



Department
for Education

Court orders and pre-proceedings

Consultation response on draft guidance to replace the Court Orders (Volume 1) guidance

April 2014

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Introduction

On 12 Feb, the government launched a public consultation on its statutory guidance on Court Orders and Pre-Proceedings, which proposed revisions to the existing statutory guidance on Court Orders (The Children Act 1989 Guidance and Regulations, Volume 1). The consultation ran for 6 weeks and closed on 26 March.

This guidance was first published in 1991 and was last updated in 2008. It is being revised in light of changes to legislation introduced through the Children and Families Act 2014 and to changes in practice to reflect the new Public Law Outline (PLO).

Included with the consultation document were 3 annexes:

- a Social Work Evidence Template, developed by Anthony Douglas, Chief Executive of Cafcass, in conjunction with Andrew Webb, President of the Association of Directors of Children’s Services (ADCS)
- a Pre-proceedings flowchart, and
- 2 Letters before Proceedings

There were 43 responses. Three respondents submitted comments on track change versions of the draft guidance. The breakdown by category of respondent was as follows:

Category	Respondents
Local authority	22
Other	18
Individuals	3

*other were typically social work, legal or other representative organisations. Full list of respondents is at annex A.

A breakdown of responses to each question is outlined in the annex. Twelve respondents did not respond to the specific questions set out in the consultation but preferred instead to provide general feedback with detailed comments on specific sections of the documents. As part of the consultation the Department worked with an expert group representing social work and legal practitioners. We are very grateful to the expert group, for their advice and support in drafting the guidance. We are particularly grateful to Uma Mehta, Julie Penny, and Bridget Lindley, for their additional assistance in producing revised versions of the annexes.

Consultation questions

Question 1

This guidance is primarily for use by social workers, local authority lawyers and other local authority children's social care staff. Is the guidance appropriate for its target audience?

There were 28 responses to this question			
Options	Responses		Across Consultation (this means of those responding on response template and below)
Yes:	16	57%	52%
Not Sure:	7	25%	23%
No:	5	18%	16%

Question 2

Does the guidance cover the necessary statutory requirements of pre-proceedings and care orders? If not, what is missing?

There were 26 responses to this question			
Options	Responses		Across Consultation
Yes:	14	54%	45%
No:	10	38%	32%
Not Sure:	2	8%	6%

Question 3

Is the guidance clearly expressed? If not, what aspects might be made clearer?

There were 27 responses to this question			
Options	Responses		Across Consultation
Yes:	16	59%	52%
No:	8	30%	26%
Not Sure:	3	11%	10%

Question 4

Are there any other links which would be helpful to be included in the guidance??

There were 23 responses to this question			
Options	Responses		Across Consultation
Yes:	14	61%	45%
No:	7	30%	23%
Not Sure:	2	9%	6%

Question 5

This guidance includes some best practice examples. Are these helpful?

There were 21 responses to this question			
Options	Responses		Across Consultation
Yes	13	61%	42%
No	6	29%	19%
Not sure	2	10%	6%

Question 6

Do you think the guidance and annexes are user friendly? If not, how can they be improved?

There were 25 responses to this question			
Options	Responses		Across Consultation
Yes:	15	60%	48%
No:	6	24%	19%
Not Sure:	4	16%	13%

Question 7

Bearing in mind that this guidance is primarily for use by social workers, is there too much content on private law?

There were 25 responses to this question			
Options	Responses		Across Consultation
No:	24	96%	77%
Yes:	1	4%	3%

Question 8

Do you think that there are additional issues that should be covered in the Private Law chapter?

There were 25 responses to this question			
Options	Responses		Across Consultation
Yes:	15	60%	48%
No:	9	36%	29%
Not Sure:	1	4%	3%

Question 9

Are the pre-proceedings letters expressed appropriately and clearly?

There were 24 responses to this question			
Options	Responses		Across Consultation
Yes:	15	63%	48%
No:	8	33%	26%
Not Sure:	1	4%	3%

Question 10

Chapter 4 is designed to provide information on some of the more frequently used orders. Are the orders in this chapter the most helpful to include?

There were 25 responses to this question			
Options	Responses		Across Consultation
Yes:	21	84%	68%
Not Sure:	4	16%	13%

Question 11

Does the guidance cover the necessary statutory requirements of pre-proceedings and care orders? If not, what is missing?

11 Does the guidance contain enough information on what practitioners should do when considering whether to apply for a secure accommodation order for looked after children for welfare reasons?			
There were 24 responses to this question			
Options	Responses		Across Consultation
Yes:	12	50%	39%
No:	7	29%	23%
Not Sure:	5	21%	16%

Question 12

The LA Social Work Evidence Template has been included at Annex A. This is intended to support the production of evidence for care applications. How could the template be amended to best support social workers in collecting robust evidence?

