Local Practice Note:

Ensuring Adherence to the Public Law Outline in London

"It is now clear to me that there is a need for a radical resetting of the culture within the Family Court so that the system reconnects with the strictures of the PLO and, once again, aims to meet the statutory requirement of completing each public law case within 26 weeks"

Sir Andrew McFarlane P, View from the President's Chambers, November 2022

The Public Law Outline

1. Section 32(1)(a) of the Children Act 1989 requires the court to draw up a timetable with a view to determining public law proceedings without delay and, in any event, within 26 weeks. It sets out the *law* the Family Court is required to apply in this regard.

2. Part 12 of the Family Procedure Rules 2010 is a statutory code setting out the legal requirements for the case management of public law proceedings. Again, it sets out the *law* the Family Court is required to apply in this regard.

3. PD12A (hereafter the PLO) is a self-contained code designed to assist the parties and the court to deal with care proceedings justly and efficiently. It places very considerable demands on all participants, but that is what Parliament has required of the courts for the benefit of the children and families concerned.

4. London remains an outlier in terms of the time it takes to determine care proceedings and the number of hearings it takes to do so. There is a concerning culture of non-compliance with the PLO. This must change. Practitioners can expect the PLO to be applied rigorously in London. This Practice Note, issued with the concurrence of the President of the Family Division, sets out the consequences of this.

Adherence to the FPR 2010

5. The FPR 2010 provide the definitive procedural code for the Family Court and *must* be adhered to by all parties.

6. In particular, any application within public law proceedings *must* be made using the correct court form and the correct fee paid *before* the court will deal with the application. Where the parties seek for the matter to be dealt with on paper, the application form *must* be accompanied by a draft consent order.

7. Such applications *must* be made using FPL. It will no longer be acceptable for applications for case management directions, or their variation, to be made by way of email to the court or judge. Emails requesting case management directions or variations thereto, including emails purporting to "update" the court and seeking "guidance" and emails duplicating applications submitted to FPL, will *not* be dealt with.

Rigorous policing of 'Urgent' applications

8. It was, and should be again, *very* rare for a public law case to require an urgent first hearing. The courts will be rigorous in policing the question of urgency.

9. Where a local authority has the benefit of an interim care order, s.33 of the Children Act 1989 and the associated authorities set out in clear terms what decisions the local authority is able lawfully to take under the interim care order without further involvement of the court. Local authorities *must* give careful consideration to the scope of their powers under an interim care order *before* deciding to return the matter to court on a disputed issue.

10. The courts in London will adhere strictly to the local Practice Direction of 28 November 2024 on urgent hearings (see Appendix I). Where an application is not, in fact, demonstrably urgent, the court will refuse to hear it as such, and it will be listed with a fixture in the ordinary way. It is *not* possible to circumvent the requirements of the local Practice Direction by, for example, requesting the listing of a hearing in a number of days' time in a case that does not otherwise meet the criteria for urgency set out in the local Practice Direction.

Making cases smaller

11. Cases will be made 'smaller' by reducing the number of hearings per case to that prescribed by the PLO and by making 'every hearing count'.

12. *All* public law cases in London will now return to the much tighter procedural template required by the PLO. Each case will, save where demonstrably necessary to deal with the case justly, be limited to the ***three*** hearings provided for by the PLO.

13. As such, and as required by the PLO, the first hearing will be the Case Management Hearing (CMH), held not before Day 12 and no later than Day 18, with an Advocates' Meeting to be held no later than 2 days before the CMH. A minute of the Advocates' Meeting *must* be provided prior to the CMH.

14. Thereafter, no other hearing should ordinarily be listed following the CMH until the Issues Resolution Hearing (IRH). The final hearing should not be listed prior to the completion of the IRH.

Stopping the "Start Again" culture

15. Adherence to the PLO pre-proceedings process, with the engagement of parents and a thorough assessment exercise following the DfE Guidance and the Public Law Working Group recommendations, is essential. There is little incentive for local authorities to conduct pre-proceedings assessments if the court orders further assessment as a matter of course.

16. Where the court considers that the assessment completed by the local authority during the pre-proceedings stage is sufficient to determine the issues before the court justly, it will not order a further assessment to be undertaken within proceedings unless it can be demonstrated that such further assessment is *necessary*. Ordinarily, the passage of time will not by itself justify a further assessment as being necessary.

