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# Introduction – Pathfinder approach

The Family Court at Birmingham is selected as the location for a Pathfinder Court. Birmingham and Solihull Local Authority are the designated local authority districts in the pilot. Practice Direction 36Z supplements Family Procedure Rule Part 36, rule 36.2 (Child Arrangements Programme). It is an investigative approach to private law reform. This protocol between Birmingham Family Court, HMCTS, Cafcass and Birmingham Children’s Trust is updated to reflect the changes responding to private law applications to the Court.

The Practice Direction strongly encourages parents to try to reach agreement concerning the child outside the court system Where parents cannot agree arrangements for children, they are encouraged to obtain advice and support and the practice direction contains practical advice and links including parenting plans and mediation. Non court resolution must be considered at every stage of any court proceedings.

Applications will be reviewed at the initial gatekeeping stage at Court and the following stages will apply:

* Initial Gatekeeping
* Stage 1 Information Gathering and Assessment
* Stage 2: Interventions and/or Decision Hearing
* Stage 3: Review

At the initial gatekeeping stage, the gatekeepers may decide on the level of Judge or wait for the safeguarding gatekeeping appointment. The gatekeepers will issue directions on issue, can direct that the applicant or parties attend a MIAM before progress to next stage, direct an urgent hearing, direct filing, and service of evidence.

As soon as possible after initial gatekeeping the court will send the application documents to Cafcass and shall continue to send any further documents including respondents’ response documents on receipt. It has been agreed locally that documents will be sent at the point the first gatekeeping order is made.

9.3 of the PD provides that at the gatekeeping stage where an application does not require an urgent determination the Court must refer the application to the persons or bodies who are to undertake the information gathering and assessment and contribute to the child impact report.

Usually, Cafcass will lead on work for the information and gathering stage however if the court determines that a local authority has had relevant recent involvement with the family then the court may consider that the LA should lead on work for the information gathering and assessment stage. (Locally there are agreed arrangements for checks to be made with the Trust/LA to inform decisions by gatekeepers).

The Court will follow the good practice guidance between Cafcass and local authorities in determining which agency should complete the report. It has been agreed locally that the standard timescale for a report is 8 weeks (40 working days) however where the case only requires a brief report where there are limited issues then the Court will direct the CIR to be provided earlier and where necessary will liaise with Cafcass and the Local Authority about the timetable.

The court may determine this at initial gatekeeping stage or upon receipt of information collected during the course of the preparation of the Child Impact Report.

The Information Gathering and Assessment Stage is to actively investigate the impact of issues presented in the application and through the enquiries made on the child through engagement and assessment. This stage must comply with the following steps to complete a Child Impact Report:

* Safeguarding checks.
* Parental/party engagement.
* Direct or indirect engagement with the child in a means consistent with their welfare needs and determined as appropriate in accordance with their age and understanding.
* DASH risk assessment (where Domestic Abuse is a direct feature of the case)
* Consideration of anyother cases involving the child or parties which is relevant to the case management.
	1. **Safeguarding enquiries by Cafcass**

Under Practice Direction 36Z Cafcass will receive the C100 application and complete the safeguarding checks with the police and Birmingham Children’s Trust (BCT). If the initial gatekeeping process at the Court confirms BCT are involved with the family or have been known within the last three months, the application will still be sent to Cafcass to complete the safeguarding enquiries on a more limited basis. Cafcass responsibilities are:

Screening and initiating relevant safeguarding checks in respect of all applications for child arrangements orders and some other applications such as specific issue orders on receipt from the court.

* Reporting the outcome/progress of this work to the court in advance of the first hearing (Practice Direction 12B: CAP 2014)including the relevant information in the CIR.
* Where initial gatekeeping has identified that it is the Trust/LA which will carry out the CIR Cafcass will not require a full safeguarding return but will complete police checks which will be sent to the Trust/LA

The initial screening checks are made to safeguard children, and the advance consent of the parties is not sought.

The Trust will ensure that safeguarding checks take place within time limits (7 working days) to ensure information is provided quickly to safeguard children and for the completion of the Child Impact Report.

A timely response to the request for safeguarding information enables the child(ren) to be safeguarded. It determines at an early stage which agency is responsible for completing the Child Impact Report, whether a DASH risk assessment is needed, and which track is required for the assessment.

# Child Impact Report

There is Good Practice Guidance between the Association of Directors of Children’s Services (ADCS) and Cafcass on the allocation of responsibilities for reporting between Cafcass and Local Authority (LA) Children’s Services. On 11th November 2022 Cafcass and the ADCS revised their policy on whether Cafcass or a local authority should prepare a Section 7 report and such guidance has now been applied within this protocol. The guidance still applies in determining which agency should complete the Child Impact Report.

