Herefordshire Council

Supplement to the agenda for

Children and young people scrutiny committee

Thursday 20 May 2021

2.00 pm

Hereford Town Hall, St Owen Street, Hereford, HR1 2PJ

Herefordshire Council

Title of report: Update on Children's Legal Team

Meeting: Children and young people scrutiny committee

Meeting date: Thursday 20 May 2021

Report by: Interim Head of Legal

Classification

Open

This is not an executive decision

Wards affected

(All Wards);

Purpose

Is to provide to the Children and Families Scrutiny Committee, in the light of the Judgement Herefordshire Council v YY [2021] EWHC 749 (Fam) (Herefordshire Council v YY) and the criticisms of the legal service as a result of issues raised in the judgement, a report on the history of the Children's Legal Team, how they work with the Childrens Social Care Service and what improvements to service delivery have been made since March 2020. In addition, this report sets out new protocols/practice processes for the Council to deal with an 'end of life' decision.

Recommendation(s)

That:

a) **Note the Contents of this Report**

Alternative options

1. There are no alternative options.

Key considerations

2. The Council's Legal Service is an in house legal practice and our responsibility is to act for the council as our professional 'client'. The Legal Service is governed by professional regulatory bodies (the Law Society and Solicitors Regulatory Authority) which set practice standards which mean we cannot also advise the public or any other third party, so we have just one client, and that is the council.

3. The Children's Legal Team (the "Team") is one of four (4) teams in Legal Services and advises the council's Children's Social Care service (the "Service") as its professional client.

4. Social work practice does not exist in a legal vacuum; it is subject to numerous guidance and an ever changing regulatory framework. So in supporting the Service to make informed and legally sound decisions it is essential that the Team and the Service consistently build and maintain positive strong and trusted working relationships.

5. Prior to May 2018 the Service was provided with legal advice by Warwickshire Council Legal Services supported by a small in house children's legal team in the council. Following the end of the working relationship with Warwickshire the in house team became the sole legal advisor to the service. At the end of 2019, the then lead solicitor in the children's legal team left the council and so leadership support was provided by way of 2 days support from Warwickshire Council. In March 2020, two senior solicitors in the legal team were appointed on a job share basis as Acting Heads of Law to provide consistent leadership. In April 2020, the council approved a dedicated budget for Legal Services which meant that resources were available to support growing capacity and capability in the team. In April 2021, the redesign of Legal Services was implemented which formalised the structures in each legal team including the children's legal service, with additional roles and development roles including redesigned leadership post, Head of Law and Legal Business Partner Children's Legal Team. It is anticipated during June/July following the outcome of a recruitment process this leadership post will be on a permanent footing. Appendix 1 sets out the new Team Structure.

6. Incorrect Legal Advice – Herefordshire Council v YY 2021

7. This incorrect legal advice was given in June 2019 and concerned the process for consenting to end of life decisions for a looked after child.

8. We have since put in mitigations so this could not happen again. The Team have since put in place training to the legal team, training to the service and there is now a clear legal practice procedure that advice of this nature has to be agreed with the Deputy Monitoring Officer or the Monitoring Officer and/or Counsel before any firm advice is given to the service. We are also formalising this practice procedure into an Escalation Protocol to be agreed with the service so that a written second opinion is necessary in circumstances of a significant nature. When this has been agreed with the Service and the Monitoring Officer we will provide a copy to the Children and Family Scrutiny Committee.

9. In addition, the Team have drafted and developed a Protocol on End of Life Protocol that has been agreed with the Wye Valley Trust. It was also reviewed and signed off by the Leading Counsel representing the Council in the Herefordshire Council v YY 2021 proceedings. A copy of this protocol is attached at Appendix 2

10. Disclosure Issues - Herefordshire Council v YY 2021

11. The judgment criticised the way the council had dealt with the required legal disclosure as part of the usual court proceedings and also the specific order of Mr Justice Keehan relating to disclosure of personnel records of those witnesses in these proceedings.

12. The issues are summarised as follows and are summarised in more detail in Appendix 3 which explains why and how the issues raised occurred.

    a. Case notes not on MOSAIC

    b. Legal Services not given access to MOSAIC

    c. Supervision Notes/121 Meeting Notes not on MOSAIC or Council Nominated Database

    d. Personnel Files – not held in Council Nominated Database

    e. Disciplinary Records – not held in Council Nominated Database – Master Files

    f. Learning Review Records – not held in Council Nominated Database

    g. Disclosure Order of Mr Justice Keehan not treated by HC with gravity it should have been given

13. In addition, the Monitoring Officer is now raising the need for robust Data Management in the Council to deal with the key issues identified above. In addition, Legal Services are in the process of providing a Disclosure protocol to the Service along with training to relevant personnel in the service.

14. The Children's Legal Team

15. The Team have not had the opportunity to be a proactive service and one which can advise on ways to mitigate risks, and focus on outcomes for children. This has been due to number of historic factors including a closed door to the Service and an unwillingness of the service to engage with the Team. Appendix 4 sets out the particular challenges the Team has faced. New leadership in the Team introduced in March 2020 endeavoured to engage more effectively with the service. This has had significant impact and positive engagement at pace since March 2021 when the Interim DCS and her supporting Interim AD's joined the Council. Appendix 4 also sets out the journey the current team have been on including further improvement work needed.

16. As part of the Improvement work identified arising from the Herefordshire Council v YY 2021 Judgement, the Team now have an Improvement and Resilience Plan to work to and deliver. A copy of this Plan is attached at Appendix 5. A copy of the tracking data

for this Plan, as it develops can be provided to the Children and Family Scrutiny Committee for further consideration.

17. High Risk Cases/Cases of Serious Concern

18. All cases Legal Services are instructed to advise on are risk assessed. Once the Team become aware of significant cases of concern/high risk cases, then as part of a practice protocol they are reported to the Monitoring Officer and the case is then tracked and reported through the council's risk and performance monitoring process. Only cases which the Team have been advised of are captured through this process ; if there are issues in the Service that have not been shared with the Team, or the Team have not been asked to advise, or they are not including in the necessary case planning meetings, then the Team will not be aware of issues of concern.

19. Legal Services were not aware of the significant practice failings identified in the Herefordshire Council v YY 2021 judgment until the Team were instructed on presenting a discharge of care proceedings to the Worcester Family Court and until issues were given in evidence during the court proceedings – certain witnesses were recalled by the court to give further evidence not contained in their substantive witness statements.

20. Now, since March 2021, there are open conversations with the Interim DCS and the Interim AD's and also case conferences to discuss the issues of concern and the open invitation of the Team to look at other issues of concern identified by the service. There is now an opportunity for the Team to provide a proactive, collaborative service and for the Team to become a trusted partner.

21. Journey of a Child – where might legal advice or support be needed.

22. As already discussed, social work does not exist in a legal vacuum. It is subject to numerous volumes of guidance and an ever changing regulatory framework. Perhaps to some social workers this can appear confusing and impenetrable. The primary role of a lawyer and a social worker working together is to present the best interests of the child and so the role of the lawyer is to work with and support the Service with what and when are the key responsibilities of the legal service in the Journey of the Child. Appendix 6 sets out, as an example, what those legal responsibilities might look like.

Community impact

23. Ensuring that the Council as Corporate Parent and the Service in providing the best possible care and safeguarding for children who are looked after by the council are provided with the best legal advice to ensure that the best outcomes are for the children and their families.

Environmental Impact

24. Not applicable

Equality duty

25. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

26. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

27. There are no resource implications with the matters discussed in this report.

Legal implications

28. There are no legal implications with the matters discussed in this report.

Risk management

29. There are no risk implications with the matters discussed in this report.

Consultees

30. None

Appendices

1. Childrens Legal Team – Structure Charts
2. End of Life and Medical Intervention Protocol – Herefordshire Council and Wye Valley Trust.
3. Summary of Disclosure Issues raised in Herefordshire Council v YY 2021
4. Children's Legal Team – Journey of Improvement
5. Children's Legal Team – Improvement and Resilience Plan 2021
6. The Journey of a Child and Legal Advice

