

## **Public Law Advisory Group**

### **Final Report**

#### **Guidance on Recovery & Reform in Public Law Proceedings**

##### Introduction

1. This guidance has been produced by the Family Justice Reform Implementation Group which consists of stakeholders in the child protection and family justice systems, including senior family judges, Cafcass, Cafcass Cymru, ADCS, ADSS Cymru, Ofsted, DfE, MoJ and the Welsh Government.
2. It is issued with the approval of the President of the Family Division and the Family Justice Board.
3. The guidance is intended to assist all those concerned with the child protection and family justice systems in England & Wales to ensure that the best interests of children are paramount at all times, to promote improved practice and decision making in respect of the removal of children from the care of their parents/carers, to achieve a more effective and efficient use of resources and to ensure the recovery of both systems from the adverse consequences of the pandemic and to secure beneficial reforms.
4. It is not intended to be rigidly prescriptive and should be tailored to the circumstances and conditions prevailing in each DFJ area. The guidance reflects elements of good practice undertaken in many areas of England & Wales and is underpinned by the key principles in the Children Act 1989:
  - the paramountcy principle of best interests
  - the presumption that children should be brought up by their own families
  - working in partnership with parents
  - the use of voluntary accommodation
  - and the concept of No Order.
5. It is assumed that judges and all professionals will have regard to and take account of the President's guidance in The Road Ahead and to MacDonald J's Guidance on Remote Hearings (Version 6).

## Background

6. The fundamental concept in the child protection and family justice systems is the paramountcy of the welfare best interests of the child and this underpins every recommendation in this document.
7. Prior to the implementation of the recommendations of the Family Justice Review of 2011, public law care proceedings were taking on average 60 weeks to be completed, which had an adverse impact on the courts' ability to hear and conclude other children's cases (e.g. adoption applications). The imposition of a statutory 26 week limit in which to conclude public law care proceedings had a dramatic impact and quickly led to cases being completed within or close to 26 weeks. Permanency plans for children were made and approved by the court within a timeline much more conducive to meeting a child's best interests.
8. The progress made in securing protection, stability and permanence for children has been under increasing pressure, with growing backlogs exacerbated by COVID-19. For children who remain stuck in the middle of the court system, the detriment to them is immeasurable. Their young lives are now on hold and their whole futures could be seriously affected with long-term consequences. It is essential that the sector, as a whole and as a partnership, and with the endorsement of the Family Justice Board, considers these children as a top priority.

## Local Authorities

### Non urgent cases

9. All cases involving the courts are serious and should be considered in court in a planned and orderly manner, with time for the parents, Cafcass and the court to prepare for the hearing and consider the issues sufficiently. Where a child is not at immediate risk of harm, local authorities should be confident that, if they decide to bring a case to court, it is in the child's best interests and that they have gathered all of the relevant information that the court will need to make its decision. Applications that do not merit the court's attention, because the application does not adhere to the principles of the Children Act 1989, impede the court's capacity to hear applications that do. It is for this reason that the child protection planning process alongside the PLO should be thoroughly exhausted before an application is made to court.

10. Local authority Practice Leaders (commonly the Assistant Director for Children’s Social Care) have a central part to play in rigorously vetting applications to the courts to ensure that the legal framework and statutory guidance is *fully met in every case* to ensure an application is justified and that the argument for removal is grounded in well tested evidence. ***There can be no greater priority for social work leaders than ensuring that children who need to be subject to care proceedings become so without delay***, and that children who can be protected through the child protection planning process are fully supported with expertise and persistent diligence.
11. Additionally, Practice Leaders should ensure there is a robust focus on and undertaking of pre-proceedings measures to engage with, and offer support to, parents and the child. The parents, children (where appropriate) and significant family members should be included and involved in the planning and the process that follows. A multiagency approach is highly recommended in parallel with a stronger use of child protection arrangements during the pre – proceedings period.
12. Vital questions need to be answered in making the decisions to issue proceedings and to endorse a care plan, taking account of the provisions of the Public Law Outline (‘PLO’): crucially:
  - i. What order is to be sought? and;
  - ii. Why is it being sought now?
13. The decision should be made on the basis that (i) the welfare best interests of the child are paramount and (ii) public law care proceedings should be an option of last resort where evidence and all relevant assessments support the application. The Social Work Evidence Template (currently in revision), or any similar template used by local authorities, must set out the nature of support for the family in pre-proceedings, including the objectives of the child protection plan and what precisely the family were unable to offer to the child/ren by way of protecting and managing risk together with the local authority. The final report of the President’s Public Law Working Group will contain best practice guidance in this space and ADCS/ADSS Cymru will support its dissemination and usage. Local authorities should ensure that internal quality assurance and monitoring processes reflect the approach set out here and in the best practice guidance (e.g. a sufficiently senior manager signing off on the decision to issue proceedings).
14. Frequent changes in key workers result in parents and children having multiple allocated social workers, this has an adverse impact on the working

relationship and trust between social workers and the parents and child. In cases where court proceedings are issued, wherever possible local authorities should avoid changes in the case holding social worker and ensure they have the requisite level of experience to ensure the desired level of consistency and continuity.