The aim of this local protocol is to set out in one document local administrative arrangements and the agreed approach to allocation of responsibility.

# BCT Court Business Support Unit

Court Business Support **(CBS)** is an experienced administrative team within the Trust which has been managing all private law cases since 2011. The team will now deal with:

* Initial requests from Court Issue Clerk/CPO on allocation of responsibility.
* All Cafcass Safeguarding Checks**;** and
* All new directions for Child Impact Reports and other directions for disclosure, information or court attendance made by the Court in private law proceedings.

BCT’s Legal Team does not process new directions for Child Impact Reports and other disclosure orders and but will become involved in these cases on Head of Service instructions.

# Court Initial Checks and Cafcass Safeguarding Check Requests

All Court Initial allocation checks using the agreed proforma should be sent by the Court officer issue clerk to by 11.00am each day to: Courtbusinesssupport@birminghamchildrenstrust.co.uk

If received by 11.00am Court Initial safeguarding checks to be returned by CBS to Court by 2.00pm. Checks received after 11.00am will be returned to Court by 2.00pm on the following day to:

birminghampathfinder@justice.gov.uk

Cafcass Safeguarding checks should be sent to: ChildSocialCareCheck@birminghamchildrenstrust.co.uk

CBS will process all requests. Where the Trust has already indicated to the Court that it is responsible for the CIR but Cafcass have requested a full check Cafcass will be advised that Court initial gatekeeping check has been completed and the Trust has accepted responsibility for the CIR. This information should normally be provided to Cafcass within 5 working days.

Where the initial gatekeeping has identified that is it the Trust/LA which will complete the CIR Cafcass will not require completion of the proforma but will complete police checks which will be sent to the Trust/LA

The aim of BCT is to handle all requests within 7 working days of receipt. Performance is monitored regularly.

Where a case is unknown to the Trust or closed with no allocated social worker and the Trust has indicated to Gatekeepers that it is not responsible for the CIR safeguarding requests will be handled directly by CBS within 7 working days through checking the Eclipse electronic management system and returning the Cafcass proforma.

# NB If safeguarding check requests are not sent to the correct email address or to individual social workers or other intake email addresses this is likely to lead to delay. Cafcass must liaise with CBS if there is any doubt about the correct e-mail address to use to avoid delays in proforma check requests.

1. **Child Impact Report and Disclosure Request Administration**

HMCTS should send all directions for Child Impact Reports by e-mail to.

*courtbusinesssupport@birminghamchildrenstrust.co.uk*

There is no need to send orders by post and HMCTS agrees not to do this.

HMCTS/Gatekeeper will:

* Ensure that addresses are included to enable service on the parties or their legal representatives. It is important that when the Court directs the Trust to complete a Child Impact Report HMCTS Gatekeeper will inform CBS by sending the draft order, C100 and any evidence as soon as the direction is made to avoid delay in awaiting the sealed order.
* Send sealed orders to CBS, including orders requiring Family Court Advisors/ Social Workers to attend court to give evidence, ensuring enough notice is given. If the attendance is required, the Court will direct this. On filing the Child Impact Report the FCA/SW will advise the CPO on their view as to their attendance is required.
* Ensure that orders are not sent directly to social workers or area offices and that all orders are sent to the dedicated email address.
* The Court Case Progression officer should liaise with Court Business Support in the first instance to track progress.

When a Child Impact is ordered for completion by BCT the CBS will complete the following further checks:

* Further check that the direction concerns a Birmingham child and promptly inform the court if there has been an error and the order should have been directed to another Local Authority.
* Further check compliance with the protocol for allocation between the LA and Cafcass (see below), liaise with social work managers where necessary.
* Ensure enough time has been given for the completion of a Child Impact Report – this should normally be 8 weeks for standard CIR. Where the issues are limited and the Court does not require anything more than a brief report the Court will direct that the report is filed sooner than 8 weeks.
* Check for delayed orders received and bring this to the attention of the social worker for them to consider whether an application should be made for an extension of time.
* Send the application documents and order to the allocated social worker for completion and monitor compliance.
* Where the child is not allocated the order will be sent to the Trust Children’s Advice and Support Service (CASS) for allocation.
* Where absolutely necessary request extensions of time following a request to do so by the social worker.
* File and serve completed reports electronically from the inbox to the court outward facing email account: birminghampathfinder@justice.gov.uk using the heading “CIR case number due date”, e.g. “CIR BM24P0015 1/7/2024”

In respect of disclosure requests and miscellaneous order cases CBS will:

* Ensure the direction concerns a child known to BCT and not another Local Authority.
* Email the order to the CASS.
* Ensure that the orders are uploaded on to Eclipse.
* Email the order, where the child is open, to the allocated social worker and team manager.
* The social work team manager is expected to check for delayed orders and seek extensions of time where good practice demands that more time is required or there are unavoidable reasons for delay.
* Advise the social worker and team manager or CASS that they hold the responsibility for the communication of documents to the court if those documents exceed 50 pages. If under 50 pages CBS shall file with the court however the responsibility for serving all the documents, even if under 50 pages, is the responsibility of the social worker and team manager.