Background papers

None

Children and Families – Substantive Team

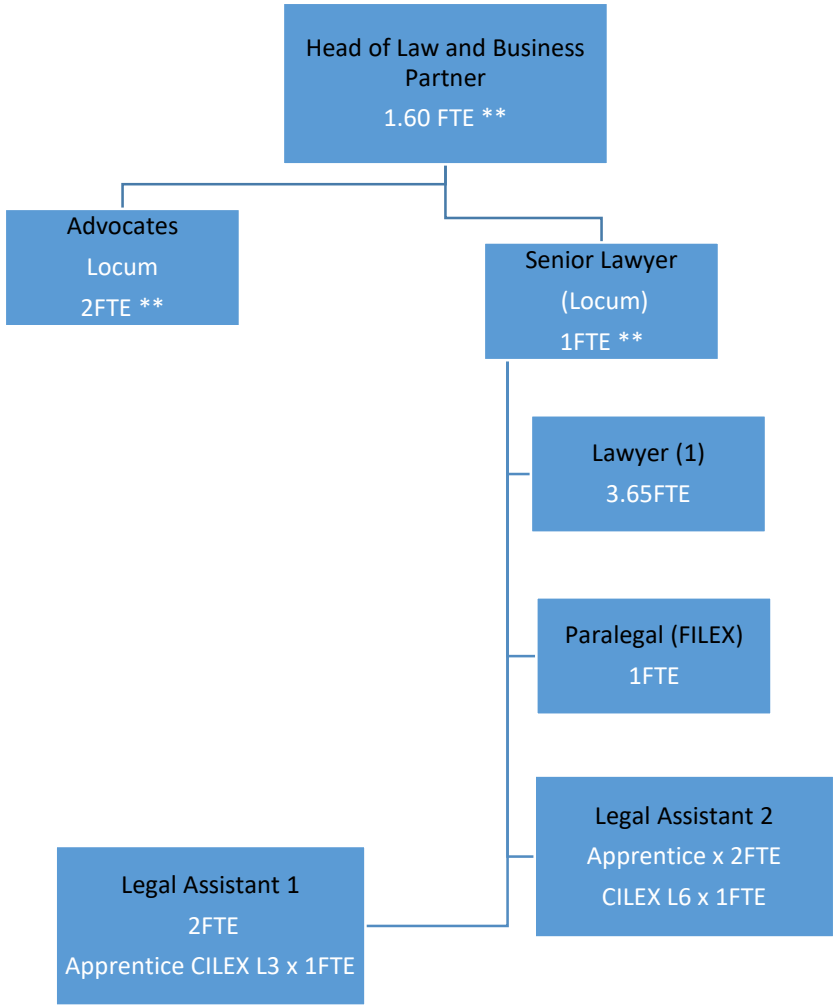
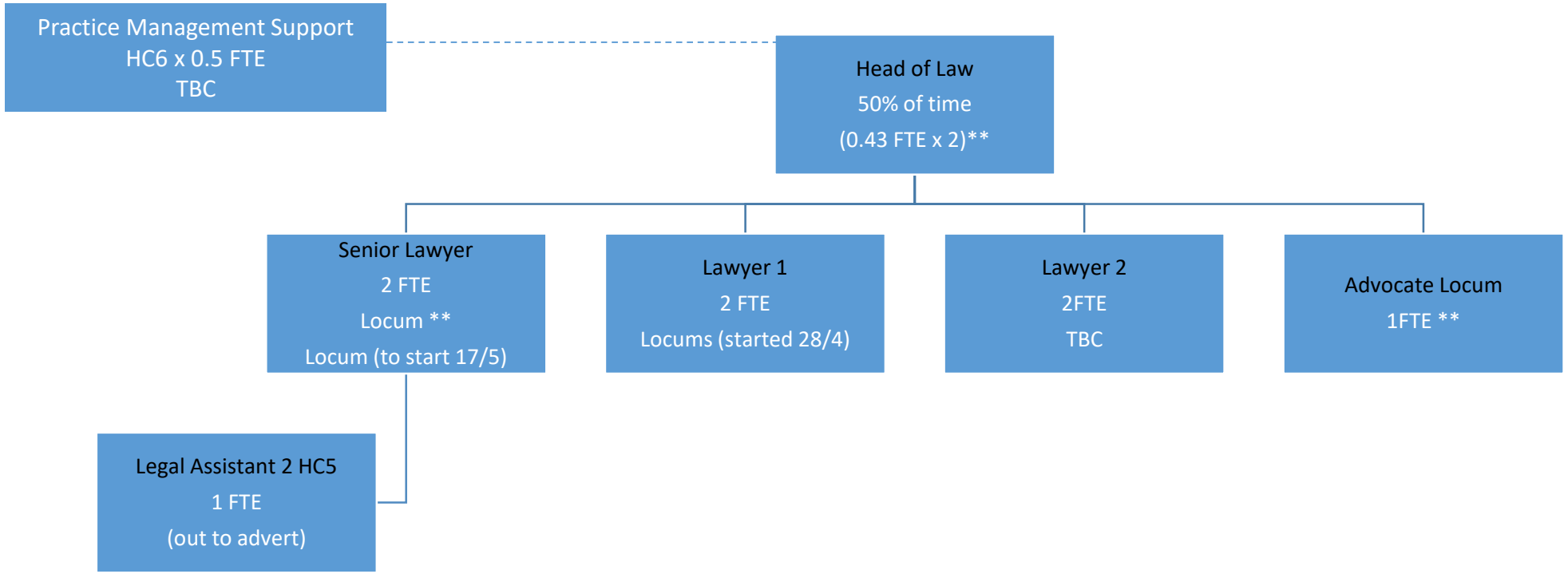


Chart represents agreed establishment

Children Legal – Improvement Team



Herefordshire Council

NHS

Document prepared in consultation with WVT and CCG.

Withholding or Withdrawing Life Support for care experienced children/children subject to ICOs/children subject to Care Orders/EPOs and Placement orders

Reviewed on 2nd March 2021

Withholding or Withdrawing Life Support for Looked After Children

1. Introduction

This document is a protocol which is adopted by Herefordshire Council.

The aim of this protocol is to provide practical guidance to social work practitioners when a child who is the subject of a statutory order made under section 31 **Care Order**, section 38 **Interim Care Order** or section 44 **Emergency Protection Order** of the Children Act 1989 becomes the subject of a "Do Not Resuscitate (DNR)" status or if consideration is being given to withholding or withdrawing life sustaining medical treatment.

This protocol also provides guidance in situations where a child is **accommodated** for the purposes of section 20 of the Children Act 1989 or abandoned. A distinction must be made between children subject to an order and those who are not, as in the case of the latter, Herefordshire Council's Children's Services do not share/hold **Parental Responsibility** (unless PR has been delegated by agreement) and therefore our powers and duties are limited pursuant to s20 Children Act 1989.

This protocol should be read in conjunction with the guiding principles set out in up to date relevant clinical guidance relied upon by health professionals. Please note that this guidance can be made the subject of future amendment and it should be ensured that the most up to date version is consulted.

The key current guidance is contained in the following documents:

- By the General Medical Council *"Withholding and withdrawing life-prolonging treatments: Good Practice in decision making" (2010)*[1]; and
- By Royal College of Paediatrics and Child Health *"Making decisions to limit treatment in life-limiting and life-threatening conditions in children: a framework for practice" (23 March 2015)*[2].

2. The reasons why a protocol is needed

The Local Authority, in its role as a statutory parent, is involved in the decision making process when a child, who is the subject of an order (s31, s38 or s44 CA1989 Act) requires medical treatment.

Social work practitioners are sometimes faced with dilemmas as to whether it is in the best interest of the child/patient to start or continue treatment. These dilemmas can arise in cases concerning the possible application of advanced techniques of life support. The application of such techniques can have the potential in

[1] ***The General Medical Council***. *Treatment and care towards the end of life: good practice in decision making. GMC, London; 2010. http://www.gmc-uk.org/guidance/ethical_guidance/6858.asp Accessed May 2020*
[2] *Larcher V Craig, Craig F, Bhogal K, et al. Arch Dis Child 2015 :100 (suppl 2) s1-s23*

some cases to be able to sustain life artificially, where there exists little or no hope of recovery. In other cases their application may have the effect of simply prolonging the process of dying and of causing unnecessary distress to the patient.

This protocol sets out the Local Authority's decision-making process and establishes clear guidelines for social workers to follow when faced with such difficult decisions.

This protocol is intended to assist all social work teams, where required across Children's Services.

3. When does the issue arise?

Once a patient is admitted to hospital, the medical staff are under a positive duty of care at common law to care for the patient. A fundamental aspect of this positive duty of care is a duty to take such steps as are reasonable to keep the patient alive.

However, the clinical team in charge of the patient's care has an ethical obligation to ensure that the benefits of a particular treatment outweigh any burdens or risks associated with the treatment. Therefore, there are certain exceptional circumstances that may absolve a doctors' positive duty to keep the patient alive.

The current guidance and case law suggest that, where it has been decided that a treatment is not in the best interests of the patient, there is no ethical or legal obligation for the treating clinicians to provide it. In such situations, there are two distinct treatment options that the hospital may need to consider:

1. **Withholding or the withdrawal of life sustaining medical treatment** - this is where the hospital is proposing to transfer life-sustaining care to palliative care.