15. A key principle of the 1989 Act is that children are best looked after within the family, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary. When making an application to court for an order, the court will need to be satisfied that making an order for the child will be better than making no order. Where making an application for a court order is not in the best interests of the child, greater use should be made of:
  - i. The extended family and/or friends of the parents/carers;
  - ii. Child in need plans;
  - iii. Child protection plans;
  - iv. Care and support plans (Wales).

Where a decision is made *not* to apply to the courts for removal, the points to be scrutinised are set out in statutory guidance, either through Section 47 child protection enquiries undertaken by local safeguarding partners including the police, health, and the local authority, or through the statutory multi-agency child protection planning process which provides considerable focused, frequent, and formal scrutiny of child safety.

### Urgent cases

16. Where children face a serious and immediate risk of harm, the ability to enter court proceedings without delay is crucial in order to prevent harm, and to secure stability and / or long-term permanency.
17. If a child is at *immediate risk of harm*, the court's involvement should be sought without delay. Adherence to and compliance with the Public Law Outline (FPR PD12A) is required *before* a case is brought to court. However, ***the safety and welfare of the child should never be put in jeopardy*** by delaying issuing proceedings whether because of lack of documentation or otherwise.
18. Labelling a case as 'urgent' needs to be reserved solely for situations where there is an immediate serious risk of harm. Currently, a significant

proportion of cases<sup>1</sup> are coming to court as ‘urgent’, when they do not meet this threshold, and the cause of the “urgent” classification, is not based upon the risk of significant harm, but some other factor. In these circumstances, the application has been un-necessarily rushed through to court, often with a request for a hearing within 24-48 hours, resulting in the application being inadequately prepared. This creates huge frustration for all parties and uses court capacity which could either be used for truly urgent cases, or indeed other cases which *have been* properly prepared for a productive hearing. None of this is in a child’s best interests.

### Checks and Balances

19. In developing this guidance, the Family Justice Reform Implementation Group advises that the complexity of decisions concerning the removal of children from their parents/carers cannot be underestimated.
  - Lead professionals have a central role in robustly vetting applications to court and need mechanisms in place to ensure that practice complies with legislative and statutory requirements, reflecting the key principles of the Children Act 1989. They also have a role in ensuring that rigorous safeguarding procedures are in place for cases that are not taken to court because it is not in the best interests of the child to do so.
  - Continual improvement is critical. The peer review tool recently developed and tested by six ‘Partner in Practice’ local authorities in England is now available to be used by other authorities as part of Regional Improvement and Innovation Alliances’ work programmes. This would assist in the implementation of, and adherence to this guidance, and would also inform improvement conversations and practice in respect of ensuring robust safeguarding mechanisms for cases not taken to court and improved pre - proceedings and the use of care and supervision orders.
20. It is also recommended that:
  - a) Statutory guidance (Working Together to Safeguard Children) is updated to provide greater clarity regarding the expectations of local authorities in respect of pre-proceedings;
  - b) Ofsted and CIW criteria for the inspection of local authority children’s services across England and Wales should be amended such that there

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<sup>1</sup> Judges estimate the number of cases labelled as ‘urgent’ to be approximately 60%.

is an assessment of the extent to which reasoning about pre-proceedings, the support for families, the protection of children during this period and the decision to issue are clear and explicit being focused on children's best interests;

- c) That practice direction 12A is amended to be clearer on the expectations of Children's Guardians early in proceedings when they give an initial view to the court. In any such amendment, the expectation will be that the parent's views have been sought and understood, that the child's wishes and feelings work has commenced, that an understanding of pre-proceedings is established such that a view can be provided to the court about the decision to issue at this time; and
- d) That Practice Direction 16A is also amended to complement the 12A amendments regarding the Children's Guardian giving a view on the work in pre-proceedings but setting out clearly when this must happen and including the option for recommending an adjournment to proceedings if not enough time has passed to satisfy the court that removal is in the child's best interests.

