JUDICIARY OF
ENGLAND AND WALES

Newsletter January 2019

Happy New Year to you all! I hope you all had an enjoyable Christmas and some well-earned rest.

Having recently been appointed as the DFJ for Leicester and Leicestershire I thought it would be helpful to provide a summary of our current performance and some action points for the coming months.

LFJB Conference 9 November 2018/LFJB website

I should first like to thank everyone involved in putting together what was an excellent conference in November. The range of topics and speakers proved both highly informative and enjoyable. Please do acknowledge your colleagues' efforts in this regard and support them with ideas for this year's event and by offers of help. I should also like to thank all those who continue to make the LFJB website such a helpful tool and reference point for local practitioners and those seeking information on family court matters. If you haven't looked at it for a while, I do commend it to you.

Performance

It is no secret that there has been a year on year increase in the number of care cases being issued over the past 5 years. Leicester has been no exception and it saw a spike in new cases in the summer/early autumn of 2017 which has left us with something of a legacy because too many cases fell outside the 26-week timetable. However, in 2018 there has been something of a decrease and it is to be hoped we can catch up because our performance is not good, and we need to improve it.

As at the end of November 2018, there were 155 live cases in the court across all levels of judiciary. New cases received by the court since April 2018 totalled 127 which is down on the same time last year. The average number of weeks to completion of a

care case is 43.7 which is the highest in the region. The region averages 34.3 weeks and the national average is 30.5 weeks.

In private law cases the picture is also one of Leicester lagging behind the regional and national averages. There were 561 new cases issued between April and November 2018. The target for completion of a private law case is 20 weeks and the national average is 27.3 weeks. Leicester cases average 35.8 weeks to completion; the regional average is 27.6.

Much of what follows is an attempt to highlight some key areas of practice principally in public law cases which if we can improve, should have an overall impact on performance and help to close the gap between what we are currently achieving and what we should be aiming for.

Making the IRH as effective as possible

In Leicester most care cases are not given a final hearing date until the IRH. It is vitally important that parties come to the IRH properly prepared. In appropriate cases, judges have been asked to list the IRH for 2 hours, so the court has time to resolve disputed issues where possible with a view to reducing the length of the final hearing. Advocates who attend the IRH must be familiar with the facts of the case and therefore able to engage in sensible discussions about the issues that require determination and the witnesses whose attendance will be required at the final hearing. It is particularly important that threshold issues are addressed. If threshold is not agreed, then the court will expect to be told what issues remain for determination at the final hearing. This means the advocates must have a clear understanding of the issues, the evidence that will determine them and which witnesses need to be called. An advocates meeting prior to the IRH should address all these issues. These should take place at least 2 clear days before the IRH.

Advocates should be able to provide the court with details of the availability of professional witnesses at the IRH. There should be a completed witness template containing *realistic* time estimates for the evidence of each witness. This should enable parties to provide the court with a *realistic* estimate of the total time required for the final hearing. If the court is told that 2 days are required for final hearing it creates havoc when, closer to the hearing, the parties suddenly revise the time estimate to 3 days. Usually it will be impossible for the court simply to provide an extra day.

Examination in chief should not need to be the norm. Cross examination should be proportionate in length and there is no need for repetitive cross examination if two or more parties have the same case or interests. Adequate thinking and delivery of judgement time for the case to be completed should be included in the template. Expect all the judiciary to make a concerted effort on ensuring the effectiveness of IRH's in the coming months and do not be surprised if they question the need for all the witnesses identified to attend the final hearing.

Extension of time for compliance with a step in the timetable

It would be helpful if there were greater compliance with timetabling directions given by the court. The rules say that if you are unable to comply with a direction on time then you *must* apply to the court for time to be extended and that application must be made *before* time has expired. They also say that if someone else fails to comply on time with a direction to take a particular step (e.g. to file and serve a statement) there is an obligation on you promptly to inform the court and seek further directions.

There is a good reason for this: once the time has been lost it cannot be regained but if a prompt application for an extension of time is made, it may be possible to rearrange what else has to happen so that the end date in the original timetable can be preserved. The court will expect any party applying for an extension of time to make the application promptly using the pro forma which was created by HHJ Bellamy [attached below] to notify the other parties and obtain their consent or observations and to supply a draft order or the wording of the proposed order on the application form.

The form should be properly completed setting out in sufficient detail for a judge to make a decision the reasons/justification for the extension, what extension of time is required and whether this will impact on other directions and the timetable generally. Please ensure this form is used rather than email the staff directly with requests for extensions of time.

Improvement in this area is critical. Expect the judiciary to be monitoring this very carefully in the coming months and if applications for extensions are not made in time to direct statements from social workers or lawyers or whoever has caused the delay explaining why it has occurred and why no application to the court was made on time or to consider making a wasted costs order.