2. **Do Not Resuscitate** - Cardiopulmonary resuscitation (CPR) is a process of restarting the heart and lungs of a patient. If a patient is the subject of a DNR status, the hospital will not attempt CPR and therefore there will be no further treatment.

3.1 Withholding or the withdrawal of life sustaining medical treatment

In 1997 the Royal College of Paediatrics and Child Health (RCPCH) produced a framework for practice in relation to withholding or withdrawing life-saving treatment in children. This was subsequently updated in May 2004 and it has again been updated more recently on 23 March 2015. The framework reports that there are three sets of circumstances when treatment limitation can be considered because it is no longer in the child's best interests to continue, because treatments cannot provide overall benefit:

1. When life is limited in quantity

If treatment is unable or unlikely to prolong life significantly it may not be in the child's best interests to provide it.

These comprise:

A. Brain stem death , as determined by agreed professional criteria appropriately applied

B. Imminent death, where physiological deterioration is occurring irrespective of treatment

C. Inevitable death, where death is not immediately imminent but will follow and where prolongation of life by LST confers no overall benefit.

2. When life is limited in quality

This includes situations where treatment may be able to prolong life significantly but will not alleviate the burdens associated with illness or treatment itself.

These comprise:

A. Burdens of treatments, where the treatments themselves produce sufficient pain and suffering so as to outweigh any potential or actual benefits

B. Burdens of the child's underlying condition. Here the severity and impact of the child's underlying condition is in itself sufficient to produce such pain and distress as to overcome any potential or actual benefits in sustaining life

C. Lack of ability to benefit; the severity of the child's condition is such that it is difficult or impossible for them to derive benefit from continued life.

3. Informed competent refusal of treatment

Adults, who have the capacity to make their own decisions, have the right to refuse LST and to have that refusal respected. So an older and/ or Gillick competent child (i.e a child who has capacity to give consent) with extensive experience of illness may repeatedly and competently consent to the withdrawal or withholding of LST. In these circumstances and where the child is supported by his or her parents and by the clinical team there is no ethical obligation to provide LST.

In situations other than those described, or where there is uncertainty about the nature of the child's condition or its likely outcome, treatment should be continued until greater certainty is possible. The degree of certainty should be proportionate to the gravity of the decision to be taken. Adequate time must be allowed to collect evidence and this may entail obtaining second opinions from clinicians with appropriate skills, knowledge and expertise of the child's condition.

Decisions to limit treatments—or what treatments should be given—should be made by clinical teams in partnership with, and with the agreement of, the parents and child (if appropriate).

They should be based on shared knowledge and mutual respect. Where possible they should be made in advance of acute events in the form of care plans and be available for all relevant parties.

A wide range of treatments may be withheld or withdrawn if it is in the child's best interests to do so. They include cardiopulmonary resuscitation, clinically assisted nutrition and hydration as well as mechanical ventilation. Limitation of treatment agreements are increasingly used because of the greater range of options in decision making they offer.

3.2 Do Not Resuscitate (DNR) / Do Not Attempt Cardiopulmonary Resuscitation (DNACPR)

Where a patient is already seriously ill with a foreseeable risk of cardiopulmonary arrest, or a patient is in poor health and nearing the end of their life, a decision about whether to attempt CPR could arise.

When considering the withholding or withdrawing of life support, the issue facing Children's Services is whether to endorse the change in the treatment plan from actual treatment towards palliative or terminal care needs. In circumstances where DNR/DNACPR arises, there will be no life-saving treatment plan. As such Children's Services have an involvement in whether or not to endorse the hospital recommendations not to treat the patient.

Children and Young People with chronic life threatening/life limiting conditions may have a Child and Young Person's Advance Care Plan (CYPACP). The CYPACP is a document that records the advance wishes of an infant, child or young person and/or those with parental responsibility for them. A CYPACP will include whether the cardiopulmonary resuscitation status has been discussed, and the outcome of that discussion should a cardiorespiratory arrest occur. A child with a valid DNACPR decision in place should not have any attempt made to resuscitate them in the event of a cardiorespiratory arrest (excluding cardiorespiratory arrest due to rapidly reversible causes such as choking or anaphylaxis, or causes specific to the individual child as specified in the CYPACP). A DNACPR decision does NOT mean a withdrawal of care. Every attempt should always be made to make the child as comfortable as possible, and to fulfil the child's and the family's wishes. All children must be assumed to be for attempted resuscitation unless there is a valid, documented DNACPR decision in place. If there is any doubt about the validity or applicability of a DNACPR decision, then resuscitation should usually be initiated.

The ReSPECT process creates personalised recommendations for a person's clinical care and treatment in a future emergency in which they are unable to make or express choices. These recommendations are published in a ReSPECT plan that is endorsed by the child (if they have capacity) and their parent. The CPR/DNACPR section is validated by the signature of a senior clinician and can be found in the ReSPECT form section 4 or on the final page of the CYPACP. Unlike for adults, where the option is for CPR to be attempted or not to be attempted, for anyone under 18yrs of age, there is also the choice of 'modified' CPR –The Child's CYPACP/ReSPECT must be consulted and wishes considered.

4. Is consent required?

The courts have accepted that where the withdrawal of life-sustaining treatment was in accordance with good medical practice and was appropriate in the clinical judgement of the doctors responsible for the patient's care and best interests, it would be lawful to discontinue such treatment even though it would bring about the death of a patient[3] . This is the minimum legal requirement.

When withdrawal or DNR is an option that has been raised by the clinical team, the hospital must then consider whether "consent" is sought to authorise the proposed action.

The guidance suggests that it is best practice to seek patient and/or parental consent in respect of a proposed treatment plan or non-treatment plan, and in the case of DNR, if the option is available[4].

Usually in cases of doubt, the clinical team would seek the consent of the patient or those who have authority to consent on behalf of the patient.

4.1 Who Can Provide Consent?

Once a child reaches the age of 16, they are presumed in law[5] to be competent to give consent for themselves for their own surgical, medical or dental treatment, and any associated procedures, such as investigations, anaesthesia or nursing[6]. Therefore the child should be treated as an adult.

Children under the age of 16 can be considered competent to give valid consent to a particular intervention if they have "*sufficient understanding and intelligence to enable him or her to understand fully what is proposed*", otherwise known as Gillick competence[7]. Subsequent court rulings have retreated from the original Gillick level of respect for the competent child's views and have reaffirmed parents' rights of consent as a necessary legal protection when doctors care for minors[8]

If a child is aged 16/17 or under 16 and is not competent to consent for themselves; consent must be sought from a person/body with **Parental Responsibility**. Whilst for the purposes of treating clinicians the consent, where no statutory orders are in force, of one of the holders of parental responsibility may suffice where an interim care order, care order, emergency protection order or placement order is in force consent should be sought from all who hold parental responsibility and must be sought from the relevant local authority holding parental responsibility for the child.

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[3] Airedale National Health Service Trust v Bland (1993) Re J (1991) Fam 33 AND Re c (1998) 384

[4] GMC Guidance - August 2002

[5] Family Law Reform Act 1969

[6] Section 8 of the Family Law Reform Act 1969 as amended.

[7] Gillick v West Norfolk & Wisbech HA in 1986

[8] Re R (1991) 4 All ER 177, 185 Re W (1992) 4 All ER, 633

Wherever possible consensus between the medical professionals, families and Local Authority should be achieved. In circumstances of dispute between medical professionals or any holder of PR, it is clear from the guidance[9] that it is essential to safeguard the child's life in the interim.

The local authority must make an application to the High Court in the following circumstances:-

1. Where there is no consensus between those who hold PR (including disagreement between holder of PR and the local authority) in relation to medical advice and proposed care plan in respect of treatment or otherwise
2. Where there are doubts as to the ability of anyone with PR to give valid consent
3. Where someone with PR cannot be located
4. Where the local authority holds parental responsibility only by virtue of an emergency protection order or an interim care order.

5. Legal responsibilities of the local authority parent

General

The Children Act 1989 provides an overall statutory framework for the provision of children's welfare and services but makes no specific provision concerning withholding or withdrawing treatment. The bundle of parental rights and duties which is comprised in "parental responsibility" under the Act includes the right to consent to the giving or withholding of medical treatment (subject to the consent of other holders of PR). The Act does specifically provide that:

- The child's welfare is paramount[10];
- Particular regard should be paid to the ascertainable wishes and feelings of the child[11];

[9] ***The General Medical Council***. *Treatment and care towards the end of life: good practice in decision making. GMC, London; 2010. http://www.gmc-uk.org/guidance/ethical_guidance/6858.asp Accessed May 2020 and* Royal College of Paediatrics and Child Health *"Making decisions to limit treatment in life-limiting and life-threatening conditions in children: a framework for practice"Larcher V Craig, Craig F, Bhogal K, et al. Arch Dis Child 2015 :100 (suppl 2) s1-s23*

[10] Children Act 1989 section 1

[11] Children Act s 1 (3)(a)

- Children of sufficient maturity and understanding may be allowed to refuse medical or psychiatric examination or other assessment (but only for the purpose of a Child Assessment Order (section 43 (8)) or an Emergency Protection Order (section 44 (7).)