#### Cafcass & Cafcass Cymru

- 21. Cafcass/Cafcass Cymru supports and advocates for focussed, planned, and reviewed work being undertaken with families in advance of issuing any court application (the "PLO") and acknowledges that there may need to be a delay in referring a matter to court to enable the family to make the necessary changes. Cafcass/Cafcass Cymru should promote a culture of support for pre-proceedings work with families to reduce the number of applications to court. Guardians should seek to understand and to be analytical in their evidence to the court, the support that has been available to families in pre-proceedings and very specifically the risks to the safety and protection of children that child protection plans were seeking to reduce and which at the time of application are considered to have remained the same or increased.
- 22. Cafcass/Cafcass Cymru Guardians should carefully consider and set out their rationale for the order that is really required, why now, and what will be the impact on the child.
- 23. Cafcass/Cafcass Cymru Guardians should seek to make greater use of the no order principle.

24. Cafcass/Cafcass Cymru Guardians should share their reasoning and independent position on behalf of the child/ren with the local authority as soon as they are able to and should maintain a regular and open dialogue with the local authority throughout the progress of the case. Cafcass/Cafcass Cymru Guardians will comment on the care plan as it is being crafted and will keep the court and parties informed of any issues arising that may impact on the case.
25. Cafcass/Cafcass Cymru should use their national data and practice insights to initiate discussions with system leaders about regional and local variation in the use of orders and rates of care order applications.
26. Cafcass/Cafcass Cymru Guardians should only make an application for expert evidence where it is necessary.

### Legal Professionals

27. Legal professionals should increase the effective use of Advocates' Meetings (a) to resolve issues, (b) to identify the key and contentious issues relevant to a fair and just resolution of the case before the court, (c) to identify the evidence necessary to resolve these issues, (d) to provide accurate time estimates for court hearings and (e) to agree the appropriate format for the hearing whether for directions hearing (almost invariably remote) and fact finding and/or final welfare hearings.
28. They should complete the case plan template and witness template in a timely manner: an example of these templates is set out in Annexe A. In respect of applications for an urgent hearing we recommend legal professionals should file a checklist to enable judges to list the cases appropriately: an example of an urgent hearing checklist is set out in Annexe B.
29. They should provide case summaries and/or position statements which are solely focussed upon and limited to the issues to be resolved at the forthcoming hearing by no later than 4pm the day before the hearing.
30. They should notify the court and the parties immediately if a failure to comply with a court direction is being contemplated or will occur whether by that party or any other party and to seek appropriate directions from the court.
31. They should consider whether the issue(s) in dispute can be resolved by the court on paper with the benefit of written submissions from each relevant

party. Applications that are not opposed or are by consent should be made with a draft order for the court to consider on the papers in the first instance.

32. They should file draft orders with the court no later than 48 hours after the court hearing. A named advocate, recorded on the order, should be nominated to draft and file the order with the court.

### HMCTS

33. Immediate steps should be taken to recruit additional staff to undertake or to backfill for experienced members of staff to undertake the following actions:
  - i. Produce sealed court orders in a timely fashion and to email/post the same to the parties within a target of 5 days following the court hearing;
  - ii. Support remote hearings for the judges working remotely and for those attending court;
  - iii. Provide sufficient and experienced court staff to support judges undertaking hearings at court whether hybrid and/or attended hearings;
  - iv. Prepare and provide to the judiciary sitting at court the court files and/or paper bundles and/or court lists in a timely manner.
34. To review the most effective use of the existing court estate and to review the establishment of further Nightingale court buildings to increase the court estate on a temporary basis which will increase the capacity of salaried and fee paid judges to hear hybrid and/or attended hearing.
35. Flexibility and liaison between family listing officers within the circuits and across circuits to ensure the maximum use of judicial resources where, for example, cases go short or lists collapse.

### Judiciary

36. Regular and focussed meetings between the DFJ, court staff, the legal professions, the LAs and Cafcass should take place to ensure open communication to prevent and resolve local issues (e.g. Court User Groups & Covid 19 Groups).