This question was not given a yes/no option on the response form. The responses to this question are addressed below.

Question 13

Do you think the guidance says enough about the importance of involving foster carers in the care planning process?

There were 24 responses to this question			
Options	Responses		Across Consultation
Yes:	15	63%	48%
Not Sure:	5	21%	16%
No:	4	17%	13%

Question 14

The revised guidance now includes sections on placement and adoption orders. Do you think this is appropriate?

There were 27 responses to this question			
Options	Responses		Across Consultation
Yes:	24	89%	77%
No:	2	7%	6%
Not Sure:	1	4%	3%

Summary of responses and the government's response

Overview

We are very grateful to all those who took the time to respond to the consultation. It is intended that the guidance will provide an important and comprehensive source of information which the responses we received in the consultation have helped to strengthen. We have attempted to provide clear and balanced guidance which takes account of the comments received.

This response document sets out an analysis of the responses together with how the guidance has been revised in the light of these.

Many responses to the consultation were highly detailed and offered comments on specific parts of the guidance or on the annexes. There were few areas where responses elicited universal agreement; however a large majority of respondents were in favour of the inclusion of chapters on private law and adoption in the guidance; the latter has been included in the guidance for the first time. The parts of the guidance which received the most contrasting responses were those relating to pre-proceedings and care orders.

- Many respondents - though not a majority - felt that more information should be provided about other issues, such as mediation
- There was a substantial amount of comment about the Social Work Evidence Template with a large majority of respondents saying that its publication should be delayed to allow for further development work and for it to be trialled before national introduction (see below for more information about responses on this)
- There several suggestions of additional links or information sources to include, which have been largely incorporated in the revised guidance.

Clarity and content

- The majority of respondents said that the guidance was clear and appropriate for its target audience.
- Some respondents, however, said that in an attempt to provide a high level guide to the law, some detail had been missed or simplified. The former view was typically held by respondents from social work (teams) with the latter view typically held by legal representatives.
- Some respondents said that level of content was proportionate to the topics covered in the guidance, but several respondents suggested other topics that should be included in the guidance, or proposed that topics already covered should be addressed in greater depth.

- A large majority of respondents felt that it was helpful to include chapters on private law and adoption.

Best practice examples

- The majority of those who responded agreed that the best practice examples were helpful.
- Some people who responded in this way felt that the examples should be given more prominence in the text.
- Some respondents were not so positive. For example, one respondent cautioned about the use of the term 'best practice' saying that different professionals may have different views about what is 'best practice'.
- Some respondents thought that it would be helpful to include best practice examples on further topics, for example on the identification of wider family members, and on pre-birth assessments

Sources of information / links

- Several respondents suggested additional links which should be added to the guidance. For example: links relating to the Public Law Outline (PLO), Practice Directions, and relevant case law.
- Some respondents highlighted the need to refer to relevant human rights legislation such as European Convention of Human Rights and the Hague Convention, links to children's advocacy and links to free advice and information for parents (and grandparents).

Annex A: Social work evidence template

There were more comments about the Social Work Evidence Template than on any other part of the guidance.

- The majority of respondents welcomed the idea of a national template, although several respondents said that this should not be mandated.
- Some respondents were concerned that a template might encourage a 'tick-box' approach to assessment which risked de-skilling social workers, while others thought that a national template would help to ensure consistency of evidence.
- A majority of respondents questioned the appropriateness of publishing the template with the statutory guidance, particularly when it was felt that more time was needed to develop and trial the template.

Issues and Response

Chapter 1: Private law

- Almost all respondents said that it was important to include the Private Law chapter in the guidance and that the content was proportionate.
- Some responses made the point that some public law cases originated from private law cases, and that it was therefore important that social workers had an understanding of private law issues
- Several respondents made suggestions about other content which they felt should be included in the guidance, for example about mediation services, parental responsibility and the links with special guardians.

Response

In the light of comments received the guidance, has been amended to:

- Clarify who might be deemed to hold Parental Responsibility (PR), and the role of Special Guardians in particular (where this relates to Parental Responsibility).
- Specify how care orders and child arrangements orders work together.
- The relationship between private law orders and public law proceedings is set out at Annex D of the guidance.

In addition

- We recognise that mediation is important for parents, but believe that this guidance is not an appropriate vehicle to provide more detail on mediation, because the guidance is designed for local authorities . There are, however further sources of information on mediation and Advocacy referred to in 'Further Sources of Information.