Social workers must bear in mind the above principles at all times when considering the issue of DNR or the withdrawal / withholding of life support.

A social worker (and other local authority officers – please see the scheme of delegation at Annex 1) will only become involved in decisions of a child/young person's medical treatment if the child / young person is subject to the following:

- An interim / full care order (section 31 and 38 of the Children Act 1989);
- An emergency protection order (section 44 of the Children Act 1989).

5.1 Full Care Orders[12]

If the local authority obtains a full care order, it gains Parental Responsibility and by virtue of the order, it is empowered to give consent to certain medical treatment matters on behalf of a child.

Whilst the local authority is given the power to consent to medical treatment, the local authority must also obtain consent from all other holders of PR to any medical treatment/intervention on behalf of the child. Due to the significance of withholding end of life treatment and the difficulty of assuring itself that any consent is fully informed consent, active consideration must be given by the local authority to making an application to the High Court.

If the child is the subject of a full care order there should be an application to the High Court where:-

i. There is any conflicting medical advice as to what is in the best interests of the child;
ii. There is any disagreement between any person holding parental responsibility and the medical advisors; The local authority must not rely on its PR to override the consent of any other parental responsibility holder unless there is in place a High Court order/ declaration authorising the local authority to do so in the circumstances with which it is faced;
iii. There is any doubt as to the ability of any person holding Parental Responsibility to give a fully informed valid consent;
iv. There is information to suggest that the child concerned had expressed a view regarding treatment which differed to that of those with parental responsibility;
v. The local authority believes based on the history and current circumstances that the people holding parental responsibility should not be informed or consulted about the issue;
vi. Where there is an inability for any reason to consult with those holding parental responsibility;

[12] section 31 of the Children Act 1989

vii. Where the day to day care of the child has been undertaken for an extended period of time by carers who do not hold PR for the child but who have expressed a different view on the proposed treatment to the local authority and other PR holders;

If there is any doubt as to whether or not the matter should be referred to the court for the court to make the ultimate best interests decision then the best course of action would be to bring the matter before the Court.

5.2 Where court proceedings are ongoing

Where a child is already the subject of court proceedings pursuant to the Children Act 1989, and the local authority is considering a High Court application, the Court must as a minimum be informed of the evolving circumstances at the earliest possible opportunity.

5.3 Interim Care Order[13]

The local authority should make an application to the High Court.

This approach was endorsed in in the matter of Re K (A Minor)[14], where it was held that in the case of a seriously ill child who was the subject of an ICO, the parents were not legally able, without the agreement of the local authority, to make a decision to consent to the withdrawal of the treatment. In this case a declaration was sought and obtained from the High Court that the treatment should be withheld.

5.4 EPO[15]

The local authority should make an application to the High Court.

5.5 Ward of Court

An application must be made to the High Court.

5.6 Placement order

Where a placement order has been made, this has the effect of transferring the Local Authority's parental responsibility to the adoption agency (for Herefordshire this is Adoption Central England (ACE). Prior to a child being placed for adoption any consent to medical treatment would need to be obtained from birth parents and ACE. When a child has been placed with prospective adopters parental responsibility is given to them (s25 (3) Adoption and Children Act 2002. Furthermore s25 (4) Adoption and Children Act 2002 allows the agency to determine that the parental responsibility of any parent or guardian, or of prospective adopters, can be restricted by them. Therefore any consent to medical treatment would need to be obtained from birth parents, prospective adopters and ACE.

[13] Section 38 of the Children Act 1989

[14] (2006) EWHC 1007 (Fam)

[15] Section 44 of the Children Act 1989

However, whilst a placement order is in place several individuals at different points share parental responsibility. This makes it more complicated and creates further uncertainty about informed consent. Due to the significance of withholding end of life treatment and the difficulty of assuring itself that any consent is fully informed consent, active consideration must be given by the local authority (on behalf of ACE) to making an application to the High Court.

6. Hospital's Responsibilities

If a child or young person who is subject to an ICO or Final Care Order is admitted into hospital with a life threatening condition, this protocol should be observed.

In the cases of a planned withdrawal of CPR or withholding life supporting treatments or withdrawing artificial nutrition and hydration the hospital will ensure:

- That an appropriate and clear plan is identified for the child;
- This must be recorded in the hospital notes and consistent with the CYPACP+ ReSPECT plan;
- That this is communicated to the social workers at the first available opportunity to enable them to determine the Children's Services formal position with the benefit of its own advice as necessary;
- That every possible option has been considered with a view to sustaining life;
- That there exists good co-operation and communication between children's services, hospitals, children and their families to facilitate collaborative decision making at a difficult and sensitive time;
- That it will improve and develop an appropriate support service to children and their families.

7. The Procedure

7.1 The Hospital's Role

Stage 1: Relevant Persons to be notified

Once the clinical team/leading doctor has formed a view that a child who is in statutory care should be the subject of a DNR status and/or the issue of withholding or withdrawing life support has arisen, written notification of this must be circulated to the Children's Services relevant Team Manager. The notification must set out the following:

- The clinical recommendations of the leading clinician and or team in respect of the child;

- Whether parental consent to the action is perceived to be required or not, and if not the clinical guidance which is relied upon to justify that conclusion.

Stage 2: The Planning Meeting

A Planning meeting must called by the hospital to discuss the hospital's view as soon as possible after the notification has been given.

Present at the meeting should be the Children's Services Team Manager and social worker, any parent or guardian (any holder of PR), a child is they are of sufficient age and understanding andthe relevant treating clinicians.

At the Planning Meeting, the leading treating Consultant must circulate a written report clearly setting out their recommendations and the proposed care plan. The care plan must set out the proposed timescale and process for any change in the health care plan. Under no circumstances must the process / timescale be rushed and it should take into account sufficient time to enable Children's Services and/or parents/those with parental responsibility to reflect on the recommendations and to communicate any relevant views to the hospital with the benefit, where necessary, of professional advice.

7.2 Children's Services Role

Once the social worker is informed by the hospital staff that DNR / Withholding / Withdrawing Life Support is being considered, the following procedure is to be applied:

1. The following people are to be notified immediately:
    - Director of Children's Services – (Social Care lead);
    - Assistant Director of Children's Services
    - The identified legal advisor from Legal Services and Head of Childcare legal team;
    - The social worker's team manager.
2. Social workers should ensure that written notification is obtained from the leading clinician and they should forward this to the relevant people identified above;
3. Contact should be made with the parents and any other individuals who hold parental responsibility in order to ensure that they attend the Planning Meeting (as discussed at 7, stage 2) in order to ensure that they are fully aware of the proposed decision of the hospital and in order to obtain their consent. It should be established whether there is a need for interpreting services, communicators/advocates or signers at the Planning Meeting;
2. At the Planning Meeting, any consent that is given should be recorded in writing. Even in cases where the local authority holds PR, all other PR holders and medical advisors agree with the proposed course

of treatment, there should be discussion as to whether or not it would be appropriate to take the matter to court. There should be a clearly noted discussion of the fact that a referral to the High Court was an option which the local authority would undertake if any person holding parental responsibility wished for that route to be taken and that any person holding parental responsibility is made aware of this option. Whilst consensus has benefits, attempts to achieve it should not result in any person with parental responsibility feeling under pressure to agree or feeling that they have no other course of action available to them.

4. Medical professionals may have previously discussed the recommendations, and social workers need to be clear about the nature of any meetings and ensure all the relevant medical professionals will attend;
5. Both the social worker and team manager must attend the Planning Meeting arranged by the hospital;
6. All holders of PR should be invited to the Planning Meeting to ensure they fully understand the hospital's treatment plan;
7. Following the Planning Meeting, it is the social worker's responsibility to update the identified legal adviser of the outcome of the meeting and any other subsequent meeting and arrange a Legal Planning Meeting as soon as possible thereafter, as necessary;
8. If consent remains an issue of dispute following the Planning Meeting, the following persons are to be notified as necessary:
    - Director of Children's Services;
    - Cabinet Member for Children's Services (to be notified by the Director);
    - Chief Executive (to be notified by the Director);
    - The legal department.
9. Social workers should ensure that case recordings are updated as soon as possible and accurately reflect any discussions held with parents, carers, children and the medical professionals.

