**Practice Guidance - Discharge of Care Order Accelerated Procedure and applications without consent.**

This guidance should be read with the agreed local procedures between the Family Court and Birmingham Children’s Trust dated 4th January 2022 which is in the Care Discharge Practice Guidance Section in BCT’s [Practice Guidance](https://birminghamcs.proceduresonline.com/local_resources.html) (click on “Pre-proceedings and court work” then “Care Order discharge”). It is to be used for both discharges of care order where children are placed with their parents under Care Orders and for applications by relatives for Special Guardianship Orders (SGO) or Child Arrangement Orders (CAO). Where the application is made by a relative the children **must** be living with relatives who are approved Foster Carers. The Court will follow an accelerated procedure in applications where there is full consent and list and determine the application without the appointment of a Child’s Guardian. Where the application is opposed but the Trust still seeks to make the application a Guardian will be appointed. The process below should be followed in both scenarios.

1. **Pre-Application - Social Work Actions before the Child in Care Review:**

Firstly, discuss in supervision and at the child’s care planning meeting if this is the appropriate permanency plan for the child/ren .

Before the discussion you should consider key legal documents from the care proceedings which must be considered to inform discussions. These are:

* Final orders of the Court.
* Agreed threshold document.
* Any judgment.
* Final approved care plans.
* Key expert reports
* Guardian’s final report

If these cannot be located in Eclipse, you should request them from the legal team.

You should also obtain the views of the significant people involved with the child/ren:

* The child and their siblings.
* The parents/other person/s with parental responsibility/kinship carers.
* Extended Family Members. A Family Group Conference should be arranged where appropriate to discuss and plan support for the child and their carers.
* Key professionals involved with the child and their family. Make sure that you obtain written reports from them as these reports will be filed as part of the application.

Other points

* Consider family time and arrangements post SGO/CAO – will the carers need support from the Trust to facilitate this.
* Where the Trust is supporting an SGO application the Carer should be referred for legal advice. A briefing on how to do this and a template letter for the carer to give to a solicitor is also in [practice guidance](https://birminghamcs.proceduresonline.com/local_resources.html) (in the SGO and Private Fostering section under “SGO).. Once the carer has received legal advice, they are then able to make an informed decision whether to apply for an SGO.

In considering the plan you should always have reference to Right Help Right Time which is at this link, <https://lscpbirmingham.org.uk/documents/right-help-right-time-guidance-dec-2021>

You will then need to draft your report for the CiC review. Your social work analysis, conclusions and recommendations in the report should cover the following which you will also be able to use in your statement for court. At all times use Right Help Right Time and think about which level of need currently applies to the child and family.

If you use the statement template CD4 as your guide this will cover all these points and your report can then by quickly transferred to the Court template.

* The matters which led to the care proceedings and the outcome of proceedings
* Family history since the care proceedings
* Current circumstances
* How have the identified needs of the child/ren/ young person been addressed?
* Have any further assessments taken place since the care proceedings ended?
* Have support services been put in place and been effective?
* Has the child/young person been living with their carers for enough time to evidence that they are safe and well cared for, and do assessments indicate that this is likely to continue in the future? Were there any issues around family time between the child and a significant adult and have these been addressed?
* Are the issues that led to the proceedings no longer present ?
* What are the views of the child/ren/ young person? Include a copy of the direct work completed with them to help them express their wishes and feelings.
* Views of all who are involved with the child/ren/ young person.
* Include plans of support to the Child/ren/young person and Carers (e.g., SGO support plan, CIN Plan, family plan agreed at the Family Group Conference)
* Where professionals raise objections, these should be fully understood and considered in reports and discussions.
* Set out your conclusions about whether the Care Order should be discharged or an SGO should be made to a connected carer considering the legal guidance note and applying the welfare checklist that can be found in practice guidance which includes how to approach the welfare checklist.

1. **At the Child in Care 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. The IRO should endorse the care plan of discharge and or the making of an SGO. If the IRO is not in agreement, a problem resolution conversation should be arranged to discuss any outstanding differences and agree a way forward.

If the recommendation to discharge the Care Order has not been implemented by the next Child in Care Review the IRO will raise a formal dispute resolution to stage two Head of Service. This will be raised to stage 3 Assistant Director if not implemented at a subsequent review. At this point, the CPO team should be alerted so that the child is entered on the tracker and prioritised and timescales are set. The target is for all care plans to have been implemented by the next CiC review. Capacity will be kept under continuing review to avoid delays which will lead to addendum reports.

