

President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law Proceedings)

Introduction

1. This Guidance is issued by the President of the Family Division and applies to all private law proceedings under Part II of the Children Act 1989 (hereinafter referred to as 'private law proceedings') from the relevant start date as defined in Practice Direction XX.
2. This Guidance applies to the allocation of all relevant proceedings to:
 - (a) Magistrates with assistant Justices' Clerks (referred to in this Guidance as Legal Advisers) in the Family Proceedings Court; or
 - (b) District Judges (Magistrates' Courts) in the Family Proceedings Court; or
 - (c) Judges in a County Court or the High Court,until the allocation procedures for the single Family Court come into force in 2014.
3. The purpose of the Guidance is to ensure that all new private law proceedings are allocated to the appropriate level of judge who shall provide continuity for the proceedings in accordance with the President's Guidance on Judicial Continuity and Deployment (Private Law).

Allocation and Resources

4. In some Designated Family Judges' areas full implementation of this guidance may result in a significant shift of caseload between levels of the judiciary. Before implementation it will therefore be necessary for the Designated Family Judge (DFJ) in consultation with the local judiciary, the Justices' Clerk, and HMCTS to review the available resources, in terms of courtrooms, court staff and Judiciary including Magistrates and Legal Advisers. The extent and timescale of implementation of the guidance should take these factors into account alongside any shift in allocation of public law cases following the implementation of the gatekeeping guidance for care, supervision and other Part 4 proceedings. The overarching intention should be to avoid delay in all children's proceedings wherever possible.

Allocation and listing schedules

5. The DFJ in consultation with the Judiciary, the Justices' Clerk and HMCTS should review the family listing schedules in place within his or her area taking into account any plans for the implementation of the single Family Court. Where feasible and practical, consideration should be given to arranging listing schedules so that First Hearing Dispute Resolution Appointments (FHDRAs) are taking place in parallel lists (i.e. on the same day and ideally in the same building) before District Judges and Magistrates (sitting with a Legal Adviser). This will allow for re-allocation to be considered up to and including the date of the hearing of the case, so that an alternative judicial tier to that selected by the Gatekeeper(s) can be arranged if necessary (in particular, should receipt of the Cafcass Safeguarding [Schedule 2] checks or interview with the parties raise matters of particular significance which justify a revised allocation decision).

Gatekeeping teams

6. Each DFJ will lead a gatekeeping team responsible for private law gatekeeping in each of the Family Hearing Centres that are nominated by the President to be Designated Family Centres. The team will consist of the DFJ and the Justices' Clerk with as many Legal Advisers and District Judges as the DFJ considers necessary to carry out the gatekeeping role depending on local demand and conditions. The DFJ in consultation with the District Judges and the Justices' Clerk will determine whether gatekeeping decisions are to be made by the District Judges or Legal Advisers acting alone, or together. The District Judge and Legal Advisers when making gatekeeping and allocation decisions are referred to as "the Gatekeeper(s)" in this guidance.
7. All applications for private law orders which are received by 4.00 pm will be issued by HMCTS and placed before the Gatekeeper(s) for their consideration on the next working day or as soon as possible if urgent. The Gatekeeper(s) should consider the application on the basis of the information provided in the application, and shall determine the appropriate tier of judiciary in accordance with this guidance taking into account the available judicial and court resources as well as the existing case volumes in each court. The Judiciary including Magistrates and Legal Advisers have an ongoing duty to keep allocation decisions under review particularly:

(a) when any response to the Application is received;

(b) the safeguarding checks are received; and

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(c) at the FHDRA when further information has been ascertained from the parties and Cafcass at court.

8. Prior to making an allocation decision the District Judge and/or Legal Adviser should determine whether there is sufficient evidence to demonstrate compliance with [Paragraph 6 Annex A to PD3A FPR 2010] [Paragraph 1.7 of the draft/Child Arrangements Programme ('CAP')] (attendance by Applicant at a MIAM), or justification for non compliance.¹
9. Prior to making an allocation decision the Gatekeeper(s) shall consider whether to transfer the application to another court where it appears that the child(ren) who are the subject of the application reside(s) in an area other than that covered by the DFJ..
10. Gatekeeper(s) are to be made available for a period of time on each weekday to allocate all private law proceedings that have been issued. Gatekeeper(s) will consider the file in each new application that has been issued on the preceding day and any urgent applications that are outstanding and determine whether the proceedings should be allocated to the Family Proceedings Court, the County Court or the High Court, and whether in the case of the Family Proceedings Court or the County Court, they should be allocated to a District Judge (or exceptionally in the County Court to a Circuit Judge) in accordance with the schedule to this guidance. The Gatekeeper(s) will record their allocation decision and reasons on the case papers and make any appropriate arrangements for transfer as necessary. In addition, where a case needs an urgent listing, the Gatekeeper(s) will ensure that the case is listed as a matter of urgency, and will make directions to abridge time for service if necessary.
11. The DFJ shall, in consultation with the local judiciary, make arrangements to ensure the swift allocation of all cases within the County Court to a named District Judge or exceptionally (prior to FHDRA) to a Circuit Judge as appropriate so that it can be listed in week 5 or 6 after issue, for an FHDRA, or sooner if an FHDRA is not appropriate.
12. If any Gatekeeper requires further guidance on a particular case, they should refer the allocation decision to the DFJ or his nominated deputy.
13. An allocation decision made by the District Judge or the legal adviser with responsibility for allocation does not prevent a party to the proceedings applying for a review of the decision.

