

# ROYAL COURT OF JERSEY

FD 19/01

## Care and Supervision Proceedings – Case Management

1. This Practice Direction shall apply to all care and supervision proceedings that are issued after 1 August 2019. It shall not apply to cases that are already before the Court, but parties and their representatives are reminded that they are expected to work to the standards of good practice which underlie this practice direction, remembering at all times that the welfare of the child(ren) involved is paramount.
2. The outline in the tables below sets out:
  - a. The different stages of the court process;
  - b. The steps to be taken to prepare for hearings (which will include meetings between advocates), and the issues that should be considered;
  - c. The timescales that parties and their advocates are expected to abide by.
3. The Court, the parties and lawyers involved in these proceedings shall at all times have regard to the overriding objective set out in Rule 4 of the Children Rules 2005, and to the principles set out in Article 2 of the Children (Jersey) Law 2002.
4. The Court has flexible powers at all stages of the proceedings to meet the overriding objective. The Court may give directions without a hearing. The steps that the Court might normally take at a case management or other hearing may be taken at any time the Court considers fit. The Court may cancel, advance or delay any hearing. The Court may decide to hear evidence at any hearing to resolve a particular issue, where it decides that it is appropriate to do so.
5. The Court may invite the parents, the child and the social worker to attend court to discuss the progress of the case. If the Court does so, the Court shall notify counsel who may attend court if so advised.

6. Where it appears the Court may need to hear evidence at a hearing (other than the final hearing), the Court shall be notified immediately and consideration given to what directions are required.
7. At all hearings counsel must be prepared to deal with all issues that may arise at that hearing so that the hearing can be as productive as possible, and so as to avoid the need for further case management hearings where possible. Parties and experts are expected to produce documents and reports on time.
8. Nothing in this practice direction shall affect an application for an emergency protection order, secure accommodation order, child assessment order, recovery order or an application for a care or supervision order to be discharged or varied.

#### **“Pre-Proceedings”**

9. Before an application is made for a care or supervision order the Minister for Health and Social Services (the “Minister”) will often have implemented a ‘pre-proceedings’ process. The aim of this process is to identify children who are at risk of significant harm, and to inform the Minister as to whether the risk presented in a particular case can be managed with additional support and guidance or whether proceedings are necessary.
10. The ‘pre-proceedings’ process does not currently take place under the umbrella of the Children (Jersey) Law 2002, but events during this process will often become relevant to any proceedings that are issued subsequently.
11. The Court expects the Minister to ensure that counsel appointed to advise parents during the ‘pre-proceedings’ process are provided promptly with all documentation that they need to provide meaningful advice and support to their client.
12. The Court expects that, during the ‘pre-proceedings’ process, the parents will be told in clear terms what concerns the Minister has in relation to the child(ren) and what the parents need to do to alleviate those concerns and to avoid proceedings. If proceedings are subsequently issued the Court will expect the social worker’s statement to set out clearly why it has become necessary to

issue proceedings and in what way the parent(s) failed to meet the expectations of the Minister.

13. The Court notes that the 'pre-proceedings' process is expected to run for not more than twelve weeks from the date of the first pre-proceedings meeting, unless a delay has been authorised by the appointed Head of Service. In most cases the expectation will be that counsel and the parents will meet with the Minister on three occasions during the Pre-Proceedings process.

## **Stage 1**

### **The Start of Proceedings**

14. The Law Officers' Department shall file the application in the form required under the Children (Jersey) Law 2002 and the Children Rules 2005. Generally, the Law Officers' Department will file the following documents with the application form(s) unless to do so would require a delay which is not in the best interests of the child(ren):-
  - a. A case summary. This summary should identify the parties, the advocates (if appointed) and other relevant individuals, and provide a summary of any allegations of fact, the Minister's proposals for the child(ren), any disputes between the parties that need to be resolved by the Court at an early stage and a short summary of the case in general. This summary shall be updated at every stage of the case and every summary shall be dated;
  - b. The first social work chronology (at this stage limited to the two year period preceding the application);
  - c. The first social work statement and genogram;
  - d. The first care plan;
  - e. The interim threshold document; and
  - f. The Child and Family Assessment
15. The Law Officers' Department shall contact the Judicial Secretary to notify the Court of the need for (a) a case management hearing or (b) a hearing for an interim order (in cases where this is expected to happen) and a case management hearing.
16. The Judicial Secretary shall fix a date for the hearing(s). The Court shall order the appointment of a JFCAS guardian. A copy of the application forms showing the date(s) fixed for the hearing(s) and any accompanying documents shall be sent to JFCAS by the Law Officers' Department.
17. A guardian for the child(ren) shall be appointed by JFCAS. At this stage, or at any point thereafter, JFCAS may apply for a lawyer to be appointed to represent the child(ren). Such applications should be limited to cases where there is a particularised need for the child(ren) to be represented. When

making their application JFCAS shall state why, on the facts of the case, it is appropriate to appoint a lawyer for the child(ren). The guardian is able to seek legal advice in deciding whether to make an application for a lawyer to be appointed, and to assist with the preparation of that application.

