

THE MAGISTRATES' ASSOCIATION

FAMILY COURTS COMMITTEE

Response to the President's letter on the Public Law Outline

Introduction

The Family Courts Committee of the Magistrates' Association thanks the President of The Family Division for his letter regarding the Examination of some aspects of the PLO approximately 17 months after its implementation across England and Wales.

We are pleased to respond, as the Family Proceedings Court (FPC) is the first court to hear applications under the PLO and making the first interim orders rely heavily on the paperwork initiated by the Local Authority. We have taken soundings from FPCs across the country but have experienced some difficulties in collating responses in time due to the short consultation during the summer holiday period. However we believe that our representations give an accurate overview of the current position.

General Comments

Although applications have in general increased since the Baby Peter case, particularly at Inner City Courts, we are experiencing a varied picture of the PLO across the country. In some courts the PLO is working reasonably well. Practitioners have become familiar with the procedures, alternative orders to full care orders are being made, and time being taken has reduced, although not reaching the 40 week target. In some other courts implementation of the PLO is patchy. Some Local Authorities and Lawyers are not conforming with the PLO procedures. This can occur irrespective of whether or not it is a busy court and it falls upon the Legal Adviser or the Bench to question and chase the relevant paperwork.

All the responses we received stressed the serious effect on FPCs of the lack of Guardians. This means that the initial Cafcass analysis and recommendation is not available until further on in the case - CMC and sometimes beyond, after the all important first decisions which may include removal, have been taken. This is now affecting all areas. Some courts are experiencing a Duty Guardian for the first time. Generally speaking, cases seem to be more complicated, and so we consider it vital that a Guardian is appointed as early as possible.

We hope that the temporary measures recently put in place will help alleviate this problem, but there are doubts about the ability of Guardians to meet an increased workload while maintaining the level of response and input that Courts require.

1. Forms & Orders

On the whole these are helpful and are working well. But where they are not completed, delay can occur.

Some magistrates are frustrated that some practitioners use the forms and others do not. We feel consistency is required.

Several Family Chairs commented on the form for the draft case management order. We think it would be helpful if the sequence of Directions made, either by the Parties, Legal Adviser or the Bench, could be seen at a glance. Form PLO6 does not facilitate this. Further, it does not provide sufficient space for Directions and many of them are written on extra sheets of paper attached to the form. At Rotherham for example, form PLO5 is used to record allocation and directions on issue, and PLO3 & PLO 6 are not usually used. The draft directions produced by the parties tend to be used rather than duplicating the form filling. Tyneside on the other hand do not tend to use form PLO5 or PLO3 and have amended form PLO6.

Swansea, is an example of an area where practitioners have adapted the forms to suit their requirements, in London, an updated front sheet attached to the order has been drafted to list next hearing date and Directions.

In addition we have received a question as to whether PLO 7 form is necessary. Although it is a requirement that transfer is considered at every hearing, a form is only required if transfer is ordered.

2. The Use of Experts

Family Magistrates report little or no difference in the use of experts under the PLO. The Practice Direction does not feature in many hearings except in procedures for the identification of experts, and letter of instruction to them. We feel that the appointment of Experts remains one of the biggest causes of delay in care applications.

Although Magistrates are adopting a more robust approach to applications for Expert assessments, faced with agreement between all parties involved, it remains difficult to refuse such applications, or directing that the work be carried out by Guardians or social workers instead. The decision often rests on the rights of the Parent to a fair trial.

There are examples where parents are demanding independent residential assessments of parenting ability on the grounds that community based assessments by local authorities are not independent. Resolving these issues can add delay to proceedings.

Overall we do not feel that further Guidance is required as the Practice Direction is comprehensive. But there is a need to ensure that it is followed.

3. Pre-Proceedings Paperwork

Comments on this are extremely varied and range from nothing to fully comprehensive.

Where the Local Authority brings a case quickly at fairly short notice, paperwork can be sketchy and core assessments not completed. In some areas this seems to be increasing. In addition, the first Cafcass analysis and recommendation is not usually available at first hearing. In these circumstances, courts have to make Directions for these to be filed as soon as possible. This means that the paperwork is not complete when early decisions in the case are made. In these cases, the courts are somehow playing 'catch-up' and delay can develop at CMC stage.

Where the Local authority has been working with a family for some time, fuller paperwork is usually available which assists the court.

Most Magistrates report that the 'letter before proceedings' is very helpful. This is not always provided however.

4. Paperwork on Issue

When the full paperwork is filed before the first appointment it amounts to a huge amount of information that Magistrates have to absorb very quickly. If the PLO2 case summary was required to be filed at first hearing the Bench and all parties could get a quick overview of the case. The Local Authority also has to identify the relevant papers to be read at first appointment. It would still be appropriate to file an updated PLO2 for the CMC.

5. Raising the Profile of Timetable for the Child

We find that this concept is still not fully understood or implemented by practitioners. There were one or two comments relating to the fact that this concept is at odds with the 40 week target for the conclusion of cases. We agree that the profile of Timetable for the Child needs to be raised.

Some Magistrates are reporting that adjournments are as frequent as ever which inevitably disrupts any timetabling. The reasons appear varied but are sometimes because Directions are not followed. Where CMCs or IRHs go part heard then the timetabling is disrupted. Advocates Meetings sometimes only take place immediately before the Court hearing leaving no time for further discussions on areas of disagreement. It follows therefore that the paperwork is not before the court in good time for the hearing. Due to the lack of Case Progression Officers, it remains the task of the legal adviser and the Bench to try to get timetabling back on track.

6. Bundles

The Practice Direction on the filing of bundles only applies to the County Court and High Court. Some areas Local Authorities are providing sufficient reading for magistrates and the legal adviser but we think it would be helpful if the PD could also cover bundles in the FPC.

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