

JUSTICES' CLERKS' SOCIETY

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**Family
Provision of Justices' Reasons in uncontested
cases**

Date: March 2014

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Family Provision of Justices' Reasons in uncontested cases

REVISED GUIDANCE

MARCH 2014

Following the decision in *Re NL (A Child) (Appeal Interim Care Order: Facts and Reasons)* [2014] EWHC 270, there is a need to revise part of the November 2007 Joint Guidance in relation to Justices' Reasons in the Family Proceedings Court. The section entitled "Good Practice in Relation to Uncontested Cases" as reproduced on page 248 of the Family Proceedings Court Bench Book is no longer sustainable and should be discarded. The updated guidance is detailed below:

A) Public Law

- Under no circumstances should the local authority or any other party to the proceedings be involved in drafting Justices' written Reasons. This prohibition applies irrespective of whether orders are said to be agreed or 'not opposed.'
- Henceforth, the court should never ask any party to supply draft Reasons or suggest that a draft be circulated amongst or consulted upon by the parties.
- The practice of inviting parties to submit their own position statements in which they may set out analyses of the facts as well as their contentions in relation to resulting orders is unobjectionable.
- It is entirely permissible for Justices' Reasons to include references to documents filed by the parties – for example position statements, case summaries and chronologies. As appropriate, parts may be adopted e.g. 'The background facts of the case are as set out in the case summary supplied by Miss A on behalf of X County Council'.
- In all cases, as part of the case management process, the parties should provide written details of the agreed issues as well as those which are in dispute. It is acceptable and often helpful to record that information in the Justices' Reasons.

- Templates and / or pro forma Facts and Reasons documents may be used so long as they are created by the Justices in consultation with their Legal Adviser. If a template or pro forma is employed, the Justices must ensure that (a) case specific detail is incorporated to explain the key aspects of their decision and (b) they alone determine the content. Examples of key decisions recorded upon a template will be, how, if at all, the threshold criteria are established; and whether upon consideration of a child's welfare interests, he should remain with or be separated from his parents at any stage of the proceedings.
- The detail and length of the Reasons document will vary according to the complexity of the case; the stage reached in the proceedings and whether any of the facts, or the order sought, are disputed. Where all or some aspects of the case are contested, the competing arguments and the reasons for preferring a particular course should be given.
- In every case, even where the order is said to be agreed or where there is no active opposition, there is still a judicial task to perform. Justices must ensure not only that justice is done but also that it is seen to be done.

B) Private law

- Whilst the decision in *Re NL* related to public law, the key principles applicable to the compilation of Reasons apply equally in private law. A distinction should be drawn between agreements reached between the parties and Justices' Reasons for their decisions.
- Current and future practice in private law cases emphasises the benefit in parties reaching agreements between themselves, with the active assistance and encouragement of the court and other agencies. The advice that courts should not "go behind" such agreements without good cause remains valid.
- Where an order is imposed by the court, Reasons should be prepared by the Justices and no one else. Neither party should be invited to supply a draft of suggested Reasons.
- Where orders are agreed, it is highly likely that Reasons will be brief. Nonetheless, the Justices should demonstrate that they have applied the key principles of the Children Act 1989 in coming to their decision, if it be the case, of approving the draft consent order.

The President of the Family Division has approved this Guidance