37. Regular meetings should take place between the DFJ and all tiers of family judges, legal advisers etc should take place to ensure informed and open communication and to resolve local issues.
38. Following on from successful contact between MoJ and the NPCC on the issue of police disclosure, to ensure there is consultation with each police force in each DFJ area to reduce the delays in compliance with court orders for disclosure. Unless otherwise directed by the court, any request for disclosure will cover a period of two years preceding the date of the request or order. Requests for disclosure should be limited to that which is necessary and by reference to specific incidents and documents that are required.
39. Maintain to the maximum practical degree judicial continuity.
40. Triage and allocate all public law proceedings to the appropriate tier of judiciary, to establish the necessary/appropriate format of the hearing and the time required for each hearing.
41. Increase the work being undertaken by family magistrates subject to HMCTS ensuring that (i) there are sufficient legal advisers to undertake family hearings, (ii) the family justices have the necessary technology and support available to undertake remote, hybrid and/or attended hearings, and (iii) they are sufficient courtrooms to accommodate the family justices.
42. Scrutinise with care each and every application for expert evidence. Expert evidence is only permitted where it is necessary. Save in the most complex cases, the social worker and/or the children's guardian should be considered sufficiently experienced and/or qualified to give evidence on issues affecting the welfare of a child.
43. Exercise robust case management to ensure that a case is (a) allocated to the appropriate tier of judiciary, (b) only those issues which are identified to be essential to the fair and just resolution of the proceedings are tried (c) to determine the appropriate format of the hearing, remote/hybrid or attended, (d) to determine whether the case requires oral evidence to be heard or whether it may be determined on the basis of oral or written submissions, and (e) routinely excuse the attendance of social workers and children's guardian at court hearings and require attendance of them only when necessary.
44. Direct case summaries and position statements are focussed upon and deal solely with the issues to be determined at the hearing and are filed and served.

45. Direct timely completion of case plan templates and witness templates.
46. Introduce neutral evaluation hearings (cf. FDRs in financial remedy cases) to increase the number of cases concluding with consent orders or, at least, limiting the issues/areas in dispute.

#### Fee paid Judiciary

47. The limits on sitting days for all fee paid family judiciary should be suspended.
48. Increase the number of salaried judges working remotely from home to free up more courtrooms for fee paid judges to conduct hearings and/or provide the technology & support to fee paid judges to conduct hearings remotely from the court estate.
49. Greater allocation of private law proceedings to fee paid judges to free up salaried judges to focus on public law proceedings and to ensure a greater degree of judicial continuity.

#### Well-being

50. All professionals in the family justice system can easily become overburdened with the weight of the practical and emotional efforts inherent in child protection practice. Many are now experiencing additional pressure and stress with the unremitting workload and the new ways of working resulting from the restrictions imposed by the pandemic.
51. Many professionals have also felt overwhelmed by the plethora of instructions, advice, guidance, and new ways of working, particularly in recent months as we have moved through the pandemic and adapted accepted ways of working at pace.
52. Further, guidance must be underpinned by (i) a local and national system-wide commitment to achieving the necessary cultural shift towards greater respect and cooperation and (ii) our shared commitment to achieving the best outcomes for children. This will be particularly important for practitioners who carry the tensions between family and state intervention, on a day to day basis. Social workers are engaged in the most challenging and complex family situations and carry exceptional responsibilities on behalf of society. It is crucial that social workers feel they have the

confidence of their local authority leaders and safeguarding partners who actively share the risks they carry when working with families in the child protection system.

53. We would recommend that each DFJ revise and update their Well-Being Policy in light of the challenges presented by the pandemic.

**Public Law Advisory Group**  
**Case Plan Template & Witness Template**

(Reproduced with the kind permission of HHJ Thomas, the DFJ of Birmingham)



**THE FAMILY COURT SITTING AT BIRMINGHAM**

**COVID-19 CASE PLAN TEMPLATE**

**Notes**

1. It is envisaged that the case plan template will be discussed and completed at an advocates' meeting before the issues resolution hearing, pre-hearing review or dispute resolution appointment. The applicant, usually the local authority, will be able to fill in much of the required information in advance. However, it is imperative that the advocates' meeting is attended by the trial advocates, who must have full instructions, in order to complete the case plan. The information you provide will inform the Court as to the practical arrangements that are necessary to ensure an effective hearing and will be required before a case is listed for a final hearing or a finding of fact hearing.
2. All parties have the responsibility to contribute to this document and ensure that it is completed sufficiently far in advance of the hearing for it to be submitted to the allocated judge (see paragraph 5 below). When completing the case plan, please have regard to the President's framework 'The Road Ahead' dated 9<sup>th</sup> June 2020.
3. The parties are required to complete the case plan as far in advance of the issues resolution hearing, pre-hearing review or dispute resolution appointment as possible or as directed by the Court. If necessary, the advocates' meeting can be directed retrospectively.
4. **Parties should also complete the Covid-19 witness template and provide a copy with this case plan.** The witness template should specify the relevance of each witness to the issues to be determined.
5. The case plan should be agreed by all parties, if possible. Any areas of disagreement should be clearly highlighted. Please complete the case plan electronically and submit it by email to the allocated judge as soon as possible or, at the latest, by 2pm on the day before the hearing.