17. With respect to assessments of friends and family, parents are required to identify any family members for assessment at, or within a week of, the CMH. The court will not ordinarily accede to late applications for assessment of friends and family. Each DFJ will agree with their local authorities a clear timeline that will apply to any 'viability' or full assessments of connected persons and that timeline will be adhered to.

Ensuring effective Case Management Hearings

18. Proper adherence to the PLO requires a *far* greater focus on planning and preparation ahead of the CMH and the effective use of the Advocates' Meeting than occurs at present. It will no longer be acceptable, for example, for the case to be adjourned for a further CMH because the parties have not, at the Advocates' Meeting, identified the expert sought to be instructed and ascertained the position as to costs and timescale for reporting.

19. Under no circumstances should Advocates' Meetings take place on the working day before the hearing and, save in exceptional circumstances, hearing advocates should attend the meeting. It is the advocate's professional responsibility to ensure that they take comprehensive instructions in a timely manner ahead of the Advocate's Meeting and CMH.

20. Practice Direction documents, including a draft order, *must* be submitted to the court in accordance with the time limits set out in the PLO. Pressure of work on the part of the advocate and/or solicitor will not be an excuse for failure to submit Practice Direction paperwork by the deadline stipulated in the Practice Direction.

21. The task of the court at a CMH is to ensure the Overriding Objective in FPR 2010 r.1.1 is being met and to determine any case management issues that are in dispute between the parties. The court will have read the Practice Direction documentation. The court is *not* assisted at the CMH by advocates reciting lists of general "concerns" to the court in the hope that the court will make some comment helpful to their client. Advocates should make clear at the outset of the CMH what case management orders are sought and, in particular, whether there is a dispute as to which orders should be made. If there is a dispute, the court will hear short submissions *on the point in issue* and give its ruling.

22. Pursuant to s.32(5) of the Children Act 1989, an extension to the 26 week time limit may *only* be granted if an extension is *necessary* to enable the court to resolve the proceedings justly. Section s.32(7) provides that such extensions are *not* to be granted routinely and require s*pecific* justification.

Immigration issues and foreign placements

23. London has a high proportion of cases involving jurisdictional and immigration issues and proposed placements abroad. In proceedings involving a foreign national child or a family with a connection to a foreign jurisdiction, a Standard Direction on Issue and Allocation must be made seeking disclosure from the Home Office via Form EX660 of information on the immigration status of the child and the parents. The parties must at the Advocate's Meeting, and the court must at the CMH, identify any issues arising and give further directions for securing the evidence or expert opinion required to address them. It is not acceptable for

issues regarding immigration status to be left to be investigated at the IRH or final hearing and wholly unacceptable for them to be left unresolved at the point a final order is made.

24. Where one of the options for the subject child involves placement abroad, consideration of the legal and practical requirements for facilitating such a placement must start prior to the CMH and be considered at the advocate's meeting. The court must at the CMH identify any issues arising and give directions for securing the evidence or expert opinion required to address those issues. It is the responsibility of all legal representatives to familiarise themselves with the legal principles governing placement abroad including, where they apply, the requirements of the international Conventions to which the United Kingdom is a party. Where necessary, legal advice from specialist counsel should be taken. Again, it is not acceptable for these issues to be left to be investigated at the IRH or final hearing.

Limiting expert evidence

25. The strict test for whether the court requires expert evidence to determine proceedings is clear and well established.

26. The court will only permit the instruction of an expert where it is *demonstrated* to the court that to do so is '*necessary* to assist the court to resolve the proceedings justly'. Permission to instruct an expert will *not* be given on the basis that such evidence is desirable or helpful.

27. The fact that all parties agree that a particular expert is necessary will *not* automatically lead to permission being given for that expert to be instructed. The question of whether expert evidence is '*necessary'* is a matter for the court.

28. FPR 2010 r.25.10 provides a comprehensive framework for written questions to be put to expert witnesses. FPR 2010 r.25.9(2) stipulates that the court will not direct the attendance of the expert at a final hearing unless it is *necessary* to do so in the interests of justice. It is incumbent on any party seeking to cross-examine an expert to make an application for the court to direct the attendance of the expert. By reference to the terms of FPR 2010 r.25.9, a direction for the attendance of the expert at the final hearing will be an exceptional course.