1. **After the Child in Care Review - Social Work to do list**

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

The Head of Service will need to review all documents and the minutes of the CiC Review to approve plan of Discharge/SGO/CAO to family members.

The relevant guidance and template documents are in the [Pre-Proceedings and Court Work section of Trix practice guidance](https://proceduresonline.com/trixcms2/birminghamcs/doc-library/#section10Nested3) under care order discharge and also in the fostering section where SGO is being proposed

Where an SGO is being proposed and the carer is an approved BCT foster carer a referral to the fostering team is necessary to assist with completing the SGO assessment and assist with the SGO support plan. If this is a BCT foster carer, then the allocated fostering supervising social worker will complete the sections on the carer. The child’s social worker will complete the sections on child, family, and background. If the carer is not an approved foster carer for BCT and registered with an independent fostering agency, then a referral to the fostering service will be necessary to assist in completing the SGO assessment and assist with the SGO support plan. If they a registered carer with another Local Authority – potentially they would agree to complete the carers section of the SGO assessment . The SGO support plan must be signed off by the SGO support team before it is sent to Legal Team for filing as part of the application.

Where the Trust is supporting an SGO application the carer should have been referred for legal advice at the start of the process.

A briefing on how to do this and a template letter for the carer to give to a solicitor can be found at in practice guidance.

In SGO cases the applicant and their legal adviser should prepare the application and send this to the BCT Legal Team. The Legal Team will lodge the application at Court via the Family Public Law Portal and pay the court fee as part of the main application to discharge the care order. it is not necessary for the Solicitor or the applicant to issue the case in court or pay a fee.

You must obtain the relevant consents to application to discharge, for the SGO and for disclosure of documents to Cafcass using the templates CD1 – CD3 which are in practice guidance.

Write the statement using template CD4 and follow the legal practice guidance and the guidance in the statement.. Your Case Progression Officer will offer you support if needed.

NB – where an application is being considered where there are continuing safeguarding concerns or on the basis that the Care Order cannot be effective due to resistance and non-co-operation from the family a legal planning meeting should be arranged, and legal advice given before a final decision is made on the application.

*When ready send the following documents to the legal team inbox requesting allocation and advice:* [*bct.legal@birminghamchildrenstrust.co.uk*](mailto:bct.legal@birminghamchildrenstrust.co.uk)

* Minutes from the Child in Care review including IRO recommendation.
* Draft Social Work Statement using the agreed local template and a short up to date chronology (CD4)
* Report to Child in Care Review.
* Reports from key professionals.
* Any updating assessments and plans.
* Up to date Police checks (PNC Check).
* Parental or connected carers consents
* If SGO is the plan on discharge of the care order the SGO assessment and support plan.
* The SGO application which should be available from the Solicitor for the SGO applicant.

1. **What will your Legal Team do?**

On receipt of the documents the Lawyer will follow the 2022 fast track process if there are full consents which requires seeking the agreement of Cafcass to the application before the case is issued and will keep you informed of progress.

Where the application is contested the application will still be issued on the portal, they will take the following steps in all accelerated procedure consent applications:

* Step 1 - Prepare a bundle and notify Cafcass by email to the agreed address.
* Step 2 - On receipt of the recommendation from Cafcass, they will send this to you.
* Step 3 – The Lawyer will make a formal statement to the Court using the agreed template that the accelerated process is appropriate for the child/ young person and involvement of a Guardian is not necessary because of pre proceedings management review by Cafcass and letter of recommendation.
* Step 4 The Lawyer will make a Care Discharge application on the FPL Portal and in SGO cases will issue the SGO application as part of the main application. To do this the Lawyer will need to be sent the application form completed and signed by the SGO applicant.
* Step 5 - On receipt of sealed copies of the application, order and notice of hearing the lawyer will serve all the family parties.
* Step 6- The Lawyer will keep the social work team advised of hearing dates and the outcome of the application.

In non-consent or cases where Cafcass take the view that a Child’s Guardian should be appointed the Lawyer will make the application on the FPL portal and the Court will make the appointment of a Child’s Guardian and list the application for a hearing

For more information about the entire process please read the agreed protocol with the Court which is at the link above in pre proceedings and Court work.

January 2024