

LOCAL AUTHORITY CIRCULAR

LAC(2004)1

To: The Chief Executive
County Councils)
Metropolitan District Councils) England
Shire Unitary Authorities)
London Borough Councils
Common Council of the City of London
Council of the Isles of Scilly

Copy: The Director of Social Services
The Head of Legal Services
Justices' Chief Executives
Care Centre Managers
Chief Executive CAF/CASS

15 January 2004

IMPLEMENTATION OF THE PROTOCOL FOR JUDICIAL CASE MANAGEMENT IN PUBLIC LAW CHILDREN ACT CASES

Summary

1. This guidance is issued to local authorities under section 7 of the Local Authority Social Services Act 1970, which requires local authorities to act under the guidance of the Secretary of State. It contains guidance to local authorities on the action required to implement the Protocol for Judicial Case Management in Public Law Children Act Cases, which came into effect on 1 November 2003. The guidance in this circular should be read in conjunction with LAC(99)29: Care Plans and Care Proceedings under the Children Act 1989.
2. There will be a number of benefits arising from the implementation of the protocol. The most important benefits will be to children and their families who will experience faster resolution to court proceedings and hence earlier decision-making. As a result children will experience shorter delays before appropriate long-term plans can be made for their future. In addition there will be benefits to local authorities themselves through shorter care episodes and reduced placement costs, improved internal systems and processes and demonstrable performance improvement.
3. Local authorities are asked to bring this circular to the attention of senior managers with responsibilities for care applications to court, to social workers and other staff involved in the preparation of reports, and to local authority legal staff dealing with such cases.

Aim and scope of the circular

4. The guidance in this circular seeks to address the difficulties caused to children and their families, and implications for costs, resulting from the current delay in completing care proceedings. The protocol, developed by an Advisory Committee commissioned by the Lord Chancellor involving all of the agencies and organisations that have a significant role to play in the care process, consists of 6 steps which will streamline the key processes and monitor time-scales towards achieving a final hearing within 40 weeks.

The protocol

5. Section 1(2) of the Children Act 1989 requires the Court to “*have regard to the general principle that any delay in determining any question is likely to prejudice the welfare of the child*”. In addition decisions of the European Court of Human Rights emphasise the need under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms for “*exceptional diligence*” in this context. The Green Paper, *Every child matters* (published in September 2003) also stresses the importance of timely and effective planning and decision-making for looked after children.
6. The paramount objective of the protocol is to improve the outcomes for children by reducing unnecessary delay in Public Law Children Act Cases and, to this end, to achieve the completion of all cases within an overall timetable of not more than 40 weeks (save in exceptional or unforeseen circumstances). The following core elements have been identified to achieve this objective:
 - judicial continuity and case management by not more than 2 judges per case;
 - consistency, including early identification of complex cases requiring transfer;
 - more rigorous control of the use of experts;
 - more rigorous control of the content and quantity of court documentation, including standardisation where possible.
7. The protocol has been produced to assist all participants in the process (including judges, magistrates, lawyers, guardians, social workers and other experts) by providing them with a common, timed framework for the case management of every case at every stage and every level. To this end, it sets out the “6 Steps” that every Public Law Children Act Case should go through and includes guidance on the documentation for the conduct of each of the steps. As is apparent, the protocol does not radically change the procedure (no rule changes are required), rather it seeks to distil and streamline the process to its essentials and change the culture within which the proceedings takes place.

Implementation

8. All agencies and individuals referred to in the protocol are expected to have been endeavouring to work in accordance with the protocol from 1 November 2003, following the local approach to implementation articulated in the Care Centre and Family Proceedings Court Plans that have been submitted in line with Appendices E/1 and E/2 to the protocol.
9. There are five key strands of work which will contribute to the successful implementation of the protocol. These strands are:
 - activity by the Department for Constitutional Affairs, Court Service and Magistrates Courts Committees to put in place systems to deliver the required time-scale;
 - activity by CAFCASS to ensure the availability of guardians to the required time-scale;
 - action by local authorities (see below);
 - a working group to be established by the Department for Constitutional Affairs to examine the use of experts in care proceedings; and
 - action to resolve children's services workforce issues.
10. There is some evidence that the areas in which there is currently greatest delay are those where social services are experiencing the greatest recruitment problems, though this is not always the case. *Every child matters*, outlines strategies to address these workforce issues.

