

President's Guidance on Continuity and Deployment (Private Law)

Introduction

1. This Guidance is issued by the President of the Family Division.
2. This Guidance applies to all private law proceedings under Part II of the Children Act 1989 (private children proceedings) heard in the Family Proceedings Court (FPC) and the County Court until further guidance is issued when the legislation for the Family Court is commenced in 2014.
3. Deployment is a judicial function which includes the patterning of judges and magistrates, the management of the workload of the court, allocation and listing.
4. The purpose of this Guidance is to ensure that family proceedings are accorded the appropriate level of priority in their listing and that they are case managed and heard by judges, magistrates and legal advisers who provide continuity of the conduct of the proceedings.

Continuity and Docketing

5. In accordance with the Guidance given by HMCTS on the introduction of a system for the docketing of cases (which is annexed to this Guidance) all private children proceedings are to be allocated to a case management judge in the County Court or a case manager in the FPC who will be responsible for any case management hearings in the proceedings.
6. In the FPC, the case manager is the Justices' Clerk or assistant Justices' Clerk (legal adviser) who manages the case. Continuity of the case manager in the FPC is as essential as continuity of the case management judge in the County Court or the High Court.
7. The name of the case manager(s) or case management judge must be recorded on the outside of the court file by the court staff immediately after the FHDRA or other first hearing..
8. Where possible, the case management judge or the case manager sitting with magistrates is to conduct any contested hearing including the final hearing in all proceedings allocated to them
9. No hearing at any stage of the proceedings should conclude without a date for the next hearing having been fixed for the earliest possible date, and communicated to the parties at court.

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No reliance is to be placed on this document in any court

10. It is not good practice for proceedings to have to wait until the case manager or the case management judge is available. Discussions must take place during the FHRA, DRA or other hearings (and with HMCTS) to ensure that one of the two case managers or the case management judge is available to hear the proceedings on the date fixed for the next appointment. Legal advisers and judges must fit their availability around the case, not the other way around. Although continuity of representation is important, lawyers will be expected to organise their diaries to ensure that cases are heard without delay.
11. The allocation of private children proceedings is to be undertaken in accordance with the President's Guidance on Allocation and Gatekeeping (Private Law).

Deployment

12. Circuit Judges and District Judges hearing private children proceedings should be patterned so as to be able to sit in private children proceedings with a gap of no more than a month so as to provide continuity for their allocated proceedings..
13. District Judges (Magistrates' Court) who sit on private children proceedings are identified by the Chief Magistrate and authorised by the President. The deployment of DJSMC is determined by the Chief Magistrate in consultation with Presiding Judges and the FDLJ on each Circuit.
14. Legal advisers are generally to be patterned so that they are available to the family courts for not less than 40% of their time. Those sitting as case managers must sit for 40% or more of their time in public and private law. Each private law application which is allocated to the magistrates must have one and not more than two allocated case managers who are legal advisers.
15. Justices' Clerks will be expected to agree the deployment of their magistrates with Designated Family Judges (DFJs) and this should be done in direct meetings between the DFJ and the Justices' Clerk and his/her tier 4 specialists. Any disagreements are to be referred immediately to the FDLJ and the Regional Delivery Director through his/her Head of Civil, Family and Tribunals
16. The deployment of Circuit Judges and District Judges in the County Court (ie their patterns and itineraries) is decided by the Presiding Judges in consultation with and on the advice of the FDLJ, and the Designated and Resident Judges and the local judiciary. No judges now authorised to hear private law children proceedings shall be prevented from continuing to do so unless they shall so chose. DFJs are encouraged to agree a protocol with

Resident Judges for the patterning of mixed ticketed judges and their availability to provide judicial continuity.

Continuity in the Family Proceedings Court

17. The following arrangements will apply to proceedings in the Family Proceedings Court which are not allocated to a District Judge (Magistrates' Court) for case management and hearing.
18. Magistrates are patterned to sit by their Justices' Clerk. Continuity should be provided for in the individual case, where a decision of fact has been made which renders a case theoretically or actually part heard, in accordance with the guidance in *Re B (Children)* [2008] UKHL 35. Where possible, continuity is to be provided by at least one member of the Bench (preferably the Chairman) being available as well as the legal adviser who is the case manager for the proceedings.

Appeals

19. Appeals are to be allocated to Circuit Judges by the DFJ in consultation with the FDLJ. Appeals from Circuit Judges and second appeals will continue to be heard by the Court of Appeal.

[end]