7.4 Disputes

7.4. Disputes between the medical practitioners and Children's Services

When withdrawal of medical treatment or DNR is an option that has been raised by the medical team and consent to carry out such treatment is required, section 7 and 8 of the protocol will apply.

In accordance with paragraph 76 of the GMC guidance, if any holder of parental responsibility is not willing to authorise treatment, the medical practitioner is bound by the refusal unless his responsible hospital trust obtains a ruling from the court.

In respect of children who are the subject of an interim or final care order, the hospital trust should only accept a decision whether to administer the withdrawal or withholding of life sustaining treatment or endorse a DNR status from a non-statutory or statutory Chief Officer on behalf of Children's Services, being:

- The Director of Children's Services;
- The Chief Executive.

It is the responsibility of the Local Authority to obtain consent from all those with PR, if a consensus cannot be reached then the local authority is required to seek a declaration from the High Court in respect of the decision.

Even when those with PR appear to be consenting to the decision, a record should be made by the local authority that they offered the Holders of PR the opportunity to take the matter to court, and such an offer should be recorded in writing. If there is any query whatsoever about whether they have given fully informed consent, the local authority is required to seek a declaration from the High Court in respect of the decision.

7.4.2 Disputes between Children's Services and parent /guardian

This situation arises when parental consent is required but the local authority and those with PR fail to achieve a consensus.

If such consensus cannot be achieved, the legal team must be informed and an application must be made to the High Court for a declaration in respect of this decision.

Once practitioners have complied with section 7.1 - 7.2 of this protocol, the following procedure should be applied;

1. The team manager must forward the written report / recommendation of the treating / leading clinician to the Lead Consultant Paediatrician for the relevant treating hospital;
2. The Lead Consultant Paediatrician to consider the report and provide her recommendation in respect of the proposed treatment. This report is to be forwarded to the social worker and team manager:
3. Once the social worker and team manager are in receipt of the report from the Lead Consultant Paediatrician they must forward this to the following persons:
    - Director of Children's Services;
    - The identified legal advisor and Head of the Childcare legal team.

In matters where parental consent is sought and the child is under an interim or final care order, the hospital trust should only accept a decision whether to administer the withdrawal or withholding of life sustaining treatment or endorse a DNR status from:

- The Director of Children's Services;
- The Chief Executive.

Before communicating this decision, the local authority in these circumstances should have reached a consensus in respect of the decision with the holders of PR (if there is any doubt as to whether full informed consent has been given then an application should be made to the High Court for a declaration), and if no consensus has been achieved, an application for a declaration from the High Court regarding this decision needs to be obtained prior to this decision being communicated to the hospital trust.

The hospital must act in accordance with the written notification of Children's Services.

7.4.3 Dispute between the local authority and the parents in respect of a child subject to an Emergency Protection Order

If the child is subject to an EPO as with ICOs and Final Care Orders, declaration from the court under section 100 of the Children Act 1989 is required. Again, the onus is on the local authority to make the application.

7.4.4 Dispute between the local authority and children aged 16 - 17 or "Gillick" competent

The wishes of a child, who has the capacity to decide whether to consent or refuse a proposed treatment should normally be respected, however if Children's Services in its statutory care authority role disagrees with the child, legal advice should be sought immediately.

8 Section 20 / Abandoned Children

This protocol focuses upon children who are the subject of a care order. However social workers may find themselves in situations where abandoned child/ren are admitted into hospital with life threatening conditions. For example, when a child is born with multiple disabilities and is left in the hospital with staff.

Children's Services responsibility for abandoned children is limited to section 17[16]) and 20[17] of the Children Act 1989 and therefore it does not acquire parental responsibility without obtaining a Care Order or Emergency Protection Order. Therefore, if the hospital is considering the possibility of administering the withdrawal or withholding of life sustaining treatment or DNR, it is vital that Children's Services uses its best endeavours to contact the parents.

Until a parent is contacted to discuss their consent, a medical practitioner should continue to treat the child provided it is limited to that treatment which is reasonably required either to save the child's life, or to prevent deterioration in the child's health. However, for any child/young person with an agreed CYPACP+ ReSPECT in place this should be followed even when the parent or legal guardian is NOT present at the time of the child's acute deterioration or collapse (CYPACP Policy 11.4)

If a parent does not provide consent, it will be the hospital in this instance who makes the application for a declaration from the High Court as the local authority would not share PR in these circumstances. The local authority would need to ensure that it is made clear to the hospital that it does not share PR and therefore it is not able to provide consent.

[16] It shall be the responsibility of the local authority to safeguard and promote the welfare of the child within their area who is in need.

[17] The duty to provide accommodation.

9. Removal, Storage and Use of Human Organs

The issues of transplant and / or organ donation is addressed in the Human Tissue Act 2004. Under section 1 of the Act, it is lawful to store, use and remove human organs of a deceased person and use it for a purpose specified within the Act provided "appropriate consent" is obtained. The schedule of the Act is annexed to this protocol for ease of reference. Within the CYPACP the child or young person and their carer/parent have the opportunity to express their wishes in regards to organ and tissue donation.

Under section 2 of the 2004 Act, "appropriate consent" under section 1 of the Act in relation to the body of a person who is a child or has died as a child is defined as:

1. Where the child is alive, "appropriate consent" means the consent of the child (section 2 (2)); OR
2. Where the child is alive, but does not have the capacity to consent (either by virtue of being a minor or otherwise) or fails to consider the issue, if s/he are competent, "appropriate consent" means the consent of a person who has parental responsibility for him (section 2 (3)).

If a child has died and the issue of organ removal arises, then section 7 of the 2004 Act will apply:

1. "Appropriate consent" means the consent of the child, if it was in force immediately before s/he died (section 7 (a)); OR
2. If no consent is in force, the consent of a person who had parental responsibility for her/him immediately before s/he died section 7 (b) (i)".

Therefore, if the child is subject to a Care Order, Children's Services must provide the consent on behalf of the child. Consent should however be obtained from the other holders of PR. If no consensus is reached then the Children's Services department can make this decision as it is not possible to seek a declaration from the High Court in respect of a child who has deceased. Social workers must ensure that the consent forms, if agreed, are signed by a Chief Officer on behalf of Children's Services, being one of:

- The Director of Children's Services;
- The Chief Executive.

10. Procedures Following the Death of a Child Subject to a Care Order

It has been held that the effect of a Care Order (and thus parental responsibility held by a local authority) ceases on the death of a child[18]. Nevertheless the social worker must complete the following before proceeding to close the relevant files:

[18] R v Gwynedd County Council ex parte B (1992) 3 All ER 317, (1991) 2FLR

- Complete an OFSTED Serious Incident Form and send a copy to The Director of Children's Services and the Head of Commissioning Services and OFSTED;
- Notify the Secretary of State and the Commission for Social Care Inspection;[19]
- Inform the Safeguarding Children Partnership;
- Notify the corporate parenting team;
- Notify the local PCT;
- Complete an Event Form;
- Notify care agencies if support services have been in place;
- Notify the Herefordshire Council Business and Finance Manager;
- Notify benefits agency when appropriate if a child is in receipt of benefits e.g. Disability Living Allowance;
- Notify the Child Health Department;
- Ensure that the date of death is recorded on the electronic computer system and case file.

Workers **must** obtain a copy of the Death Certificate. It is usual for the parents to register the death.

Funeral Arrangements

The right to arrange the disposal of the remains of a child vests exclusively in the parents.

Funeral arrangements for a Looked After Child is dealt with in paragraph 20 of Schedule 2 to the Children Act 1989 as follows:-

- The local authority may, **with the consent** (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated. In relation to a child who was under the age of 16 when s/he died, the local authority may recover from the parent of the child any expense incurred by them;
- The local authority may make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by the person in attending the child's funeral, subject to (a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without financial hardship and (b) the circumstances warrant the making of the payments.

[19] Children Act 1989, Schedule 2, para 20.

Following the death of a child, the social worker should discuss the funeral arrangements with the parents/guardians and establish whether they wish to organise the funeral. The social worker should also establish whether the child has an estate.

If the parent is unwilling or unable to arrange the funeral and has no other financial means, and the child has no estate, the local authority can apply for funding to support the funeral arrangements. The social worker must ensure that they contact legal services for advice. Under **no circumstances** do social workers arrange a funeral without seeking advice and guidance.

If a child does have an estate this goes directly to the parent who can use this finance to pay for the child's funeral as the family will not be eligible to apply for a death grant.

The allocated social worker will remain in contact with the family until the funeral has taken place.

The allocated social worker will ensure that appropriate counselling and support services are offered, to the family should they require post funeral support.

If CYPACP in place, consideration should be given to any wishes in respect of the place of rest/funeral preferences/possessions agreed prior to the child's/ young person's death.