Extension of time pro froma.doc

Extension to the 26-week timetable

Section 32(1)(a) of the Children Act 1989 requires the court "to draw up a timetable with a view to disposing of the application without delay". Section 32(4) provides that when considering whether to amend the timetable the court must have regard to "the impact which any revision would have on the duration and conduct of the proceedings". Section 32(5) provides that the court may only extend the overall duration of the case "if the court considers that the extension is necessary to enable the court to resolve the proceedings justly". It follows from all of this that compliance with the timetable set by the court is to be regarded as mandatory not optional and that extensions are to be regarded as the exception and must be justified. In short, before it will be granted a party applying for an extension must demonstrate that the extension is necessary

HHJ Bellamy issued a local Practice Direction in 2016 requiring any application for an amendment to the timetable which, if granted, is likely to lead to the need for the court to extend the overall duration of the proceedings beyond 26 weeks to be made on notice to the other parties which would be listed for a hearing before the allocated case management judge. I wholeheartedly endorse this approach. This is the Practice Note and the procedure that is to be followed please.

CASE MANAGEMENT ORDERS – PRACTICE NOTE

1. Section 32(1)(a) of the Children Act 1989 requires care cases to be completed 'without delay' and 'in any event within 26 weeks'.
2. Section 32(5) permits the court to extend the 26 week timetable 'if the court considers that the extension is necessary to enable the court to resolve the proceedings justly'.
3. Section 32(8) provides that 'each separate extension' may not exceed 8 weeks.
4. Paragraph 6 of the Case Management Order (CMO) is headed 'The Timetable for the Proceedings'. This paragraph is not being completed correctly. This reflects, in part, the fact that in some cases the need to obtain a judicial decision to extend the timetable is being overlooked.

5. It is important that each CMO sets out details not only of any extension which may have been granted at that hearing but of all extensions granted to date. Thus, for example, in a case in which the 26 weeks expired on 22nd April 2014 in which two extensions have been granted the order needs to make plain

    (i) the date when the first extension was granted – 22.4.14

    (ii) the date to which the first extension was granted – 17.6.14

    (iii) the revised length of the case – 34 weeks

    If/when the second extension is granted the detail given in the previous CMO (i.e. paragraphs (i), (ii) and (iii) above) should be repeated and followed by:

    (iv) the date when the second extension was granted – 17.6.14

    (v) the date to which the second extension is granted – 12.8.14

    (vi) the revised length of the case – 42 weeks.

6. In this way perusal of CMOs should provide a clear audit trail of all extensions granted.
7. It is also important that the CMO gives reasons for each extension. Following the President's decision in *Re S (A Child)* it has already become noticeable that the reasons for extensions proposed in draft CMOs are formulaic and general. The reasons for each extension need to be related to the facts of that particular case. Why has the court granted *this* extension in the circumstances of *this* case.
8. This is important not simply because that is the way it ought to be done. It is also important because it enables the case management judge to read through past orders and see at a glance how the case has come to be in the position it is in at that particular hearing.

I add my own paragraph 9. It also enables the DFJ to look at the cases where the 26-week timetable has been extended and understand why and whether any trends can be identified. This may help to identify what ameliorative action can be taken to avoid similar problems in future cases.

Too many hearings per case

Achieving better compliance with the court's directions should lead to a reduction in the number of hearings per case. Additional hearings put a strain on the court system and practitioners especially if they have to be listed at short notice and must also be very difficult for parents and professionals to accommodate. The other thing that would help reduce the number of hearings per case is to ensure that CMH's and FCMH's are truly effective and address all the issues in the case that can reasonably be foreseen.

The local authority's lawyers and Counsel will bear a heavy responsibility in this area, but it is incumbent on everyone, judges included, to try and ensure that case management directions are comprehensive at as early a stage in proceedings as possible. Issues that often cause delay and therefore require some early thought are capacity and the need to invite the OS to act; whether a party needs an intermediary or other specialist assessment e.g. PAMS parenting assessment, autism assessment etc; identifying wider family or friends who may be *realistic* potential carers for the children if they cannot live with their parents; disclosure from police forces other than Leicestershire, other local authorities, schools, health bodies.

Effective final hearings

The court staff do contact the parties' representatives in the week or so prior to a final hearing to check that it is still effective. They are often assured that it is only for it to transpire on Day 1 that it is not or that less court time is needed. This is really not acceptable. Please help us to help you and your clients by keeping the court office up to date on the timing of final hearings in particular and the accuracy of responses to their enquiries.

And finally

There are two other documents which I think it would be helpful to remind practitioners of. The first is HHJ Bellamy's Guidance on the issuing of urgent new care proceedings issued in 2013. If you are a local authority lawyer, please remind yourself of this guidance. Please ensure that any urgent hearing requests provide sufficient information in the original documents submitted or covering email to enable a judge to decide how to process the request [attached].

The second is the President's Guidance on Jurisdiction and Allocation published last year but worth having to hand [attached].

Urgent cases issue.pdf


Jurisdiction.docx

I apologies for the length of this newsletter! I look forward to working with you over the coming months and welcome your assistance in addressing the issues highlighted.

HHJ Jane George

DFJ Leicester