

Practice Note: Care and Supervision Proceedings in Northamptonshire.

14 May 2018

## **Introduction**

The purpose of this practice note is to deal with the issues this court is experiencing in care and supervision cases which are causing substantial delays, unnecessary court hearings and wasted public funds. This practice note also serves as a warning that the court will not be tolerating non compliance.

This Practice Note reaffirms the Practice Note of HHJ Handley on Final hearings and IRH's dated 1<sup>st</sup> February 2017.

This practice note is to be read in addition to the Family Procedure Rules for Public Law children matters and comes into force on 14 May 2018.

This practice note applies to all levels of the judiciary, unless specifically stated otherwise.

## **Issuing non urgent applications**

- 1 Applications sent to the court before 2pm will be seen by the gatekeeping team the following day. Applications received after 2pm will be seen by the gatekeeping team on the next but one day. Save in respect of emergencies the Local Authority will not issue more than 2 applications on any single day.
- 2 Incomplete Applications will be returned to the Local Authority. All sections of the application form must be completed. For example, it is not sufficient to say 'see attached document'.
- 3 The application should identify the appropriate level of judiciary and if District Judge level or higher is suggested the reason for such an allocation must be indicated on the form by making reference to the Schedule to the Allocation and Gatekeeping Guidance dated 22 April 2014.
- 4 Directions will be made in the standard form as attached at appendix 1. The Local Authority is to complete draft directions and include this when submitting the application.

## **Issuing urgent applications**

- 5 The application form and covering email must state clearly (a) why the matter is considered urgent, and (b) indicate how soon a hearing is needed with a clear indication whether this time frame is hours or days. Failure to comply with this requirement will result in the application being treated as non-urgent.

- 6 When dealing with urgent applications in respect of new born babies the Local Authority must make enquiries with the hospital as to the likely date of discharge and this should be stated on the application form and in the covering email. Where possible the Local Authority will be expected to have considered and investigated all possible placement options to ensure that the court can make a fully informed decision.
- 7 The local authority is to give extra consideration to parents that are unrepresented and/or require an interpreter and shall make the application at the earliest opportunity to allow the parents to obtain representation and to ensure that interpreters can be booked if required. Whilst it is accepted that very urgent applications may necessitate a hearing on the day of issue the degree of urgency in many cases may be such that the application does not need to be listed on the day of issue. It is recognised that in some cases a delay of one or more days will allow for better preparation and assist the parent(s) in obtaining legal representation.
- 8 Directions made in urgent applications will normally provide for the matter to be dealt with by way of submissions.

### **All Hearings**

- 9 All advocates should and at least one advocate acting on behalf of all parties must report in with the usher as soon as possible and not less than 30 minutes before the listed time. It is not the responsibility of the usher to search out the advocates. Parties must always use their best endeavours to ensure that they are able to proceed at the listed time.
- 10 Any advocate with responsibility for filing an order shall use their best endeavours to file the agreed draft order on the same day and shall file the order by no later than 2.00 pm on the next working day unless a different time is agreed with the Judge at the hearing. In the event that the advocate fails to file the order as required the advocate shall email the court no later than the deadline for filing explaining why the order is late and confirm when the order will be filed.

### **Contested ICOs/ISOs**

- 11 Where the local authority seek either an Interim Care Order or an Interim Supervision Order and this is opposed the matter will be listed for a 2 hour hearing to be dealt with on submissions in the absence of a material dispute on the facts.
- 12 Where a contested hearing in excess of 3 hours is requested before magistrates this must be approved by HHJ Handley or by HHJ Wicks or a District Judge in their absence.

### **Case Management Hearings (CMH)**

- 13 The court is to be provided with a copy of both the Draft Order and Case Summary by 11.00 am the day prior to the hearing in accordance with Practice Direction 12(a). Where an advocates meeting has not taken place prior to the day of the court hearing the order will record this and record the reasons why the meeting did not go ahead. The court is concerned at the increasing number of hearings that are occurring in a number of cases. The Court will endeavour to list to the IRH at the CMH whenever possible and will expect parties, where possible, to have issued any Part 25 applications in accordance with directions made on issue.
- 14 All other parties shall then use their best endeavours to file their own position statements by 4.00 pm on the day prior to the hearing whenever possible.
- 15 The CMH may be called on at the listed time and advocates are expected to be outside court ready to start at that time or otherwise to update the Judge in respect of the current position.
- 16 FCMH's will not be listed in anticipation of an event occurring, for example, a possible Part 25 application being made. The court will make directions at the CMH based on the current position. Further hearings will be listed on receipt of an application, if required. The application form and covering email is to clearly indicate if a hearing will be required and how soon this will be needed, consideration having been given to the current timetable for the case.
- 17 In the absence of exceptional circumstances Judges will not fix a final hearing at the CMH but will list the IRH for 2 hours in week 18 and if this is not possible no later than week 20. Special reasons must be shown if the IRH is to be heard outside the 18-20 week window and these must be recorded in the order.