6. In substantial cases, for example cases listed for five days or more or ones which are complex, the Court will allow the first day of the hearing to be used for the purposes of conferences, advocates' discussions, a trial run of the technology, judicial reading and case management. In shorter cases, it may be appropriate to timetable the first witness to attend, for example, not before 12noon. All of these matters should be dealt with remotely or away from the Court building insofar as that is possible. The parties should agree a time with the Judge to deal with any case management issues, which may also be dealt with by email.
7. Hybrid hearings present new challenges and we are all learning from our good and bad experiences. Therefore, this case plan template will need to be updated in due course.

*12<sup>th</sup> June 2020*

**Her Honour Judge Sybil Thomas**  
Designated Family Judge for Birmingham

## **1. Case Details**

Case number	<i>Click or tap here to enter text.</i>
Case name	<i>Click or tap here to enter text.</i>
Date of hearing (if known)	<i>Click or tap here to enter text.</i>
Time estimate for hearing	<i>Click or tap here to enter text.</i>
Allocated Judge	<i>Click or tap here to enter text.</i>
Issues to be determined at the hearing  <i>Please be specific</i>	<i>Click or tap here to enter text.</i>
Is the hearing urgent? If so, why must it be heard now/ASAP?  <i>100 words max.</i>	<i>Click or tap here to enter text.</i>

## **2. The Parties and Representatives**

<b>Applicant</b>	<i>Click or tap here to enter text.</i>
Solicitor and firm	<i>Click or tap here to enter text.</i>
Solicitor's email address	<i>Click or tap here to enter text.</i>
Counsel and chambers	<i>Click or tap here to enter text.</i>
Counsel's email address	<i>Click or tap here to enter text.</i>

<b>First Respondent</b> <i>Please specify if they are a litigant in person</i>	<i>Click or tap here to enter text.</i>
Solicitor and firm	<i>Click or tap here to enter text.</i>
Solicitor's email address	<i>Click or tap here to enter text.</i>
Counsel and chambers	<i>Click or tap here to enter text.</i>
Counsel's email address	<i>Click or tap here to enter text.</i>

<b>Second Respondent</b> <i>Please specify if they are a litigant in person</i>	<i>Click or tap here to enter text.</i>
Solicitor and firm	<i>Click or tap here to enter text.</i>
Solicitor's email address	<i>Click or tap here to enter text.</i>
Counsel and chambers	<i>Click or tap here to enter text.</i>
Counsel's email address	<i>Click or tap here to enter text.</i>

*Please add any further respondents or interveners by copying and pasting the table above.*

<b>Children</b> <i>For each child please give their name and date of birth (as in the birth certificate)</i>	<i>Click or tap here to enter text.</i>
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Children's Guardian	<i>Click or tap here to enter text.</i>
Solicitor and firm	<i>Click or tap here to enter text.</i>
Solicitor's email address	<i>Click or tap here to enter text.</i>
Counsel and chambers	<i>Click or tap here to enter text.</i>
Counsel's email address	<i>Click or tap here to enter text.</i>

### **3. Format of the hearing**

This hearing is intended to be:

- Remote** (all participants attend remotely)
- Hybrid** (some participants attend in person and some remotely)
- Attended** (all participants attend the court building in person). If so, please explain why the hearing cannot proceed remotely:

*Click or tap here to enter text.*

- There is a dispute about the format of the hearing and the parties' positions are as follows:

*Click or tap here to enter text.*

### **4. Remote and hybrid hearings**

- (a) What is the agreed videoconferencing platform?

*Please note that the Court's preference is to use CVP, Skype for Business or Microsoft Teams. Zoom may be used at the discretion of the Judge, but please note that Zoom remains incompatible with many judicial laptops.*

*Click or tap here to enter text.*

- (b) Who will 'host' the hearing?

*Please note that the Court will record the hearing unless otherwise directed.*

*Click or tap here to enter text.*

- (c) Who will be responsible for collating the participants' email addresses or other appropriate contact details and providing these to the host?

*The expectation is that the local authority in a public law case and the applicant in a private law case will take responsibility unless otherwise agreed.*

*Click or tap here to enter text.*

- (d) Who will be responsible for ensuring that witnesses receive an invitation to the hearing?  
*The expectation will be that the party calling the witness will be responsible for providing the witness with the videoconferencing link, and for keeping the witness updated in respect of the timings for their evidence.*

*Click or tap here to enter text.*

- (e) Are there any expert witnesses? Please provide details and confirm that each expert is willing and able to give their evidence using the parties' preferred videoconferencing platform.