Note:

The relationship between private law orders and public law proceedings is set out at Annex D of the guidance.

Chapter 2: Pre-proceedings

- Some respondents said that the guidance should provide more information about the legal planning meeting

- Several respondents said that there should be more information about the importance of providing early help and support to parents
- A number of respondents said that there was too much overlap with sections of the 'Working Together to Safeguard Children Guidance', although a majority of correspondents said that it was important that Working Together should be extensively referenced
- Several respondents said that the guidance should include material about the importance of pre-birth assessments. Some respondents said that there should be consistent terminology (for example, the distinction between parental capacity and capability)

Response

In the light of responses the guidance has been amended in the following way:

- We considered the comments about Working Together and have amended the draft to reduce duplication. However, some overlap remains because we believe that it is important to retain those references relating to the chronology of the child's entry into the care system.
- We have addressed comments about the need to have consistent and appropriate terminology e.g. the distinction between capacity and capability, we have clarified how we have used these terms and we have also included additional detail about local authority responsibilities in relation to litigation capacity
- We have strengthened the section relating to the importance and role of early help assessments for families, including the role of advocates in helping children understand what is happening and to help ensure that their voice is heard throughout this process
- We have included more detail about the legal planning meeting in relation to potential role of foster carers, and identification of evidence gaps and scope to produce additional assessments
- A new box has been added to the guidance about the actions which local authorities should take in relation to pre-birth assessment. This includes the specific steps local authorities should take to support parents before the birth and assessment of parental care

Chapter 3: Care, supervision and placement orders

- A number of respondents said that the guidance should include references to the UN Convention on the Rights of the Child (UNCRC) and the Hague Convention .
- Some respondents said that there should be more emphasis on representing the voice of the child.

- Several respondents said that the information about placement orders needed to be more cohesive, and there should be more detail on the circumstances under which the court can make a placement order. Some respondents also said that there should be stronger wording on what local authorities must do before making a placement order application.

Response:

In the light of responses the guidance has been amended as follows:

- Further content has been added in relation to the evidence that the local authority must supply to support its application for a placement order
- Further detail has been included on the criteria that must exist when the court makes a placement order
- We have strengthened references to the UN Convention on the Rights of the Child (UNCRC) and have included stronger references to representing the voice of the child.
- We have emphasised the importance of maintaining up to date information on evidence and assessments

Chapter 4: 'Emergency Protection, Secure Accommodation and Child Assessment Orders' (previously Child protection and secure accommodation orders):

- One respondent said that the title of the chapter was inappropriate and suggested it be re-titled (see above).
- One respondent said that this chapter 'contained basic law rather than guidance'.
- One respondent said that there should be more information about police powers while several respondents said that there should be information about the need to requirement to keep Secure Accommodation Orders under regular review and that the Independent Reviewing Officer should be involved when a decision had been made that a Secure Accommodation Order was no longer appropriate.

Response:

Many of the comments were asking for more information which is available in other documents, so additional links have been included in the guidance. The annex "Further sources of information", provides signposts to the links, and we have added footnotes in some places. In addition:

- The chapter has been retitled.
- The text clarifies that Parental Responsibility can only be exercised to safeguard a child's welfare

Chapter 5: Adoption Orders

- Nearly all respondents agreed that it was helpful to include coverage of adoption orders in the guidance.
- Several respondents said it was important that the chapter was not seen as stand-alone guidance, and that it was essential to include more references to the statutory guidance for Adoption.
- Some respondents said that the guidance should include information about inter-country adoptions and that the distinction between agency and non-agency adoptions should be made clearer.

Response:

As a result of the comments received the guidance has been amended to include more explicit references to the statutory Adoption guidance. A number of specific amendments have been made to the guidance, which includes:

- Clarification of differences between agency and non-agency adoptions
- Amendments to include more information about Inter-Country Adoptions and a footnote added to signpost to other sources of information

Pre-proceedings flowchart and Letters before Proceedings

- There were mixed responses to these 2 annexes
- Some respondents said that the templates and flowchart were useful and, for example, 'the overview of court orders is simple to understand'
- A number of respondents said that the 'complexity of the language' in the letters should be reviewed. to ensure that parents were able to engage ahead of court proceedings.
- Some respondents reported that changing the terminology for the letters was confusing and unhelpful.
- Several respondents said that the previous version of the flowchart was more comprehensive and should provide the basis for the flowchart in this version. There were also comments that the flowchart should include indicative timelines for pre-proceedings activities.