A more detailed process document in respect of the processes CBS will follow is set out at appendix 1.

# Child Impact reports: responsibility for reporting under ADCS/Cafcass Good Practice Guide

The Court may direct Cafcass or the LA to report to the Court on the matters relating to the welfare of the child as are required to be dealt with in the report. In line with the Cafcass/ADCS revised policy dated 11th November 2022 the report should be prepared by Cafcass unless the Trust has been involved with the child or family as more specifically set out below.

Cases where LA reports may be considered:

1. Where the child is the subject of an open and active statutory social work case with a Local Authority for example:
* Family assessment.
* Section 47 assessment.
* Child in need with social worker as lead professional.
* Child or siblings looked after.
* Child currently subject of a Child Protection Plan.
* Child currently subject to supervision order or family assistance order directed at LA.
* Application made as a result of a recommendation made by Children’s Services or with its support following assessment.
* There is a private fostering arrangement in place.

AND the involvement is current;

OR where no current open file but in the last 12 weeks, before the Child Impact Report is ordered, there has been a statutory social work assessment of a child’s welfare in accordance with the Children Act 1989 (sections 17 or 47);

OR In the last 12 weeks, before the Child Impact Report is ordered, the child has been the subject of a child in need or child protection plan.

Cases where a Trust report is not appropriate and where Cafcass should prepare the report:

Where there is no children’s social care involvement in line with the above.

This includes:

* Referral or initial assessment
* Right Help Right Time universal services

In all other circumstances, where the local authority is not involved or has not been involved with the family in the last 12 weeks, the Court will be informed that responsibility falls to Cafcass to complete the Child Impact Report. In these circumstances, there may be a requirement for the LA to disclose previous assessments to the court, the parties and Cafcass. Information may be disclosed to Cafcass by the Trust without a Court Order under Rule 12.75 Family Procedure Rules 2010.

In these cases, the Trust will supply any relevant information to Cafcass to assist in their reporting.

In cases where responsibility falls to the Trust but there have been previous proceedings which have involved Cafcass then there will be a requirement for Cafcass to disclose previous information in those proceedings to the Trust.

It is expected that there will no longer be any requirement for the Court to order section 7 reports. In the event that there is an order for a report the court should avoid ordering general requests for reports and should state on the face of the order the specific factual or other issue which is to be addressed in the focused report. The court must consider the information provided by Cafcass and any relevant protocol between Cafcass and the Association of Directors of Children’s Services in determining whether a request for a report should be directed to the relevant LA or to Cafcass (PD12B): (CAP2014).

# Practice Points BCT & Cafcass and what happens after the filing of the Child Impact Report

CBS is an administrative service only. Where practice or legal questions arise, these should be raised by the allocated social worker with their team manager. Access to legal advice and representation at court may be obtained from Trust Legal Team with the approval of a Trust Head of Service.

A Trust assessment will not be accepted in place of a Child Impact Report. However, the assessment can be referenced or filed alongside the Child Impact Report.

Where during the information gathering and assessment stage Cafcass is recommending that the preparation of the Child Impact Report should transfer to the Local Authority, Cafcass should first discuss this with the allocated social worker and/or the first line manager and if none allocated make a referral to CASS and alert CBS.

If a Cafcass Family Court Advisor (FCA) attends a Decision Hearing and a Section 7 or section 37 report is ordered, Cafcass shall inform CBS via email and provide them with a copy of the Child Impact Report filed with the Court to avoid delay for the children and to ensure that the children who are the subject of private law proceedings are safeguarded.

Where the case is open, and the Trust is involved in a non-pathfinder matter from another Court CBS shall forward any Safeguarding Letter received to the allocated social worker and their team manager. Where the case is not open or not known to the Trust, CBS will forward any Safeguarding Letter to CASS, who will then forward the safeguarding letter to the area team for allocation.

Cafcass information sharing letters or interagency referrals should be sent to CASS not the court business support team. For current risk factors or where it is recommended by Cafcass that a Section 47 investigation or further assessment is required Cafcass will complete an inter-agency referral and pass to CASS.