*Please bear in mind that the court's traditional video link facility is not compatible with other videoconferencing software such as Skype, Teams, etc.*

*Click or tap here to enter text.*

## **5. Access to the videoconferencing platform**

*All participants, including those attending court, will require access to a device on which they can view the 'remote' part of the hearing. A laptop or iPad is preferable to a smartphone, particularly if the participant is due to give evidence. The use of headphones may reduce the possibility of 'feedback' if multiple devices are in use at the hearing. In any event, it is imperative that only one audio speaker and one microphone is in use at any one time in the courtroom.*

*The parties should confirm that all participants will be able to access the chosen videoconferencing platform. Their ability to do so may be affected by internet connectivity and bandwidth issues, particularly if (for example) two people from the same household are accessing the platform simultaneously. It is also important that all participants have the skills necessary to join the hearing, mute themselves when necessary, and re-join the hearing if they are cut off. **For this reason, parties are strongly advised to carry out a 'trial run' prior to the hearing, using the chosen videoconferencing platform.***

- The parties confirm that all participants in the hearing will be able to access the hearing through a suitable device, and that they have carried out a ‘trial run’ to ensure that any potential issues are identified.

OR

- The following participants will have difficulty in accessing the remote part of the hearing (please give details):

*Click or tap here to enter text.*

Will any of the lay parties be participating remotely from their solicitor’s offices or barristers’ chambers? If so, please provide the address and contact details for the premises.

*Click or tap here to enter text.*

## **6. Childcare during the hearing**

- (a) Is any party intending to access the hearing remotely from a household in which either the subject child or another child will be present?

*Please give ages of children and details of any relevant medical or other condition necessitating additional care.*

*Click or tap here to enter text.*

- (b) What arrangements are proposed to enable the party to participate during the hearing?

*For example, breaks during the hearing to attend to the child’s needs.*

*Click or tap here to enter text.*

- (c) Are these arrangements agreed by the other parties?

*Click or tap here to enter text.*

## **7. Attendance at Court**

*The parties are requested to identify at an early stage the possibility of an attended hearing and the numbers likely to attend. Parties should note that it may not always be possible to offer a courtroom for an attended hearing and that the allocation of courtrooms for attended hearings is at the discretion of the Designated Family Judge.*

- (a) Please complete the following table for all cases other than those where it is agreed that the hearing should take place entirely remotely.

Notes:

- (i) 'Participant' means a person who is due to take part in the hearing and includes parties, witnesses, interpreters, intermediaries, lay advocates, McKenzie friends and legal representatives.
- (ii) Whilst there is no need to provide medical information or breach confidentiality, it would assist the Court to know if a participant is "shielding" or otherwise having to self-isolate.
- (iii) Participants attending the court building will need to stagger their arrival times.

Participant's name and role	How will they participate in the hearing (i.e. attending in person or remotely)?  <i>Please specify the parts of the hearing for which they will attend in person and what time they will need to arrive each day.</i>
<p><u>Examples</u></p> <p><i>Jane Smith, mother</i></p> <p><i>Sarah Jones, counsel for the child</i></p> <p><i>Jasbir Patel, children's guardian</i></p>	<p><i>The mother will attend in person each day and arrive at 9.45am.</i></p> <p><i>Ms Jones will attend remotely, save for day 4 when she will attend at 2pm to cross-examine the mother and day 5 when she will attend at 10am to cross-examine the father.</i></p> <p><i>Mr Patel will attend remotely throughout the hearing, including for his own evidence.</i></p>
	<i>Click or tap here to enter text.</i>
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	<i>Click or tap here to enter text.</i>

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	<i>Click or tap here to enter text.</i>
	<i>Click or tap here to enter text.</i>

+ Please add more rows as necessary

- (b) The expectation will be that if a lay party (e.g. a parent) is attending court, his or her legal representative should also attend rather than joining the hearing remotely. Is there any reason why this will not be possible in this case?

*Click or tap here to enter text.*

- (c) Are there any practical issues not identified in the table above which should be considered when making arrangements for a participant to attend court safely?

*For example, issues to do with public transport.*

*Click or tap here to enter text.*

- (d) How is it proposed that those issues should be resolved?

*Click or tap here to enter text.*

- (e) On the basis of the information given above, the maximum number of participants expected to attend court for the hearing on each day is:

*Click or tap here to enter text.*

### **8. Communications with legal representatives during the hearing**

*Each party will need to ensure that they have access to a means of communicating with their legal representative during the hearing. If they are both in the courtroom, the Judge will permit pieces of paper to be passed with written instructions or, if necessary, the Judge will rise to allow instructions to be taken.*

- The parties confirm that they have each made suitable arrangements to communicate with their legal representatives during the course of the hearing.

OR

- The following parties will have difficulty in communicating with their legal representatives during the course of the hearing (give details):

*Click or tap here to enter text.*

## **9. Interpreters, intermediaries and lay advocates**

- (a) Does any party require the assistance of an interpreter, an intermediary or lay advocate during the course of the proceedings? If so, please give details.

