

Practice Direction

Practice Direction (Care Cases: Judicial Continuity and Judicial Case Management)

1.1 This Practice Direction, which includes the annexed Principles and the annexed Protocol, is issued by the President of the Family Division with the concurrence of the Lord Chancellor. It is intended to implement the recommendations of the Final Report, published in May 2003, of the Lord Chancellor’s Advisory Committee on Judicial Case Management in Public Law Children Act Cases chaired by Munby and Coleridge JJ.

1.2 The Practice Direction, Principles and Protocol apply to all Courts, including Family Proceedings Courts, hearing applications issued by local authorities under Part IV (Care and Supervision) of the Children Act 1989 (“care cases”) where

- a) the application is issued on or after 1 November 2003; or
- b) the proceedings are transferred on or after 1 November 2003 from the Family Proceedings Court to a Care Centre, or from a County Court to a Care Centre or from a Care Centre to the High Court.

1.3 *Practice Direction (Family Proceedings: Court Bundles)* [2000] 1 WLR 737, [2000] 1 FLR 536, remains in force and is to be complied with in all cases to which it applies, subject only to the Protocol and to any directions which may be given in any particular care case by the case management judge.

1.4 Paragraph 2 of the *President’s Direction (Judicial Continuity)* [2002] 2 FLR 367 shall cease to have effect in any case to which this Practice Direction applies.

2 Purpose of the Practice Direction, Principles and Protocol

2.1 The purpose of the Practice Direction, Principles and Protocol is to ensure consistency in the application of best practice by all Courts dealing with care cases and, in particular, to ensure:

- a) that care cases are dealt with in accordance with the overriding objective;
- b) that there are no unacceptable delays in the hearing and determination of care cases; and
- c) that save in exceptional or unforeseen circumstances every care case is finally determined within 40 weeks of the application being issued.

2.2 The Principles are the principles which govern the application of the Practice Direction and Protocol by the Courts and the parties.

3 The Overriding Objective

3.1 The overriding objective is to enable the Court to deal with every care case

- a) justly, expeditiously, fairly and with the minimum of delay;
 - b) in ways which ensure, so far as is practicable, that
 - (i) the parties are on an equal footing;
 - (ii) the welfare of the children involved is safeguarded; and
 - (iii) distress to all parties is minimised;
 - c) so far as is practicable, in ways which are proportionate
 - (i) to the gravity and complexity of the issues; and
 - (ii) to the nature and extent of the intervention proposed in the private and family life of the children and adults involved.
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3.2 The Court should seek to give effect to the overriding objective when it exercises any power given to it by the Family Proceedings Courts (Children Act 1989) Rules 1991 or the Family Proceedings Rules 1991 (as the case may be) or interprets any rule.

3.3 The parties are required to help the Court to further the overriding objective.

3.4 The Court will further the overriding objective by actively managing cases as required by sections 11 and 32 of the Children Act 1989 and in accordance with the Practice Direction, Principles and Protocol.

4 Avoiding Delay

4.1 Section 1(2) of the Children Act 1989 requires the Court to “have regard to the general principle that any delay in determining any question is likely to prejudice the welfare of the child”.

4.2 Decisions of the European Court of Human Rights emphasise the need under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms for “exceptional diligence” in this context: *Johansen v Norway* (1996) 23 EHRR 33, para [88].

4.3 One of the most effective means by which unnecessary delay can be avoided in care cases is by active case management by a specialist judiciary.

5 Judicial Case Management

- 5.1 The key principles underlying the Practice Direction, Principles and Protocol are
- a) **judicial continuity:** each care case will be allocated to one or not more than two case management judges, who will be responsible for every stage in the proceedings down to the final hearing and one of whom may be, and where possible should be, the judge who will conduct the final hearing;
 - b) **active case management:** each care case will be actively case managed by the case management judge(s) with a view at all times to furthering the overriding objective;
 - c) **consistency by standardisation of steps:** each care case will so far as possible be managed in a consistent way
 - (i) in accordance with the standardised procedures laid down in the Protocol; and
 - (ii) using, wherever possible, standardised forms of order and other standardised documents;
 - d) **the case management conference:** in each care case there will be a case management conference to enable the case management judge to actively case manage the case and, at the earliest practicable opportunity, to
 - (i) identify the relevant issues; and
 - (ii) fix the timetable for all further directions and other hearings (including the date of the final hearing).
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6 Implementing the Protocol

6.1 The Protocol is based on, and is intended to promote the adoption in all Courts and in all care cases of, the best practice currently adopted by Courts dealing with care cases.

6.2 The Protocol will be implemented:

- a) in each Care Centre by reference to the Care Centre Plan which will be drafted locally (see appendix E/1 to the Protocol); and
 - b) in each Family Proceedings Court by reference to the FPC Plan which will be drafted locally (see appendix E/2 to the Protocol).
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6.3 The target times specified in the Protocol for the taking of each step should be adhered to wherever possible and treated as the maximum permissible time for the taking of that step. Save in exceptional or unforeseen circumstances every care case should be finally determined within 40 weeks of the application being issued. Simpler cases can often be finally determined within a shorter time.

6.4 Unless the case management judge is satisfied that some other direction is necessary in order to give effect to the overriding objective, the case management judge should, and, unless the case management judge has otherwise ordered, the parties and any expert who may be instructed in the case must (as the case may be):

- a) use or require the parties to use the forms and standard documents referred to in Appendix A to the Protocol;
 - b) prepare or require the parties to prepare the documents referred to in Appendix B to the Protocol in accordance with that Appendix;
 - c) comply or require the parties and every expert to comply with the Code of Guidance for Expert Witnesses in Family Proceedings contained in Appendix C to the Protocol; and
 - d) make every order and direction in the form of any relevant form which may from time to time be approved by the President of the Family Division for this purpose.
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6.5 Appendix D to the Protocol contains the text of the President's *Practice Direction (Family Proceedings: Court Bundles)* [2000] 1 WLR 737, [2000] 1 FLR 536.

6.6 Appendix F to the Protocol contains the Social Services Assessment and Care Planning Aide-Memoire, which is a summary of existing guidance relating to assessment and care planning.

6.7 Appendix G to the Protocol is a summary of best practice guidance relating to requests made under section 37 of the Children Act 1989.

6.8 Cases in which there are concurrent care proceedings and criminal proceedings are to be dealt with in accordance with the Care Centre Plan.

7 Monitoring and Compliance

7.1 It is the responsibility of the Designated Family Judge in conjunction with the Court Service and in consultation with the Family Division Liaison Judge

- a) to monitor the extent to which care cases in the Courts for which he is responsible are being conducted in compliance with the protocol and with directions previously given by the Court;
 - b) to arrange for the collection and collation of such statistical and other information and in such form as the Family Division Liaison Judge and the President of the Family Division may from time to time direct.
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