If the application is made before the first court hearing takes place, the Court will consider any such application on the papers and on its merits.

18. The Law Officers' Department shall notify the Children Panel of the names of the respondents and the child(ren) and provide the Panel with sufficient information to allocate panel lawyers promptly upon applications for representation being received.
19. The Law Officers' Department shall serve the application form(s) showing the date fixed for the hearing(s), and any accompanying documents on the respondents.

## **Stage 2 – The Case Management Hearing**

### **Prior to the Case Management Hearing**

20. The first Case Management Hearing should take place within 3 weeks of proceedings being issued.
21. If there is an application for an urgent interim order, there is no requirement for that application to wait until after the Case Management Hearing. It should be listed for an urgent hearing in the usual way.
22. The need for an urgent interim hearing should not delay the timeframe for a Case Management Hearing.
23. If the Court hears an application for an interim order within three weeks of proceedings being issued, the Case Management Hearing may take place at the conclusion of that hearing. The advocates must ensure that they are sufficiently prepared to deal with all issues arising at a Case Management Hearing, and that they are in a position to be helpful to the Court.
24. Five working days prior to the Case Management Hearing the Law Officers' Department shall produce and serve the following on the parties or their advocates and on JFCAS (unless the documents have already been served):-
  - a. the social worker's first statement and care plan;
  - b. the interim threshold document;
  - c. the chronology;
  - d. copies of any previous orders;
  - e. records of key discussions with the family, key minutes and records and any pre-existing care plans (i.e. child in need, looked after child or child protection plans);
  - f. copies of any correspondence with the family;
  - g. the Child and Family Assessment;
  - h. copies of any contact logs. These logs will be circulated regularly throughout the proceedings in cases where the Minister is supervising contact; and

- i. an index of relevant documents. This index will be kept up to date by the Law Officer's Department and will list all relevant documents in the proceedings.
25. A meeting of advocates, the Guardian (and litigants in person) shall take place. Wherever possible this will happen not less than two business days before the Case Management Hearing. At this meeting, the advocates will consider the directions needed at the Case Management Hearing (see below). And:-
- a. the attendees will identify the parties' positions as they stand at this stage (it being accepted that the parties' positions may change);
  - b. the attendees will identify whether there is a potential need for any experts to be appointed, and if so in which discipline, and shall discuss whether any adjustments may be required to the standard letter of instruction;
  - c. the attendees will identify the need for the disclosure of any documents;
  - d. the attendees will identify any need for an interim hearing (e.g. an application for an interim order, a contact dispute);
  - e. the attendees will discuss whether and, if so why, an application should be made for a lawyer to be appointed for the child(ren); and
  - f. the attendees will discuss whether any kinship or connected persons assessments are likely to be required, and of whom.

## **Experts**

26. Experts shall not be instructed in public law proceedings until the Court has given leave.
27. The expert(s) shall be selected from a panel of experts that has been approved by the Court, unless the Court has given leave to the contrary. The panel of experts will be approved by the Court after due consultation with the Minister and the panel of lawyers accredited to represent parents and children in public law proceedings. The panel of experts shall be reviewed at regular intervals.
28. The Court has approved a standard letter of instruction for each type of assessment commonly undertaken in public law proceedings. This standard letter of instruction shall be used unless the Court has given leave to the contrary.
29. Experts shall be asked to include with their reports an executive summary setting out a concise summary of their findings and opinion.
30. Following the advocates' meeting, the Law Officers' Department shall produce letters of instruction for any proposed experts and shall provide drafts of those letters to the advocates for their comments. The draft(s) shall show clearly any variations to the standard form letter of instruction. The draft(s) shall show clearly any area of disagreement between the parties in relation to the letter of instruction.
31. Following the advocates' meeting, the Law Officers' Department shall produce a draft case management order. This draft shall be circulated to the parties and shall where possible be agreed by counsel, failing which any areas of disagreement must be clearly marked on the draft. This will be filed with the Court (and Judicial Greffe) in hard copy and electronically by 9 am on the business day before the hearing together with an updated case summary and copies of any draft letters of instruction for experts. The updated case summary shall be dated, and should be provided in clean and 'track changed' version. It should set out clearly the current situation, the Minister's current proposals for the child(ren), any disputes between the parties that need to be resolved by the Court at this stage and a short summary of the case in general. This case



summary will continue to be updated prior to each hearing, and each updated case summary shall be dated.