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APPENDIX 3

DISCLOSURE ISSUES - HIGH COURT CASE
Herefordshire Council v YY 2021

Summary of disclosure issues raised in the case and responses

SGO Assessment

a. The finding was that Herefordshire Council had failed to disclose an amended SGO Assessment report until the second week of the 2021 hearing.

b. The failure to disclose the report was due to its existence being only known by legal services following a social worker providing an unsolicited statement.

c. It is confirmed at para. 156 of the *Re YY* Judgement that a social worker, said in evidence, she thought she had sent both versions of the updated reports to the legal department. The judge confirmed that he had not seen evidence of the first version being sent to legal services.

d. The Childrens Legal Litigation Team have confirmed that it did not receive the initial report.

e. Also, that report was not located on the MOSAIC system (the social worker case file database).

f. The document ought properly to have been saved on the MOSAIC database. Had this been done, the document would have formed part of the original disclosure well in advance of the final hearing.

Email Correspondence relied on in the court proceedings

g. 2 key witnesses were **recalled** to give evidence in the *Re YY* proceedings.

h. The rationale for the recall was due to relevant email correspondence between two mentioned social workers and relating to the substantive issues being considered by the

court, however no emails/case notes/supervisions not being contained within the MOSAIC database.

i. The emails were only the disclosed during the hearing after the key witness had been questioned by the judge.

Personnel/Disciplinary and Case Supervision Records

j. On 18th December 2020 Mr Justice Keehan ordered the local authority disclose such Personnel/Disciplinary and Supervision documents as the LA feel relevant.

k. As a consequence of the court order disclosure requests were made by Legal Services to HR, Hoople (involved with HR), Head of Business Support, the Development & Implementation Manager.

l. The bulk of the records provided were from the Development & Implementation Manager. Legal services were informed that the status of the records were personnel records and that such records are kept in the database 'SharePoint'. These records did not cover all individuals whom a request had been made of and only related to the period of 2017 onwards. Legal Services were unable to obtain any clarity about the whereabouts of those missing records despite enquiries. Following enquiries directly with HR/Hoople only a single disciplinary record was disclosed.

m. As the final hearing drew nearer Legal Services spoke with those individuals who were prospective witnesses for the final hearing. It transpired from conversations that there were relevant disciplinary records which had not been provided. Legal Services made a request again for all disciplinary records relating to those staff involved with the children. A substantial amount of disciplinary and investigatory material then transpired.

n. Legal services were then informed that outstanding personnel records would in fact be kept within the service and not in SharePoint. Enquiries were made with relevant managers and persons and disclosure of records was thereafter provided.

o. In order to proffer Mr Justice Keehan with a complete answer with respect to the whereabouts of pre-2017 personnel records further late enquiries were made directly to the Director of Childrens Services. The Head of Business Operations was finally able to

establish the whereabouts of the pre-2017 records which were not contained within the 'SharePoint' database.

p. It also became clear that personnel records were enmeshed with case supervision records which ought properly to have been maintained within the MOSAIC database and not on Sharepoint.

q. The case supervision data related to discussions between a Social Worker Manager and a Social Worker on a particular case. The mixture of information within one document and the status of the record within Herefordshire Council caused difficulties when assessing whether consent was required from the employee before disclosure.

Incident Report & Learning Review Document

r. As a consequence of late disclosure of personnel/supervision records further disclosure was identified as necessary. This included an incident report between a manager and employee which was found on the personal computer of the social work manager instead of being found on the 'SharePoint' database.

s. A learning review document on the Herefordshire Council v YY 2021 proceedings was also produced by the SW team leader and was not disclosed prior to the hearing. This document should have been contained on MOSAIC.

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APPENDIX 4

Journey of Improvement

- We have never had enough resources to do 'proactive' work
- Caseloads have been too high because we have not had enough resources
- We were not permitted to have the "red book" – a critical resource for any children's lawyer which meant an inability to research more complex areas of law
- Leadership in the legal team was not democratic and problems/necessary learning/key issues in the service were most often not shared with the team.
- There was a lack of management oversight historically in the team which meant some areas of work, including the PLO process have not been sufficiently robust
- Failure to invite us to strategy meetings which results in not being able to give legal advice at the earliest opportunity
- Failure to inform us of emergency situations at the earliest opportunity, this has meant in cases where the police have exercised their powers of protection, we have been asked to issue an out of hours application (this should not occur when the LA has had 72 hours to make an application to the court and would be viewed very dimly by the judiciary), this was avoided by the use of s20, but this situation should not occur.
- Following the 2018 High Court judgements several commitments were made by the local authority, specifically in the twins case, these commitments were not shared with the legal team, nor with the service and no evidence has been seen of planning or monitoring implementation of these commitments and therefore key promises were left unmet.
- There has never been any tracking of issues raised in judgements which has resulted in these being not adhered to or taken on-board
- Historic high court judgements have not been shared with the team for the purposes of learning nor have they been shared with the service; training has not been facilitated in order to address knowledge gaps and therefore "lessons learned" have not been facilitated.
- There was not a close relationship between the judiciary and the local authority, the local authority were viewed by the judiciary as operating very defensive practice.
- We are known as a reactive service; we are the last to find out and historically only key leadership personnel in the Team had engagement with the service
- Historically there is a legacy issue that legal has not been an "open door" this has meant a reluctance to seek legal advice. This emanated from a combination of having outsourced work to Warwickshire and therefore there was a loss of client relationship, and for a period thereafter a loss of faith in the in-house team, as well as at various junctures there having been arbitrary rules about who is permitted to seek legal advice (e.g. team manager and above only).
- There has been a lack of understanding about when to seek legal advice, for example, in the recent high court case (April 2021) case there was a Looked After Child who required significant medical treatment and no legal advice was sought about whether this consent could be provided by the local authority. In addition, in a recent case of concern where a Looked After Child was prescribed the contraceptive implant without any legal advice sought about who could provide that consent, a further recent example is where serious allegations of sexual abuse have been made by a child, the father was arrested and subject to bail conditions. the father returned to the family home and the child has at no point retracted allegations which means there has been a lack of appropriate safeguarding in this case as a result of not highlighting the matter to legal (
- Instances of the service undermining legal advice using own interpretation of the law and how it applies

- Appropriate documentation and assessments are not always available for legal planning meetings which means that advice cannot be proffered. An example being told an assessment was negative for an issued case - and getting into Court to find the assessment was positive.
- We had no involvement, nor was legal advice sought about the appropriate identification of children that would be suitable for SGO or discharge of care orders
- There has been a lack of understanding about the legality of allowing children to change their name and be "known as" another name at school or in other environments without seeking legal advice.
- Legal advice was not sought about the appropriateness or otherwise of a "LAC reduction" policy
- Our legal advice has been ignored - for example in a 2020 case, we asked whether an application should be filed at court in order to allow for the reassessment of kinship carers pursuant to decision of fostering ADM and this advice was ignored; and in a March 2021 case where legal advised an ICO was necessary, we were instructed to apply for an ISO and the court granted an ICO due to the seriousness of the case. We were not consulted on what is the legal duty to promote contact
- We were not consulted on 'no contact' orders for children in care – which means several cases have been in breach of statutory duty
- We are not asked about the need to include birth parents and other holders of PR in the Looked After Child review process and the ongoing requirement to include all holders of PR in this process following the granting of final orders
- We have been told by the service we don't need further protocols from legal services –and whilst protocols are not a panacea, it is important to have standards and procedures that can be referred to as part of improvement work so that staff have a point of reference for good practice
- We advised the service that their budget proposals amounted to a LAC Reduction policy which was ignored
- We rarely receive evidence on time, and whilst a protocol has been drafted to ensure the timely filing of evidence, this is not being followed. This means we have insufficient time to review evidence before it is filed, or alternatively we are required to ask the court to re-timetable matters.
- Legal often having to step into the role of the IRO where there hasn't been sufficient challenge to the care planning, or quality of assessments undertaken. Instances where parents were blocked from LAC reviews and weren't consulted, even though there was a significant change to a care plan from LAC to SGO.
- Inexperienced child care locums or permanent members of staff
- Lack of timely and good quality assessments being done in Children's Services – which means legal are often seen as the "bad guy" and "making more work" when oftentimes assessments should have been done already.