¹ The full text of this paragraph to be completed in light of consultation on the Rules to support Clause 10 of the Children and Families Bill 2013

14. The DFJ shall monitor the allocation and gatekeeping to ensure that there is consistency of allocation, effective use of resources and the capacity to list cases at the earliest opportunity to avoid delay. He/she may issue local guidance to the Gatekeeper(s) from time to time to reflect local circumstances and ensure the best use of resources. The allocation of work between the Circuit Bench, the District Bench and the Magistrates may be subject to local directions by the DFJ after consultation with the judiciary.

Directions on Issue

15. The Gatekeeper(s) shall be able to issue Directions on Issue [on Form CAP01²] in the following circumstances:
- (a) where it appears to the Gatekeeper that the Applicant has not attended a MIAM or that the reason for not attending a MIAM is obviously not satisfactory, the Gatekeeper can direct the Applicant to attend a MIAM before the FHDRA;
 - (b) where it appears that an urgent issue requires determination, the Gatekeeper may give directions for an accelerated hearing;
 - (c) Exceptionally, where it appears that directions need to be given for the service and filing of evidence, he/she may give directions for the filing of evidence.

Principles of Allocation

16. Allocation decisions must continue to be made in accordance with the Allocation and Transfer of Proceedings Order 2008; the Practice Direction – Allocation and Transfer of Proceedings 3rd November 2008; and the Family Proceedings (Allocation to Judiciary) Directions 2009.
17. This Guidance identifies criteria which are intended to be consistent with the above Orders and Directions and the decisions of superior courts.

² Post-April 2014, the Directions on Issue will be made on this prescribed Form.

18. In determining allocation, judicial continuity is an important consideration and the President's Guidance on Judicial Continuity and Deployment (Private Law) is to be followed.
19. In determining allocation consideration must be given to avoiding delay and providing the earliest possible hearing dates consistent with the welfare of the children, as well as the resources available.
20. While the Family Proceedings Court remains separate, the allocation of proceedings is a matter for the gatekeeping team under the guidance of the DFJ (The aim is that when provisions for the single Family Court come into force no distinction will be drawn between proceedings which may be heard by District Judges of the County Court and District Judges (Magistrates Courts)). There is an expectation that District Judges will assume personal responsibility for all case management hearings in proceedings allocated to them in accordance with the President's Guidance on Judicial Continuity and Deployment (Private Law).

Allocation Guidance

21. Subject to the guidance given below, all private law proceedings may be heard by any Judge or Magistrate who has been authorised or nominated to conduct such proceedings and may be case managed by the same judge or legal adviser.
22. All relevant family applications (as defined in [Annex B to PD3A FPR 2010] [draft/CAP paragraph 20]) will be heard by Magistrates unless they are
 - (a) of the type set out in the Schedule to this Guidance or
 - (b) specifically approved to be heard by Magistrates by the Justices' Clerk (or his nominated deputy) in consultation with the DFJ.
23. There is an expectation that Magistrates will not hear any contested private law application where the estimated length of the hearing is in excess of 3 days without the same having been approved by the Justices' Clerk in consultation with the DFJ.
24. Proceedings described in Part 1 of the schedule to this Guidance must be allocated to a District Judge of the County Court, or a District Judge (Magistrates' Court). If, on allocation it appears to the District Judge that the particular circumstances of the individual case justify transfer to a Circuit Judge, the District Judge shall transfer it.

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25. Subject to paragraph 27 (below), proceedings described in Part 2 of the schedule to this Guidance are to be allocated to either a District Judge (Magistrates Court) or District Judge of the County Court or exceptionally to a Circuit Judge or to a Judge sitting in the High Court.
26. Subject to paragraph 28 (below), proceedings described in Part 3 of the schedule to this Guidance are to be transferred and allocated to a Judge of the Family Division of the High Court. On the commencement of legislation relating to the single Family Court these proceedings are likely to have to be issued in the High Court, not the Family Court.
27. Where the Gatekeeper allocates proceedings described in Part 2 of the schedule exceptionally to a Circuit Judge or to a Judge sitting in the High Court, the FHDRA for that case shall be listed before a District Judge (Magistrates Court) or District Judge of the County Court unless the Gatekeeper considers (in discussion with the DFJ) that the FHDRA should be conducted by the Circuit Judge or High Court Judge (as appropriate).
28. Where the Gatekeeper allocates proceedings described in Part 3 of the schedule to a Judge sitting in the High Court, the FHDRA for that case shall be listed before a District Judge of the County Court unless the Gatekeeper considers (in discussion with the DFJ) that the FHDRA should be conducted by the High Court Judge.
29. Where it appears to a Court that the issues in a case have developed from the point of initial allocation in such a way as to justify a re-allocation or transfer, the Court shall consider re-allocation in accordance with this Guidance and Schedule taking account to the extent appropriate the principle of judicial continuity, and the need to avoid delay.

Urgent hearings

30. Urgent applications are those in which the applicant for a private law family order invites the court by application C2 either to (a) list the application for a hearing without notice to the respondent, or (b) reduce the normal (14 days) time-limit for service of an application and list a hearing at short notice.
31. The Gatekeeper(s) are to have regard generally to the guidance in para.9.1-9.3.3 of the draft/CAP in relation to the making of without notice orders when considering how to allocate an application is presented for allocation as 'urgent'.
32. When presented with an application said to be urgent, the Gatekeeper(s) shall upon receipt:

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- (a) allocate the application to the appropriate level of judiciary, and
- (b) determine whether the application requires a hearing on that day, or
- (c) requires an early hearing in advance of the FHDRA with a reduced time for service of the application.

If an application for an urgent hearing is refused, reasons shall be given in writing and the application listed for FHDRA; the Gatekeeper may issue further directions in accordance with para.(15) above.

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