*Click or tap here to enter text.*

- (b) What are the arrangements for communication between the party and the interpreter, intermediary or lay advocate during the hearing?

*Social distancing dictates that the expectation will be that such communications may have to, where possible, take place over a separate telephone line and that the interpreter and party will place themselves on 'mute' during the hearing, other than when giving evidence. For example, if the mother requires an interpreter but she is attending the hearing in person, her interpreter could attend remotely and observe the proceedings over the videoconferencing platform. The interpreter and the mother would then be on the phone to each other during the hearing.*

*If the interpreter has to be physically present, all participants will need to wait for a consecutive translation rather than a contemporaneous translation, as the interpreter cannot whisper from 2 metres away. Therefore, any parties requiring an interpreter are required to give serious thought to this issue.*

*With regard to lay advocates and intermediaries, each case will be different due to the needs of the particular party. Therefore, careful thought needs to be given so as to allow full participation in the hearing.*

*Click or tap here to enter text.*

## **10. Electronic Bundle**

- (a) Who will have responsibility for preparing the electronic bundle?

*In public law cases this will usually be the local authority. In private law cases it will usually be the applicant.*

*Click or tap here to enter text.*

- (b) The electronic bundle will be prepared and circulated to the parties and the court by no later than (insert date):

*Click or tap here to enter text.*

- (c) The bundle will be prepared and circulated using

- Egress
- Dropbox
- Microsoft OneDrive
- Other (please specify):

*Click or tap here to enter text.*

(d) How will witnesses participating remotely access the bundle?

*Any party, social worker, guardian or expert will be entitled to a copy of the entire bundle, which should be provided in advance electronically. However, other lay and professional witnesses (e.g. health visitors, contact workers, family members, etc.) are **not** entitled to have advance access to the entire bundle. For those witnesses, the parties should identify documents to which the witness will be referred during their oral evidence and provide electronic copies of those documents shortly before the evidence commences. Obviously, short passages can be read to a witness, but context is often required. Another option would be to use a document/screen sharing facility within the video conferencing software or remote presentation software such as Clickshare. Please provide details as to what has been agreed in this regard.*

*Click or tap here to enter text.*

(e) Is it proposed to provide a mini bundle to any witness who is to attend the hearing in person, containing only those documents to which he/she will be referred during his/her oral evidence?

- Yes                       No

## **11. Conduct of the hearing**

*The parties are asked to read through and confirm their agreement to the following 'ground rules':*

- (a) All participants to a remote hearing should join the remote hearing prior to the Judge.
- (b) At the start of a hearing, the Judge will identify all participants in the remote hearing and give any additional directions the Court wishes to make about the use of cameras and microphones.
- (c) The Judge will give any necessary warnings, including warnings to all parties regarding recording and confidentiality.
- (d) The parties will be asked to turn on their microphones whilst warnings are given and will be invited to confirm their understanding of the warnings given.

- (e) At the start of each day, any remote participants will be asked to turn on their microphones in order to confirm in turn that they are:
  - (i) listening to the proceedings in a room on their own;
  - (ii) in a location where they cannot be overheard or are wearing headphones; and
  - (iii) not recording what is being said (it being a criminal offence to record any part of the proceedings).
- (f) The Judge's camera will remain on at all times during the hearing. The Judge may need to mute their microphone when other participants are speaking in order to reduce audio feedback.
- (g) Unless addressing the Judge, or otherwise requested to do so, all other participants should mute their microphones at all times.
- (h) Unless directed otherwise, all participants should leave their cameras turned on. When there are several remote participants, it can assist if some participants turn off their cameras so that the Judge can focus on the witness, the questioner and the parents. The Judge may give directions in this regard.
- (i) Where a witness attends a hearing remotely, they will be sworn or affirmed by the Judge prior to the commencement of their evidence, by the witness being asked to repeat the oath/affirmation. Witnesses may use their own holy book.
- (j) The witness should have recently re-read all of their reports and statements made within the proceedings and, if it is thought helpful, may also have a paper copy of those documents.
- (k) When a witness is giving evidence remotely, that witness must keep their camera and microphone on at all times. When a witness is giving evidence in the courtroom but there are also remote participants, arrangements will need to be made for the witness to be seen and heard on the videoconferencing platform. A simple solution would be to use a designated witness tablet or laptop.
- (l) Before a witness gives evidence remotely, he or she will confirm that they are alone in the room.
- (m) Advocates may need to take instructions during the course of a hearing and the Judge will provide time to enable them to do so.
- (n) Should any participant need to speak to their legal representative or if they have any technical or sound difficulties during the proceedings which impedes their ability to follow the evidence, they shall immediately alert their solicitor or advocate by text or email who shall inform the Judge.

