**Private Law Reforms During Covid 19 Pandemic - Greater Manchester Family Courts**

**Introduction**

1. This document sets out proposed changes to our Private Law process to manage the worrying backlog of private law cases which has developed during the pandemic. Our waiting times across the cluster for FHDRAs as of July 29th, 2020 range from 10 weeks to 19 weeks. There is no question but that these delays are harmful for the children and families involved and unless they are addressed and reduced the problem is likely to become worse.
2. We need to work in a way that takes as many cases as possible as early as possible to a fair compromise or judicial decision and gets them out of the system so that we can concentrate our resources on the more difficult, complex and nuanced disputes.
3. During the pandemic the impact upon the judiciary of remote working from home generally without administrative support led to a decision to limit the number of FHDRAs in a list to 3. The situation has eased and the number of cases in the FHDRA lists (which will become Private Law lists under this scheme) is now increased to 4 and will be kept under review.
4. The listing of all cases for a FHDRA hearing can be, for a significant number of cases, a waste of the resource. There are classes of case which cannot be concluded with an assisted compromise or early decision without a s7 report or without a factfinding hearing. The one size fits all approach of universal FHDRA listing can lead to significant and unnecessary delay in those cases where a FHDRA cannot result in the conclusion of the case.
5. Our experience of Remote FHDRA hearings is that they are less successful in achieving compromise than attended hearings and the judiciary aspire to these hearings being attended, safely, as soon as possible.

**The solution – Covid Crisis Private Law Pilot for Greater Manchester**

This system will be implemented as soon as possible and will run for 12 months when its success will be reviewed.

1. The principles underpinning changes set out in this document are:
2. the need for a more flexible approach in terms of initial case management directions, focused on the needs of a specific case.
3. allocation and gatekeeping will be undertaken following receipt of a safeguarding letter from Cafcass.

**The Process**

1. Upon receipt by the Family Court at Manchester of a C100, the application will be issued and given a serial number. If contact details to enable remote hearings are not included in the application (email and/or telephone details) then the issue of the application will not take place until they are provided or the applicant has stated that they are not known.
2. If the application requests a without notice or emergency hearing it will immediately be emailed directly to the Private Gatekeeper legal adviser for that day with a copy of the template order for triage decisions. This email shall be followed up by a phone call or IM to ensure the Legal Adviser is alerted to the email.
3. If during the triage process the legal adviser considers the criteria for a without notice hearing **are not** made out, the application will either be listed on notice or sent for safeguarding and fixed for a gatekeeping on Day 25.
4. If the matter requires an urgent hearing, it will be listed before an urgent judge. The legal adviser will, in any event, send for safeguarding and fix for a gatekeeping appointment on Day 25.
5. *The Children Applications Team will send the standard form to CAFCASS requesting Safeguarding and the matter will then be fixed for a gatekeeping appointment once the information is received.*

**STAGE 1: TRIAGE:**

1. A legal adviser will access the e-file and triage within 24 hours. Safeguarding will always be ordered. The following will occur at this stage:
   1. Urgent: List and order safeguarding (the Urgent Judge on the day will consider any other gatekeeping issues);
   2. Non-Urgent: Safeguarding ordered, the matter will then go to gatekeeping.
   3. Applications for Enforcement/Variation: if within six months of the last order, the matter will be listed before the Judge who had previous conduct. If outside six months, safeguarding will be ordered and the matter listed before the Judge who had previous conduct.

Once Safeguarding is returned, the cases will then be gatekept and allocated to one of the following tracks:

**STAGE 2: GATEKEEPING:** (within 25 days of triage)

1. Track A – If there is no mention or evidence of such harm that would trigger a s7 report or consideration of the need for factfinding within the papers, a decision will be made (as now) applying the allocation criteria, as to what level of judiciary the case should be allocated. The case will then be set down for FHDRA hearing at the appropriate courthouse before the appropriate level of judiciary.

The CAT team will list accordingly FAD after 14 days.