When the Court has received the Child Impact Report the Court will consider what steps are necessary to enable the application to move to Stage 2 Interventions and Decision hearing. This may include further engagement with agencies and/or further statements and disclosure and a further updated Child Impact Report.

If the court determines further review is necessary for example to monitor contact, consider the impact of a family assistance order or other orders this will take place 3 to 12 months from the date of the order. A summary of any review process will be added to the original Child Impact Report.

Although the PD provides that it expected that the SW or Cafcass Reporter will attend court subject to any direction excusing attendance it is agreed for the Birmingham Court that on filing the CIR the FCA/SW will advise the CPO on whether attendance is required. If attendance is required, the Court will direct this. If the Court does make an order requiring Family Court Advisors/ Social Workers to attend court to give evidence, the Court will ensure enough notice is given.

# Section 37 directions

All section 37 orders are sent directly by the court to CBS. CBS will then forward these section 37 orders to the Trust legal team for allocation and advice with the name and contact details of the social worker and team manager and the timescales for completion. In the absence of a judicial direction to the contrary the statutory timescale for the completion and filing of Section 37 reports is 8 weeks.

A copy of the Order requesting the report and any relevant court documents are to be sent to Cafcass or, in the case of the Local Authority, to CBS.

# Cafcass Child Protection Referrals

Cafcass will refer child protection concerns to the Trust under its Safeguarding Children Policy using the Local Agency Referral Form.

Where a concern has already been referred to the Trust by Cafcass, where the child remains at risk of significant harm, the matter will be escalated through line management immediately making use, as appropriate, of the relevant LSCP procedures.

# Future Liaison

The arrangements set out in this protocol will be kept under review by the Judiciary, BCT, Cafcass and HMCTS.

Final: 20th May 2024

Approved by Pathfinder Implementation Group: 23rd May 2024

Appendix 1

# Information on Court Business Support Processes

**PROFORMA/GUIDANCE NOTES – Child Impact Reports and orders for provision of information**

**Child Impact Report Orders**

1. HMCTS sends all orders in private law matters relating to BCT to CBS by email to courtbusinesssupport@birminghamchildrenstrust.co.uk
2. Upon receipt of court documentation, the Court Business Support Worker (CBS) will record information such as the date for filing and serving and the names of the child(ren) on a Child Impact Report spreadsheet for future reference This spreadsheet will also hold information about future hearing dates and requests for addendum reports.
3. If the case is allocated to a social worker, CBS will forward an e-mail with all the court documentation which has been received to the social worker and team manager.
4. If, for any reason the Trust involvement the case is not in compliance with the ADCS/Cafcass protocol and updated policy for the case being dealt with by the local authority, the report should be provided by Cafcass, CBS will write to the court using **Template 2 – Request for Child Impact Report to be directed to Cafcass.**
5. If the Trust is responsible for the CIR, CBS will forward an e-mail with all the received court documentation to CASS for the matter to be allocated to a social worker.
6. If further documentation is required from the court to accompany the court order, CBS will write to the Court requesting the further information required. Once this is received CBS will forward the documentation to the social worker.
7. If it is envisaged that a report may not meet the deadline for appropriate and unavoidable reasons and the social worker’s team manager agrees, CBS will write to the court using **Template 3 – Child Impact Report Extension Request**. This must be requested as soon as possible after receipt of the request to produce the report and not towards the end of the timescale provided. It is not guaranteed that the extension will be granted, and CBS should ensure that when writing the letter is expressed as a request for an extension.
8. Ten working days before the report is due to be filed, CBS shall send a reminder to the social worker of the filing date for the report. The report should be prepared for filing at court, and the social worker will email (courtbusinesssupport@birmingham.gov.uk) a copy of the report to CBS. In the event that the report has still not been received CBS will again write to the social worker and team manager chasing for the report on the filing date.
9. The social worker will ensure that all copies of documents are held on Eclipse.

# Orders for the provision of letters or information

1. The court will sometimes order the LA to provide information from files or a letter or, in urgent cases, order a social worker to attend court. It is hoped that with better safeguarding information now being provided that these orders will reduce.
2. These orders will be processed by CBS who will forward the order to the allocated social worker or where the case is not allocated to CASS the allocated social worker or manager will then respond directly to the court either by letter or through the provision of the required information.

# IMPORTANT NOTE

**Court Business Support is an administrative service only. Where practice or legal questions arise, these should be raised by the allocated social worker with their team manager. Access to legal advice and representation may be obtained with the permission of a Head of Service.**