Where we are now and changes made to date:-

Since March 2020, a wide ranging number of changes have been made. These include the following:-

- A positive working relationship has been built up with the service, we have already begun to disseminate the message that we are an approachable team and operate an "open door" policy

- We have been able to foster a very good professional relationship with the DFJ, HHJ Plunkett. He has commented that he has seen significant positive change has been effect since the change in leadership of the team, and he has spoken highly of the quality of the legal work that is being conducted and presented to him at court (please see the attached correspondence which demonstrates a range of compliments received).
- We ensure that legal advice is now provided to ADM as this did not take place historically
- We have implemented a review process for long-term section matters which mean those children who are subject to s20 for longer than a 1 year period, we seek counsel's opinion in respect of the legality of their legal status/framework
- We have ensured the smooth transition from "in-person" hearings to remote hearings as a result of the global pandemic which meant urgent modification and adaption to new working practices
- We have held various training sessions, including for example, to elected members on Adoption and to the service in respect of emergency applications.
- We adapted to the significant changes brought about by the global pandemic which meant creating legal protocols to adapt to requirements brought about by COVID-19 and ensuring children continued to be safeguarded notwithstanding wholesale changes to practice
- We have embedded the new digital portal within the team which means all new court applications are submitted via a digital portal, rather than by email.
- A plethora of protocols have been drafted which include the following:-

    - Change of name flow chart
    - Emergency removal of child subject to a care order at home
    - Family time letter
    - Family time flow chart
    - Filing of evidence protocol
    - Looked after review process – engaging parents and other holders of PR
    - Medical treatment and intervention for children in care protocol
    - Obtaining consent for children in care protocol
    - Withholding or withdrawing life support for children protocol (this protocol is multi-agency as it has been agreed and approval sought through the Safeguarding Partnership)
    - Redaction form for assessments to be sent to legal
    - Pre-hearing protocol
    - Outcome of case summary (to be completed by legal at the end of proceedings so that the client department have a clear understanding of the outcome of proceedings)
    - End of file review
    - Redrafted designated authority tool which is the document which is used to explain to foster carers what they can and can't consent to for a child in their care in relation to a variety of different areas including school, medical consent.

More recently since, and particularly post Re YY judgement, the further following changes have been made:-

- We have recruited two experienced locums to the main legal team in order to reduce case loads
- Two lawyers have been allocated to specifically work on the resilience and improvement work

- An initial improvement plan has been drafted by the children's legal team to inform the resilience and improvement work which provides a high level view of the areas work, both in terms of analysis and remedial work that are required – need to attach a copy
- The two lawyers will be working with the children's services Improvement and Resilience Team on a joint improvement plan. This will mean that we are amalgamating the improvement plans of legal and children's services to ensure that there isn't duplication of work and that we are not working in silos and there are collaborative outcomes that stand up to professional and legal challenge
- We have conducted an analysis of the various findings of fact across the three 2018 judgements and the Re YY judgement and a review of the actions which we committed to and those commitments that have not been met. We will use this as a basis for informing improvement work to ensure that we are now implementing learning from the judgements
- We have fostered a very good close working relationship with the Interim DCS, Cath Knowles and are operating an escalation policy where matters of concern are escalated to Hilary Brooks, AD and Cath Knowles in order to ensure issues are dealt with promptly and that if legal advice isn't being followed, there is oversight of this decision making.
- Any matters of escalation that still present legal risk, including issues of medical intervention and end of life are highlighted to the Head of Legal and DMO, and MO to support the necessary legal advice.
- High risk and notable case meetings take place on a fortnightly basis with interim DCS and interim AD
- SGO panel system, designed by Legal has been established to ensure that those matters where assessments have been completed have also been considered by the legal department to ensure the appropriateness of an application to court
- We have provided legal input on the current SGO cases which have been subject to audit in Q&A team in the service
- Any new applications for care orders, SGOs/Discharge of Care Order, DOLs now require AD/DCS approval and any assessments will need approval of the Joint Panel before proceeding to court
- We are holding frequent meetings with HHJ Plunkett to ensure he is fully appraised on the local authority's improvement journey

Where we want to be:-

- We want to ensure that lessons from the YY case are fully learned and that going forward we have confidence that there has been significant cultural and systemic changes within children's services and that there is full confidence in the support provided by the children's legal team. This will include a full root and branch review; it is likely that legacy issues and decisions will be unearthed, but this is part of the improvement journey.
- In seeking to ensure lessons learned are embedded, a program of training and workshops will be facilitated. We not only need to provide these learning opportunities, we need to monitor how effectively learning is put into practice by feedback, the quality of work that is being received by the legal team and also by the nature of enquiries sought in the legal team. We are happy to provide further tracking evidence of this.
- We want to instil confidence in social workers so they know when to approach legal for advice. This will be achieved by training social workers and working alongside the social work academy to support their training packages to that social workers are able to identify the appropriate junctures for seeking legal advice
- We want the IRO service to have a renewed sense of confidence in challenging social work appropriately, acting as the check and balance that it should be. This will involve a review of the work that the IRO service conducts, and working with the service to establish key areas and "touch points" where IROs are not visible and should be.

- We want to be a proactive legal service that can carry out work to an excellent standard, and be resourced appropriately so this can be achieved
- We want to continue to maintain and build on the positive relationship we have with the judiciary so we are seen as a “court facing” authority.
- We want to implement an “escalation of advice hit list”, we don’t want any lawyer to make legal decision on a matter of complexity without a second opinion (in the same way a doctor would always seek a second opinion).
- We want to implement a disclosure protocol for the children’s legal team which can be used by across legal services
- We want as a local authority; both for the legal team and children’s services to be seen as a a first choice to work at, due to the quality of the work undertaken and the supportive environment provided to employees

Glossary
What is Section **20 of the Children Act** 1989?
- it sets out how a Local Authority **can** provide accommodation for a **child** within their area if that **child** is in need of it, due to the **child** being lost/abandoned or there is no person with parental responsibility for that **child**

Herefordshire Council

Resilience and Improvement Plan
Childrens Well Being Legal Team - Legal Services – Working document

OBJECTIVES

a)To support the Interim DCS with the 4 Stage Children and Families Improvement Strategy
b) Act as a key partner to the Children and Families Directorate to deliver the 4 Stage Improvement Strategy
c) As part of Stage 2 (set out below) act as an integral partner to any Steering Group/ Project Group Improvement Board) Group(s) as necessary
d) Support the Children and Family Service with daily quality legal advice, social work practice training, policy development, practice and procedure reviews/ implementation to facilitate Recovery and Improvement journey.

STAGES

1st Stage – from 30 March 2021

a) Represent HC during welfare part of YY proceedings.
b) Meet with LAC and Fostering SW's to discuss YY Judgement and plan how to improve situation for children and improving relationship with maternal family.
c) Identify ongoing cases within children's litigation legal services where significant failings
d) Review and track all current live SGO's and Discharge Care Orders in CWB Legal Team as fit for purposes and identify any issues and mitigations where possible
e) Commence quality assurance meetings to include AD, HoS, Legal, Team Manager, Social Worker, IRO in order to consider CWB review audit findings and Children and Family Service audit findings of all those matters that are currently being considered for SGO and are in the pre-court stage, or are currently in proceedings. Priority to audit those currently in proceedings in the first instance.
f) Provide advocacy and preparatory support for junior legal staff when court hearings are impacted as a consequence of an audit finding deficiencies with assessment work.
g) Establish SGO/DISCO panel include AD, HoS, Legal, Team Manager, Social Worker, IRO in order to provide legal advice in respect of an application to court and the associated court procedural requirements.
h) Provide findings of review in (a) and (b) to Assistant Director and DCS in order to identify urgent action points and taking instructions regarding work to be undertaken.
i) Review of the SGO protocol to ensure that there is a clear understanding that SGO support plans should be drafted after a positive SGO assessment has been completed
j) Commence liaison with Interim DCS to strengthen current checks and balances at existing Review/Panel/RPPM meetings and via the case progression officers.
k) Track and compare Findings in 2018 Judgements with YY case Judgement to see if any trends and then share with interim DCS required actions to mitigate
l) Review YY case Judgement Findings for any CWB Legal Service practice learning and improvements; include need for a Disclosure Protocol for contentious Legal Cases
m) Formulate an evidence tracker to demonstrate that all Solicitors in CWB Legal Team have been trained and know the law on End of Life decision making and Medical intervention consent for LAC
n) Support Interim DCS with DFE/External Partner 'birds eye' review