### **Issues Resolution Hearing**

- 18 The Case Progression Officer (CPO) will check that directions have been complied with 7 days prior to the IRH. The CPO will notify the Judge hearing the IRH of any issues following the compliance check. The judge may make further directions which may include listing the matter in the non-compliance court and adjourning the IRH if it will not be effective.
- 19 The court is to be provided with a copy of the draft order at 11 am the day prior to the hearing in accordance with Practice Direction 12(a). Where advocates meetings have not taken place prior to the day of the court hearing the order will record this and record the reasons why the meeting did not go ahead.
- 20 The IRH may be called on at the start time and advocates are expected to be outside court ready to start at the listed time or to be in a position to update the judge.
- 21 If a final hearing is required then at the IRH parties must:

- a. Provide an agreed list of the witnesses who are required to attend the hearing to give oral evidence.
  - b. Provide a witness template completed by ALL parties setting out the time required for (i) judicial reading, (ii) each party to examine each witness, (iii) closing submissions and (iv) judgment.
  - c. Details of the dates when professional witnesses are available to attend court to give evidence (i.e. social workers, the Children's Guardian and any expert witness) within the period of eight weeks immediately following the date when directions for a contested hearing are to be given.
  - d. Where a party intends to call an expert witness give details of what is being challenged about that expert's evidence.
- 22 If the case is being listed for a final hearing then a direction must be included in the order for the local authority to file a Certificate of Compliance not less than 14 days prior to the final hearing. The certificate will also address the issue of the current time estimate, and where appropriate, any reduction in the time estimate.

### **Final hearings**

- 23 The Local Authority are to lodge a compliance certificate 14 days prior to the hearing confirming that the case remains on track, will be ready for final hearing and clarifying the time estimate for the final hearing.
- 24 The CPO will check that directions have been complied with 14 days prior to the final hearing. The case progression officer is to notify the judge hearing the final hearing of any issues and the judge may make further directions which may include vacating the final hearing and listing the matter in the non compliance court with cost schedules to be filed by all parties.

### **Bundles**

- 25 For cases before a District Judge or Circuit Judge bundles are to be filed not less than 2 working days prior to the hearing in accordance with Practice Direction 27(a).
- 26 For cases before Lay Justices bundles are to be filed not less than 7 days prior to the hearing.
- 27 If any documents are filed after the bundle has been filed the party filing the document must ensure sufficient hard copies are brought to the hearing and handed in not less than 1 hour before the listed time.

### **Cross Courting**

- 28 Whilst the court recognises the pressure on advocates and, at times, the need to cross court and remains willing to cooperate whenever possible, save in exceptional circumstances, where an advocate seeks to represent more than one client in cases that are not in the same court room then they must seek permission from all judges dealing with those hearings in advance and at least 1 working days prior to the hearing. The advocate must give details of the other case(s) they are involved with, who the other hearing is before and where the hearing is being heard, the time estimate, the type of hearing and reasons why they seek permission.
- 29 Permission to cross court will only be granted where the court is satisfied that neither case will be compromised.
- 30 Where permission to cross court is granted the advocate will be required to check in with the usher 1 hour prior to the hearing and is to keep the judge(s) updated on availability.
- 31 Advocates who arrange to cross court without the prior approval of the court are informed that their cases may be called on by the Judge and dealt with in their absence if the case is otherwise ready to proceed.

### **Non Compliance**

- 32 Where a court direction cannot be complied with the party in difficulty shall make an application to the court requesting an extension as soon as they become aware of the difficulty and prior to the deadline in any event. Where possible the application should clarify the position of the other parties and provide a revised timetable which preserves any listed IRH and or Final Hearing when possible. The application must be accompanied by a draft order as sought.
- 33 Where there has been non compliance the burden falls on all parties to bring the matter to the attention of the court. All parties are reminded that non-compliance may result in wasted costs orders being made.
- 34 Where a direction has not been complied with the judge dealing with the hearing is to consider whether it is appropriate to make an unless order stating, for example, that unless the document is filed by a set date and time it cannot be relied on or that the document being responded to, for example a threshold document, will be deemed to be accepted in the absence of a response as ordered.
- 35 Where a party is unable to comply with any unless order that party must apply for an extension or relief from sanction in the usual way.
- 36 Any agreed application to re-timetable must be accompanied by confirmation of the position of all parties when possible and by a draft order. The court will deal with these applications as a paper exercise but subject to the Judge's discretion to list.

- 37 In the event of non compliance with a court direction which causes a hearing to be ineffective or necessitates a further hearing the judge is to consider whether a costs order may be appropriate. Ordinarily this will involve listing the matter for a further hearing with a direction parties are to file and serve a statement of costs and statements regarding the non compliance, if appropriate. The judge will consider a costs order at the next hearing.
- 38 In the event of non compliance by a legal representative or the production of an inadequate document which causes a hearing to be ineffective or necessitates a further hearing the judge is to consider whether to make a wasted costs order under S51(6) Senior Courts Act 1981. If a judge is considering this sanction the parties will be ordered to file and serve statements of costs and the legal representative will be given an opportunity to make written submissions or attend a hearing if they wish.

14 May 2018  
His Honour Judge Handley  
Designated Family Judge