Response:

Letters before Proceedings

As a result of the comments we have received the letters have been amended. These are now slightly longer but use more accessible language. Specific changes include:

- The names of the Letters before Proceedings have been changed back to their original titles i.e. Letter before Proceedings and Letter of Issue.
- The text of the letters has been re-ordered and simplified, to make the letters more accessible.
- The language has been revisited to ensure it is consistent . Some phrases have been changed, for example, ' taken into care' has been changed to 'removed from your care', and 'person or persons close to your children' has been added after 'relative'.
- Additional information has been added about the Letter of Issue to clarify that parents should seek legal advice urgently

Pre-proceedings flowchart

We have revised the flowchart from the previous version of the guidance, and have included it in this version. Specific changes include:

- The flowchart now includes references to the need for a risk management review in three boxes
- There is some indication of the timeline for case reviews
- References to multi-disciplinary assessments replace references to core assessments
- References to safeguarding have been replaced with references to Child Protection
- The flowchart now includes an additional box referring to the timing for Family Group meetings/conferences

Annex A: Social Work Evidence Template:

The template generated more consultation responses than any other topic. Many respondents welcomed the idea of a national template and some said that it would help to ensure the consistency of evidence across the country. Some respondents felt that such an approach risked de-skilling social workers. Many respondents made a number of detailed and specific comments relating to the document itself. For example, these included: the need for a single section for threshold; the need for better alignment with the Care Application C110A template; the need to amend the signature box; the need to refer more specifically to the Welfare Checklist; the need to revise reference to and use of chronologies; the need to address overlap, duplication and a suggestion that there were too many headings. A few respondents said the document was too long. Nearly all respondents said that the template needed more work before it was introduced on a national level. Some respondents questioned the status of the document, as it is not statutory, unlike the guidance, and not 'owned' by DfE. There were further concerns that the inclusion of the template in the statutory guidance would 'date' the guidance, and that any further development of the template could undermine the currency of the guidance document.

Response:

The department is very grateful to Anthony Douglas and Andrew Webb for the enormous amount of work they have devoted to the development of the template. In response to the majority of correspondents who argued that more time should be allowed to enable the template to be trialled we have decided not to include the template in the statutory guidance. Instead, the DfE will work with Anthony Douglas, and the Association of Directors of Children's Services to continue to develop the template in response to comments received during the consultation. We propose to publish a revised template in the summer alongside the on-line training materials currently being developed to support awareness of legislative changes and to underpin social work practice.

In particular, proposed changes to the template to date include:

- The threshold analysis has been replaced by an 'Analysis of Harm', to avoid duplication with the C110A application form and with the lawyer-produced Threshold Schedule
- It is now made clear that the chronology is detachable
- It is also made clear that the Looked After Children Care Plan should be filed separately
- A final case analysis template has been produced to be used in conjunction with the Social Work Evidence Template

- Some sections of the template have been rationalised where it has been suggested there are too many headings which overlap
- The case management analysis section has been dropped because of the overlap with the Care Application Template (C110A);
- Specific points about the structure of the template (for example, about re-ordering the sections and changing the layout) are being addressed.

We expect to circulate a revised version of the template in the summer.

Annex B: List of organisations that responded to the consultation

LOCAL AUTHORITY	Hamlets)
London Borough of Enfield	South London Care Proceedings (Greenwich, Lambeth, Lewisham Southwark
Gateshead Council	Merton (with Sutton, Richmond, Kingston)
London Borough of Barnet (Children's Services)	OTHER/ ORGANISATIONS
Tower Hamlets	Association of School and College Leaders
Barnet	Association of Lawyers for Children
Birmingham City Council	University of East Anglia (School of Social Work)
Leicester City Council (2 responses)	British Association of Social Workers
Hants LA	Coram Voice
Essex	British Association of Adoption and Fostering (BAAF)
Milton Keynes LA	Association of HM District Judges
North Lincolnshire	Family Law Bar Association
Hertfordshire LA	Family Rights Group
Luton Borough Council LA	Law Society
York City Council	Royal College of Psychiatrists
Isle of Wight LA	Nalgaro (National Association for Professional Association of Guardians and Independent Social Workers)
Stockton LA	NYAS (provides socio-legal services)
Enfield LA (in conjunction with Care Proceedings Managers of Barnet, Haringey, - North London Care Proceedings Project)	Greater London Family Panel (GLFP)
Bristol LA	Official Solicitor
Waltham Forest (East London Court group – Redbridge, Havering, Newham, Tower	Her Majesty's Courts and Tribunal Service

(HMCTS)
Cafcass
UK Family Law Reform
Individuals

Designated Family Judge
Children's Guardian
Professor of Social Work



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for Education

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