(o) Electronic bundles must be properly indexed so that the pages are searchable. It is preferable for the index to include clickable links to each document.

**The parties agree to comply with the above ground rules for the hearing.**

*OR*

**The parties have agreed a ground rules document which is annexed to this Case Plan.**

## **12. Other Information**

If there are any other matters to draw to the attention of the Court for the purposes of this case plan, please give details.

*For example, any Article 6 issues arising, parties with disabilities, special measures, etc.*

*Click or tap here to enter text.*

---

**Date of Case Plan:** *Click or tap here to enter text.*

**PLEASE REMEMBER TO COMPLETE THE COVID-19  
WITNESS TEMPLATE AND SEND A COPY WITH THIS CASE PLAN**

(Reproduced with the kind permission of HHJ Thomas, the DFJ of Birmingham)

**IN THE FAMILY COURT SITTING AT BIRMINGHAM  
CASE NUMBER: BM20.....**

**CASE NAME:** *e.g. Birmingham City Council v Smith and Jones*

## COVID-19 WITNESS TEMPLATE

### Notes

- This witness template requires a greater level of detail than has previously been required so as to assist the Court in determining how to list the matter. This is necessary due to the huge pressures on judicial resources and court accommodation during the Covid-19 pandemic.
- It must be completed prior to the hearing at which it will be considered by the Court. The first part of the template deals with the issues in the case. The parties must consider and specify the issues to which each witness's evidence is relevant.
- In substantial cases, for example cases listed for five days or more or ones which are complex, the Court will allow the first day of the hearing to be used for the purposes of conferences, advocates' discussions, a trial run of the technology, judicial reading and case management. In shorter cases, it may be appropriate to timetable the first witness to attend, for example, not before 12noon.
- All times are to be exact, e.g. 10.30am – 11.15am, rather than expressed in minutes. If it is contented that this is not possible, the parties shall raise this at the hearing.
- The time estimate for the case will take into account the need for regular breaks and for instructions to be taken.

**Estimated judicial reading time required:**

*Click or tap here to enter text.*

### Schedule of Witness Information

Name and role in the case	Called by	Page references	Issues to which the evidence pertains	Availability	Other information <i>e.g. interpreter required, language, etc.</i>
<i>e.g. (please delete)</i>  Jenny Smith  Allocated SW	Local Authority	C1-28, C145-153, D1-13	Allegations of neglect, sibling attachment assessment and final care plan	On annual leave 16-24 August 2020.  "Shielding" so unable to attend in person.	Ms Smith is leaving the LA on 19 September 2020

+ Please add more rows as necessary

**Timetable for Oral Evidence**

<b>Date and day of trial</b>	<b>Name and role in the case</b>	<b>Attending in person or remotely</b>	<b>Local Authority</b>	<b>Mother</b>	<b>Father</b>	<b>Guardian</b>	<b>TOTAL</b>
<b>Time for judicial reading, case management, conferences, pre-hearing discussions and testing the technology</b>							
<i>e.g. (please delete)</i>  <i>Tuesday 30<sup>th</sup> June (Day 2)</i>	<i>Jenny Smith Allocated SW</i>	<i>Remotely</i>	<i>10.30am – 10.40am</i>	<i>10.40am – 11.40am</i>	<i>11.40am – 12.15pm</i>	<i>12.15pm – 12.30pm</i>	<b>2 hours</b>
	<b>Closing Submissions</b>						
	<b>Judgment</b>						

### Section 38 Urgent Listings Checklist

**Notes: The purpose of this form is to assist the Court in identifying and listing of urgent initial hearings. Checklist to be lodged with C110A.**

Date:
Child(ren): Names and ages / d.o.b:
Address(es):
Name of mother and address (d.o.b. if known):
Name of father and address (d.o.b. if known). Also state if father has PR.
Name and address (d o b if known) of any other persons sharing PR.
Legal Representative of either parent if any:
Reasons for urgency:  Police protection – expiry time and date ..... Capacity to consent to section 20 accommodation Possible NAI – date of discharge from hospital ..... New-born baby – date of discharge from hospital..... International element – what is the immediate risk.....
Are there any alternative options which will protect the child(ren) equally well? Why not:  1) Co-operation of parents to go somewhere safe 2) Placement with other parent (if they do not have care of child) 3) Family placement 4) voluntary accommodation pending ICO
Is the LA seeking immediate removal for the child(ren) from the care of parents? If so state reasons:
Are the child(ren) subject to a Child Protection Plan (if so what category)? If not what kind of involvement if any has there been with Children’s Social Care?
What support will the LA put in place prior to initial hearing?
Names of Social Worker and of Team Manager  Phone numbers