2nd Stage - from 30th March

o) Review all LAC , Adoption and Care Leaver cases in CWB Legal Team for assurance as 'fit for purpose' for necessary court application and recommend training/development /practice improvements in consultation with the Interim DCS
p) In consultation with Joint Heads of Law and Legal Business Partner use the DFE Working Together to Safeguard Children 2018 – to map key statutory and practice responsibilities and then track against issues/trends mapped in legal cases in CWB and identify training/policy/protocol needs in Legal team and also for the Children and Family Service
q) To review and strengthen the PLO/pre-proceedings in liaison with the Interim DCS
r) Review and strengthen with CWB the s.20 Consent process
s) Review and strengthen with CWB the Adoption ADM process
t) Review and strengthen with CWB the liaison with the IRO Service
u) Review and strengthen with CWB the role of the Case Progression Officer
v) Support Interim DCS - Deep Dive outcomes with resilient mitigations/training/performance
w) Review all current and historic HRA Claims and track trends and issues with i) above and identify failings and necessary training/support
x) Liaise with Interim DCS with respect to children who are in LTF foster carer placements and consider whether there are any similar issues arising from the YY case in those placements.
y) Review of the SGO protocol to ensure that it complies with PLWG Best Practice Guidance of March 2021
z) Obtain responses from colleagues within Childrens Legal to identify complex cases both completed and ongoing where the LAC process may require review and legal input
aa) Meet with Team Managers from CWB to identify complex cases both completed and ongoing where the LAC process may require legal reviewing
bb) Devise and provide training to Fostering service to support best practice and statutory minimum for processing LAC and SGO's – regularly track knowledge outcomes/further training requirements
cc) To liaise with the Interim DCS in order to strengthen the effectiveness of the handling and management of complaints.
dd) To liaise with the Interim DCS to discuss cases where there has been evidence of difficulties/complaints around foster carer behaviour and a failure to deal with these issues by way of appropriate escalation as identified in the YY judgement and TT case.
ee) Implement the post proceedings review meeting (where outcome of case summary is presented) and so that all relevant individuals working around the child understand the impact of any court decision
ff) In-depth review of the 2018 judgements including consideration of the court bundles
gg) Review the transition process for 16-18 year olds and implementation of protocol
hh) Prepare a report for Council/CEX in respect of progress of Review Team

3rd Stage – Resilient Outcomes – from 30th March

ii) CWB Legal Team is a highly skilled, motivated and proactive service
jj) CWB Legal Team has strong partnerships that have been developed at all levels in LS and the Children and Families Service
a) CWB legal Team provides robust quality proactive legal advice to increasingly support continuous learning cycles and help influence and frame consistency of good social care practice and good outcomes for children.

RESOURCES

Up to 2 years - subject to objectives/outcomes of Improvement journey and consistent delivery of 'Good' outcomes for Children

Leadership

1) Joint Acting Heads of Law and Legal Business Partners
   - up to 50% of their time

2) Senior Solicitor – HC12 at 50% of time

Solicitors – at 100% time allocated to Recovery and Improvement Team - ALL NEW POSTS

1) Advocate Locum – also be available to cover urgent hearings and make urgent applications if required.

2) Solicitor Level 1 (Locum) –also be available to cover urgent hearings and make urgent applications if required.

3) 1 x Solicitor Level 1 (HC9/HC10) - Locum/Fixed Term

4) Level 2 Legal Assistant to support Improvement and Review work. Consider Fixed Term

Legal Admin

1) Legal Practice Support – HC06 at 50%
2) Project Management Support

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APPENDIX 6

Journey of the Child in Care – where Legal Services will be involved.

Case Planning

Child in Need Plan

If the Service believe that a child, including a disabled child, is in need of support to sustain a reasonable level of health and development, or support to prevent further harm to a child's health and development, then they need to set up a plan for that child – a child in need plan.

LS have limited involvement with child in need plans, our involvement with such plans may be as a result of

Child Protection Plan

A Child Protection Plan is a plan put together by the Local Authority if they consider that a child is suffering or is likely to suffer significant harm. The Child Protection Plan sets out ways in which a child can be kept safe and how families can be supported and helped in making changes to ensure the child's safety and welfare is met. The LA need to notify the parents of the reasons for the plan. These plans are discussed at Case Conferences which involve other relevant agencies.

LS should get involved by being invited to strategy meetings which consider whether threshold is met for s47 enquiries. A section 47 Enquiry is initiated to decide whether and what type of action is required to safeguard and promote the welfare of a child who is suspected of, or likely to be, suffering significant harm.

A Section 47 Enquiry may conclude that the original concerns are:

- Not substantiated; although consideration should be given to whether the child may need services as a Child in Need (see above);
- Substantiated and the child is judged to be suffering, or likely to suffer, Significant Harm and an Initial Child Protection Conference should be called.

What is an Initial Child Protection Conference?

- An Initial Child Protection Conference is the first conference following the

Local Authority notifying the parents of a child of concerns It about the child's welfare. In this conference, the measures that need to be put in place to prevent the children suffering or being likely to suffer from any potential harm are discussed.

Care Proceedings

Care proceedings are normally issued when the Local Authority has serious concerns in respect of the safety and welfare of a child and threshold is met for a child suffering or likely to suffer significant harm. This can be following a precipitating incident, following an unsuccessful pre-proceedings process or after months/years of involvement with a family under a Child Protection Plan where no progress has been made.

The Local Authority has certain duties it must undertake before issuing care proceedings, including legal planning meetings. In addition to answering the questions 'are court proceedings necessary at this stage' there are also certain statutory threshold criteria under s31 Children Act 1989 that have to be met before the council initiates proceedings. Both the social work team and the legal team should jointly consider all facts before issuing proceedings. At all times the Local Authority's approach should be to attempt further engagement with the parent(s) in order to put in place an agreement which reduces the risk of significant harm to the child to a manageable level. This is the purpose of the Public Law Outline pre-proceedings process. A period of 12 weeks of intense and planned work is implemented, where holders of PR are afforded legal advice and the ultimate aim of the pre-proceedings is to avoid the local authority having to issue care proceedings by assisting families to make the requisite changes.

The Service and the Team re-introduced Legal Planning Meetings in March 2020.

Each legal planning meeting consists of social worker, team manager, head of service, family support worker (if allocated), a member of the legal time and it is chaired by the case progression officer. They are used to consider separate matters, the care plan for the child, whether threshold is met and whether it is appropriate to enter the pre-proceedings process of to issue proceedings immediately.

These meetings are positive in that each child/children receive focussed discussion in order to be able to establish what the best course of action is for the

family. Challenges are raised by the head of service and legal as to the work undertaken thus far. It is helpful that the head of service is in attendance as this ensures any budgetary decisions can be made without delay.

Challenges to these meetings are that the relevant paperwork isn't always presented which means that the necessary legal advice cannot be proffered. Furthermore, each session lasts for a protracted period and can often resemble a supervision session. It means care plans are often not presented, but rather legal are requested to assist with formulation of care plans; this is not the role of legal.-

Types of Care Proceedings in the Journey of the Child might be:

Interim Care Order (ICO)

An Interim Care Order may be one of the orders sought by the Council in care proceedings. This would only occur where there are concerns that a child may be suffering or is at risk of suffering significant harm. An Interim Care Order made in favour of the Local Authority means the Local Authority shares parental responsibility for a child with other holders of parental responsibility (i.e parents).

How long do care proceedings last?

Proceedings are timetabled to last up to 26 weeks. In some cases the matter can be extended beyond the 26 weeks, but this is up to the Court to determine. This is set out in section 14 of the Children and Families Act 2014.

The team are currently achieving cases within 26 weeks timetable.

What in an Emergency Protection Order and what does it mean?

An Emergency Protection Order is an Order made by the Court allowing a Local Authority to remove a child immediately from its primary carer. These orders are usually made on an urgent application to the Court by the Local Authority following an incident so serious that it is deemed necessary to immediately remove the child for the child's safety and welfare.

Almost all applications are made by the Council, but the Police can issue an application themselves.

An EPO can last for up to 8 days however this can be extended by a further 7 days provided the matter is brought back to Court. In most cases, the Local Authority would issue an application for an Interim Care Order within the initial 8 days.

How do we work with the "IRO" and what is their role?

The role of the IRO is to **oversee and scrutinise the Care Plan of the child/ young person** and ensure that everyone who is involved in that child's/ young person's life fulfils his or her responsibilities.

As a legal department we ensure that the views of the IRO are sought by the social worker at the appropriate junctures throughout proceedings.

The IRO also has the right to independent legal advice. We have a reciprocal arrangement established with Worcestershire which means that IRO's are able to access this advice readily.

How do we work with a "Children's Guardian" and what is their role?

A Children's Guardian is independent from the Local Authority. The Role of a Guardian is to act as a voice for a child, to make sure that a child is safe, and to make sure that any decisions made are made in the best interests of a child. In Care Proceedings, the Guardian will consider the Local Authority's care plans to ensure that the care plan is viable for a child. The Guardian will also share their views as to what they feel should happen to a child in respect of their placement.

What is a Placement Order?

This is an order without which a Local Authority cannot place a child for adoption.

What is a Child Arrangements Order? (Priv)

An order which states who a child should live with (formerly Residence / Contact Orders).

What is a Special Guardianship Order (SGO)?

An Order granting, usually a family member, but not a parent, parental responsibility for a child.