Effective Issues Resolution Hearings

29. The task of the court at the IRH is to resolve and narrow issues, with a view to determining the proceedings at the IRH. The IRH is *not* a pre-trial review. It is essential that at the IRH the court identifies the key issues (if any) to be determined, considers whether the IRH can be used as a final hearing and, crucially, resolves or narrows the issues by hearing evidence. Only where issues remain will the court move to determine the scope of the final hearing and give case management directions. The IRH should be listed with a time estimate of at least 2 hours. A draft witness template with completed dates and timings must be provided.

Limiting care proceedings to their proper statutory scope

30. In order to determine the care proceedings, the court does *not* need to determine every issue between the parties at IRH or final hearing and must not be asked to do so. For example,

ordinarily, it is no part of the court's task to provide a narrative for the child by making findings of fact where those findings are not required in order to determine the case.

31. By reference to the express terms of s.31 of the Children Act 1989, the court will limit its consideration to the following issues:

(a) whether the s 31 threshold criteria are satisfied;

(b) if so, consideration of the nature of the permanence provisions in the care plan;

(c) the arrangements for contact; and

(d) what order, having regarding to s.1 of the Children Act 1989, should be made.

32. The court is not required to consider any aspect of the care plan other than the permanence provisions. In the circumstances, the court will limit its consideration of the care plan to those provisions and the question of contact.

Attendance at hearings

33. The advantages of attended hearings, where all parties are present at court to engage in discussion and robust case management are well established. Whilst the court will continue to have a discretion, exceptionally, to list the CMH as a remote hearing in an appropriate case, the IRH and any Final Hearing will *always* proceed as an attended hearing and trial advocates *must* attend the IRH.

34. Any application for a CMH that has been listed as an attended hearing to instead be conducted remotely, or for one or more parties to attend remotely at a CMH that has been listed as an attended hearing, *must* be made by C2 application and a fee paid. Requests for remote attendance made by email will *not* be accepted and will not be dealt with.

35. The Children's Guardian *must* attend the IRH. Any application made, exceptionally, to excuse the attendance of the Children's Guardian must be made by way of Form C2 and the required fee paid. Requests made by email will not be accepted and will not be dealt with.

Controlling the use of Intermediaries

36. Intermediaries should only be appointed by the court where there is a *compelling* reason to do so and not simply because the process would be improved or made easier. It will be *exceptionally* rare for the court to appoint an intermediary for the whole final hearing. It is not appropriate for intermediaries to be appointed just in case they may be required.

37. In deciding whether to appoint an intermediary, the court will have regard to the facts and issues in the case, including factual complexity, legal and procedural difficulty, and length, and to whether there are other adaptions that will permit effective participation without the need for an intermediary. All advocates should be familiar with the Advocates' Gateway and the advice on how to help vulnerable parties and witnesses understand and participate in the proceedings. An expert recommendation for an intermediary is *not* determinative. It will be unusual for the case to be adjourned for a lack of intermediary.

Default on Case Management Directions

38. Pursuant to FPR 2010 r 4.5(3), the time limits specified in a case management order may *not* be extended by agreement between the parties and the court will *not* simply accept a consent order lodged by the parties seeking to re-timetable proceedings. If re-timetabling is sought, a C2 application must be issued. It is not acceptable for parties to wait for the next listed hearing before addressing any failure to comply with the existing case management timetable. It remains the duty of *all* parties to bring to the attention of the court any default with respect to the case management timetable and to make an application for relief from sanctions *prior* to the default taking place.

39. Where a hearing is rendered ineffective due to a failure by a party or parties to make a timely application for relief from sanction *prior* to default, the court may give consideration to making a costs order or disallowing the fees of solicitors and/or counsel for that hearing, pursuant to FPR 2010 r4.5(2). Non-compliance with case management orders may be regarded by the court as professional misconduct (*Re W (A Child)(Adoption Order: Leave to Oppose); Re H (A Child)(Adoption Order)(Leave to Oppose)* [2013] EWCA Civ 1177, [2014] 1 FLR 1266).