Action by local authorities

11. The implications for local authority social services and their legal services are important. The protocol is a whole system approach to delivering improvements through local partnerships involving CAFCASS and the Family Court Business Committee, and local authorities are expected to fulfil their obligations as part of this. The protocol gives directions about the content and format of documentation to be provided to the Court to ensure consistency and avoid gaps. It does not radically change the procedure; rather it distils and streamlines the process to its essentials.
12. The protocol reflects the existing expectations placed on local authorities by section 7 guidance in respect of assessment and care planning, and the relevant time-scales and processes are outlined in Appendix F to the protocol. Local authorities are reminded that undertaking core assessments when required by the Framework for the Assessment of Children in Need and their Families (Department of Health, et al 2000) and within the required times-scales, in order to evidence the care plan presented in the proceedings, is key to reducing delay.

13. Some steps that will help to support effective implementation include:

- participating fully in the delivery and ongoing review of the Care Centre and Family Proceedings Court Plans, including following the critical path for local implementation as articulated in these local plans;
- encouraging the development of liaison arrangements with CAFCASS Service Managers to support improved joint planning and partnership working;
- informing members about the protocol, its role in securing improved care planning for children and their families and the workforce/resource implications for implementation;
- briefing for the Children's Management Team on the implications of the protocol;
- identification of the key tasks for social services and legal services, and who will lead on them;
- joint briefing with legal advisors for all children's managers on the protocol;
- revision of local authority policies and procedures to support compliance with the protocol;
- a training programme for managers and front line staff on the details of the protocol approach and time-tabling;
- encouraging court user committees or their equivalents to share monitoring information from the national adoption standards and the protocol to learn and improve performance across the wider system.

14. The Adoption and Permanence Taskforce has facilitated a number of wider systems (social services, legal services, CAFCASS and the Courts) events to support improvements in court process. Through these events a number of local documents have been shared, and these will be placed on the Taskforce's website at www.doh.gov.uk/adoption shortly. The Taskforce is currently consulting with local authority and court stakeholders about the potential role for further events of this kind to support implementation of the protocol.

15. Early work around reducing delay and implementing the protocol has identified the key role that pre-planning plays in avoiding delay in care cases. This early planning allows issues to be identified and addressed prior to the application being made to the court and in particular helps to avoid the need for additional assessments to be undertaken later in the process and the associated delay. Successful use of pre-planning relies on effective joint working between local authority legal services and social workers. In addition, some areas are seeking to make early progress by considering which children are waiting for care proceedings to be initiated or resolved and focusing their efforts on particular groups where delay is likely to be particularly harmful.

16. The effective implementation of the Integrated Children's System and sound assessment practice will support more focused care planning and the early identification of cases where proceedings may be considered and the likely level of

complexity. It will also capture information about the completion of assessments with required time-scales.

Monitoring arrangements

17. Whilst there are arrangements being put in place by the Court Service, Magistrates' Courts Committees and CAFCASS to monitor the extent to which care cases are being conducted in compliance with the protocol and directions previously given by the Court, it will be important for local authorities to develop systems to monitor their own performance and compliance with the protocol.
18. There will already be local monitoring systems in place to cover the processes and time-scales, which relate to the undertaking of assessments and care plans. Additional monitoring systems will be required to ensure compliance with time-scales for securing local authority documents at key points in the process, in particular the Case Management documents.
19. Data on the drivers for delay will be collected centrally and considered. The Department for Education and Skills and SSI will also be monitoring local authority progress in implementing the protocol through the Delivery and Improvement Statements in 2004. Statements will be expected to demonstrate that local authorities are actively contributing to the local implementation plans and complying with the protocol.

Enquiries

20. Enquiries about this circular should in the first instance be made to:

Jim Brown
Department for Education & Skills
Children, Young People & Families Directorate
Looked After Children Division
Room 125 Wellington House
133-155 Waterloo Road
LONDON SE1 8UG

Tel. 020-7972-4431
Email: jim.brown@doh.gsi.gov.uk

Further copies of this Circular may be obtained from Jim Brown at the address given above. Please quote the serial number appearing on the top right-hand corner.

Current circulars are now listed on the Department of Health website on the Internet at: <http://www.doh.gov.uk/publications/coinh.html>. Full text of recent circulars is also accessible at this site.

Publications relating to Children and Families Policy are now available on the Department for Education & Skills website at: <http://www.dfes.gov.uk/childrenandfamilies/>.

© Crown copyright 2004. This Circular may be freely reproduced by all to whom it is addressed.