relation to him the Court considers the question to be relevant is of meeting his needs.

(g) The range of powers available to the Court under the Act.

The Court will also pay regard to the general principle that any delay in determining a question with respect to the upbringing of a child is likely to prejudice the welfare of that child (Section 1(2) of the Act).

The test the Court will have to consider IS NOT, therefore, whether the threshold criteria are still made out. This information will of course, however, be relevant in relation to the welfare checklist as detailed above but the Court will focus on recent harm and current risk.

Social workers may refer to Practice Standards and Point 3 of this protocol for guidance as to the information which will be required when preparing your paperwork for the Court in support of the application.

Under Section 32 of the Children Act 1989 the Court has general duties to timetable the case and give directions for assessments.

It is therefore imperative that good planning takes place as otherwise protracted proceedings may ensue at some considerable cost to the Authority.

**Who Can Apply?**

The Local Authority may apply for the Care Order to be discharged, as may the child himself or any person who has parental responsibility for the child.

The Local Authority could, therefore, find itself as the Respondent to such an application made by the child’s parents.

It is to be remembered that it is the person/body applying for the Care Order to be discharged who has the burden of showing that the child’s welfare requires the discharge of the Order.

**The Outcome**

On an application to discharge a Care Order the Court may: -

(1) Make no Order - that is the Care Order remains in place and there is no change.

(2) Discharge the Care Order and leave no Order in place.

(3) Substitute the Care Order with a Child Arrangement Order, with or without any other Section 8 Order with conditions.

(4) Substitute a Supervision Order in place of the Care Order.

If the Care Order is discharged, then WCF will no longer have parental responsibility for the child in question and the child will cease to be looked after.

**Appendix 2: Draft Orders**

##### DRAFT ORDER FOR INITIAL APPOINTMENT FOLLOWING FAST TRACK PROTOCOL (4 WEEKS TO FINAL HEARING)

##### IN THE FAMILY COURT AT WORCESTER

##### CASE NO: \_

|  |  |  |
| --- | --- | --- |
| Names | Gender | Date of birth |
|  |  |  |

# Order Children Act 1989

Before **[HHJ/District Judge/Justices’ Clerk/Assistant Justices’ Clerk]**

UPON hearing representation from the parties as follows: -

IT IS ORDERED THAT:

1. CAFCASS shall appoint forthwith, **[name]**, guardian ad litem, to the child/ren, if available and appropriate.
2. A solicitor for the child shall be appointed.
3. By 4pm on **[insert date – week 2]**the parents/respondents do file and serve their final evidence.
4. By 4pm on **[insert date – week 3]** the child/ren’s guardian do file and serve a report in respect of the Local Authority’s application to discharge the care order.
5. The Guardian shall attend final hearing.
6. The Local Authority shall file with the Court 48 hours prior to the final hearing a bundle of evidence and case summary. The case summary to be served on all parties.
7. This matter is listed for final hearing on **[insert date – week 4]** with a time estimate of 30 minutes.

**Order by [HHJ/District Judge/Justices’ Clerk/Assistant Justices’ Clerk]**

# On