1. TRACK B – If the documents include assertions of harm as described under paragraph 13 the Legal Adviser will take one of the following courses of action
   1. Make directions on paper for a s7 report and list for DRA on a Private Law Family day after the filing date: .
   2. Make directions on paper to enable Fact Find and list for Review: If the safeguarding letter identifies contested allegations of abuse which are relevant to the application and invoke Practice Direction 12J, the Legal Adviser will consider ordering a Scott Schedule and accompanying statements to be filed prior to a direction hearing to consider whether a fact-finding hearing is necessary. (but see paragraph d below)
   3. Make directions on paper for DNA testing if this is required: If the safeguarding letter identifies the need for a DNA test, this will be ordered and the matter the consideration given to whether it meets Track A or Track B.
   4. If in Track B(a) applies and the case is clearly one which meets the criteria for allocation to a judge, the legal adviser will in the standard directions order the s7 Report and refer to CAT team stating that the case is allocated to DJ; a FHDRA will be listed following the receipt of the s7. In addition, the judge will be informed of the case and of the FHDRA date to allow the judge to make any further or alternative directions if felt required. If there are any issues raised in the safeguarding report regarding interim contact, the matter will be listed in the urgent list for adjudication of the same.
   5. If in Track B(b) applies and the case is clearly one which meets the criteria for allocation to a judge, the legal adviser will refer to CAT team stating that the case is allocated to DJ; a FHDRA will be listed as under a) above and, in addition, the judge will be informed of the case and of the DRA date to allow the judge to make any further or alternative directions if felt required. This may include listing the matter for a brief hearing to consider further directions.
2. The application must contain valid email addresses, postal addresses and phone numbers of the parties. The application should not be issued unless these details are available, unless the applicant confirms that they are unknown to him/her.
3. The application should also be checked to see if there are any Covid 19 issues revealed and if so, Cafcass should be alerted.
4. The court should send to the parties on issue:

* a copy of the “Coronavirus: Guidance on compliance with Family Court Child Arrangements Orders” issued by the President of the Family Division.
* A letter explaining the delays in the process and setting out what the parties can now expect.
* A list of organisations that may assist with ADR
* The Cafcass Young People’s Board Top Tips Document.

**Gatekeeping**

1. Legal Adviser to list cases for FHDRA/s7/Fact find if issues are clear.

**Listing**

1. The Legal Adviser will list matters before the Bench.
2. Cases before the District Bench will be listed on a Private Law Day to encompass FHDRAs, DRAs and review for fact finding hearing, such listing will be in accordance with the Greater Manchester Work Distribution Grid (the sudoku) to ensure that allocation is fair.
3. It is anticipated that each Judge may exercise their preference for the manner in which Private Law Days in front of them are listed. There will be a minimum of four hearings on each Private Law Day, including a minimum of two FHDRAs and two DRAs.

**Directions**

1. It is important that judges have a flexible menu of options which are best suited to the individual case that they are considering upon allocation. The type of directions that may be given upon allocation are as follows:
2. If Cafcass state that the parties do not require the court’s determination in the applications only arising out of Covid 19 issues, decision makers may consider giving leave to withdraw the application on paper in accordance with R2.94 with an issue fee remission.
3. It is envisaged that standard paper directions will be devised and standard forms of wording will be available.
4. A standard direction will be included on all orders listing FHDRAs or DRAs to explain indicating that if matters be can be dealt with fairly by way of submissions or evidence taken briefly and the court has the time to deal with such matters, final orders are likely to be made at this hearing.

**DRA Hearings (If this is the first hearing in a case it will be listed alongside FHDRAs in the Private Law Days):**

1. If a case is being listed for a DRA hearing on a Private Law Day with a s7 report.

The judiciary hope that the duty FCA (who will not be the author of the s7 report) would be familiar with the report and able to assist the parties and the judge to resolve issues including any issues arising from the report liaising with its author where necessary. If it is possible, fair and safe these hearings may also result in final orders after submissions or short evidence.

**Safeguarding Letters:**

1. The judiciary, justices and legal advisers expect and anticipate that safeguarding letters will include the following:
   1. Detail the usual safeguarding information as currently set out;
   2. Ensure that all parties to the application are spoken to and their views ascertained;
   3. Highlight any issues regarding interim contact where appropriate;
   4. Highlight any issues regarding the need for a fact-finding hearing;
   5. Detail what any s7 welfare report must consider.
2. If these elements are not included the matter will be listed for FHDRA as usual where the deficits can be addressed although any such deficits risk the effectiveness of the hearing as an occasion for final compromises or decision making.

Issued September 2020

Her Honour Judge Singleton QC Designated Family Judge for Greater Manchester