40. The family panel justices and family judges have the option of listing a non-compliance hearing in a compliance list where there has been a failure to comply with the court timetable. The precise format of a compliance hearing will be for each DFJ to decide. However, in broad terms, a non-compliance hearing will be an attended hearing at which the relevant party will be required to explain why the relevant court order has not been complied with, and to explain what steps have been taken to mitigate the impact of such default.

Mr Justice MacDonald

Family Presiding Judge for London

28 November 2024

APPENDIX I

Local Practice Direction

Urgent Family Applications in London

The Meaning of 'Urgent'

1. An application made during business hours seeking a same day hearing, or an application made out of hours will be justified as being urgent ***only*** where an order is required to regulate the position between the point the order is made and the next available ordinary listing.

2. Listing is a judicial function. Where a case does not fulfil the criteria for urgency, the court will decline to deal with it and the application will be given a listing in the ordinary way. The court will be rigorous in refusing to deal with cases that do not meet the criteria of urgency.

3. Applicants for urgent orders will be required to justify *on evidence* why a case is said to meet the criteria for urgency. Applications must be accompanied by a statement which includes an explanation of why the case is said to meet the criteria for urgency, and a draft of the order sought following the standard format.

4. The following work may be dealt with as an urgent application where, but only where, the criteria for urgency as defined in paragraph 1 is fulfilled (this is not an exhaustive list):

   (a) Injunctions (including non-molestation injunctions, forced marriage protection orders and female genital mutilation orders) where without such an order the immediate safety of an individual would be compromised;

   (b) Applications under the Children Act 1989 where without such an order a child's immediate safety would be compromised, including where there is an immediate threat of child abduction.

   (c) Applications for Emergency Protection Orders where the criteria for such or order is met.

   (d) Other urgent applications where, without an order being made, an individual's immediate safety would be compromised.

   (e) Other urgent applications where, without an order being made, property that is the subject of a dispute may be disposed of, dissipated or destroyed.

5. Examples of cases that will *not* ordinarily fulfil the criteria for urgency include disagreements over holiday contact, applications for interim care orders where the nature of the alleged harm concerns longstanding difficulties or applications in respect

of property where there is not an immediate risk of disposal. Again, this is not an exhaustive list.

6. A case that is said to have become urgent simply by reason of delay on the part of the applicant will *not* ordinarily fulfil the criteria of urgency.

7. Where an applicant seeks to bring a matter before the court that is urgent only because the applicant has failed to act in a timely manner that applicant can expect the court to refuse to deal with the application *unless* an individual's immediate safety would be compromised, or property disposed of if an order were not made.

Urgent Applications During Court Business Hours

8. The fact that an application made during court business hours fulfils the criteria for urgency does not absolve the applicant from presenting that application to the court in a timely manner.

9. Ordinarily, any urgent application made during court business hours should be ready to come before the court at 10.30am.

10. In any event, and save in exceptional circumstances, any urgent application made during court business hours must be ready to come before the court ***no later*** than 2pm.

Urgent Court Business Out of Hours

11. The Urgent Court Business service will operate out of hours between 4.00pm and 8.30am Monday to Friday and from Friday at 4.00pm to Monday at 8.30am each weekend.

12. Any application that fulfils the criteria for urgency but has not been made by 4.00pm *must* be made to the Urgent Court Business service and will be dealt with out of hours.

13. Any application that fulfils the criteria for urgency that has been made during court business hours but which, notwithstanding the requirements of paragraph 10 above, is not ready to come before the court by 4.00pm will at that point ordinarily be referred to the Urgent Court Business service to be dealt with as an out of hours hearing.

14. The application must be accompanied by a statement which includes an explanation of why the case is said to meet the criteria for urgency and a draft of the order sought following the standard format and sent in by email in word format.

15. The procedure for using the Urgent Court Business service for applications that fulfil the criteria of urgency is as follows:

    (a) Contact should be made with the Duty Court Business Officers on the appropriate number.

(b) The Duty Officer will answer if possible. If the Duty Officer does not answer a message must be left including the name and number of the person making the application and the Duty Officer will phone back.

(c) The Duty Officer will take details of the case and will then discuss the case with a member of the judiciary who will decide whether a hearing is necessary.

(d) The Duty Officer will inform the applicant of the court's decision, including if there is to be a hearing, the time and venue of the hearing.

Mr Justice MacDonald

Family Presiding Judge for London

28 November 2024