## **The Case Management Hearing**

32. At the hearing, the Court will give detailed directions as to:
- a. the timetable for the proceedings (taking into account dates and periods which are important to the child(ren)'s welfare and development);
  - b. identifying any additional parties;
  - c. whether there should be a lawyer for the child(ren);
  - d. identifying the key issues in the case;
  - e. identifying the evidence that is likely to be necessary and considering the reliance on hearsay evidence;
  - f. identifying whether, and if so why, there is any need for a fact find hearing. It will not be appropriate for a separate fact find hearing to take place where this will cause delay for the child(ren) unless such a hearing is necessary and in the best interests of the child(ren);
  - g. identifying whether there is a real issue around threshold to be resolved;
  - h. experts (to include the identity of the expert and the letter of instruction which; shall be in standard form, unless leave is given);
  - i. identify the need for disclosure;
  - j. ensuring compliance with directions;
  - k. directing the filing of any evidence, care plan, threshold agreement, position or witness statement and responses which should be filed before the Issues Resolution Hearing;
  - l. directing a timeframe for the conclusion of any connected persons or kinship assessment and (where appropriate) for the filing of those assessments;
  - m. in cases where the Minister is supervising contact, directing the disclosure of contact logs (if any) to the parties fortnightly or on such other basis as the Court may order;
  - n. directing an advocate's meeting prior to the Issues Resolution Hearing;
  - o. directing the fixing of a date for the Issues Resolution Hearing, Final Hearing or a further Case Management Hearing and directing the duration of each hearing to be fixed; and
  - p. giving directions for special measures, interpreters or intermediaries;

### **Stage 3 – The Issues Resolution Hearing (stage 4 being the final hearing)**

#### **Prior to the Issues Resolution Hearing (IRH)**

33. A meeting of advocates, the Guardian (and any litigants in person) shall take place. Wherever possible this will happen not less than seven business days before the IRH. At the meeting those attending will:-
  - a. Review the evidence and the position of the parties;
  - b. Identify the attendees' views of the key issues and how they can be resolved or narrowed at the IRH;
  - c. Consider what evidence is required and whether evidence should be heard at the IRH to narrow any issue;
  - d. Consider what issues need to be resolved at the IRH; and
  - e. Consider whether the issues in the case have been so sufficiently narrowed that the IRH can be used as the Final Hearing.
34. Following the advocates' meeting, the Law Officers' Department will file a draft case management order. This draft shall be circulated to the parties and shall where possible be agreed by counsel, failing which any areas of disagreement must be clearly marked on the draft. This will be filed with the Court (and Judicial Greffe) in hard copy and electronically two clear business days prior to the hearing together with an updated case summary and such other papers as are necessary for the court to consider the issues arising at the IRH.
35. If the parties agree that the issues in the case have been so sufficiently narrowed that the IRH can be used as the Final Hearing, this agreement shall be brought to the attention of the Court in the draft case management order and the updated case summary.

### **The Issues Resolution Hearing**

36. The IRH shall be listed for half a day or one day. A longer hearing may be fixed if the Court has given leave.
37. The Court will identify the key issues and whether they can be narrowed or resolved prior to the Final Hearing.
38. The Court will consider whether the issues have been so sufficiently narrowed that the IRH can be used as the Final Hearing. Where the parties have not agreed upon this in advance of the IRH, the Court may decide to proceed in this way regardless but shall first obtain the views of the parties.
39. The Court will identify the evidence that is needed at the Final Hearing, and what issues will need to be resolved at the Final Hearing.
40. The Court will review the time set down for the Final Hearing and vacate any time no longer required, or identify any additional time required. The Court will give final case management directions. These shall include directions as to the size and content of the bundle for the Final Hearing, which shall generally be limited to 350 pages. Where possible, the Law Officer's Department will provide the court with a draft index for the final hearing bundle so that this can be considered at the IRH.