



Herefordshire Council Children and Families

Legal Protocol Care Proceedings and Pre-Proceedings

Introduction

The aim of this protocol is to act as a central point of reference for all of Herefordshire Council Children and Families Department's standard operating procedures during COVID-19.

We recognise that as an authority, we are faced with unprecedented times, however we will continue to focus on our fundamental priorities; to ensure and deliver the safest child protection service to the most vulnerable at-risk children and young people in the county.

In order to ensure that this is achieved, we must consider as an authority how we will best serve the children and young people of the county, and avoid unnecessary delay in protecting children and achieving permanency by way of safe care arrangements.

This protocol sets out how, given the current circumstances and restrictions in place as a result of Covid-19, we will continue to provide a high level service. It sets out those areas where service delivery will change, in order to ensure we are serving the children and young people of the county in the best way possible.

With this in mind we have considered what we need to stop doing, either because we will be prevented from doing the work required or we will not have sufficient staff resource to make it possible, and what we must continue to do, because failing to do so would leave children at risk or harm, or create unnecessary delay in permanency planning for the child.

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1. All New Applications for EPOs and ICO's

Key changes:

- All Legal Planning Meetings (“LPMs”) will be held remotely.
- We will not be issuing any new care proceedings unless the threshold for interim removal is met and there is an immediate risk of harm to a child (ren) if they were to remain in the care of parent/carer
- Introduction of “Issuing an urgent EPO/ICO during COVID-19” template so for every case where a decision is taken to issue care proceedings, the risks to the child, the legal advice, plan for the child and officer decision to issue care proceedings are captured in a single document to ensure a consistent audit trail is kept on Mosaic.

All New Applications to the Court for EPOs/ICOs

Legal planning meetings will continue to be held remotely by way of WebeX. Social workers shall request their matter is heard at panel by the usual means and they will be informed that their case will be heard and given a time to attend by Business Support.

For every case where consideration is being given to issuing care proceedings in an emergency, the “Issuing an urgent EPO/ICO application during COVID-19” template should be adopted. This template sets out the procedure to be adopted in an urgent situation which is:-

1. A legal planning meeting (“LPM”) is to be held
2. Legal advice is given at the LPM
3. A record is to be kept of the LPM and legal advice given to include:-
 - a. Outline of significant and immediate risks to the child
 - b. The plan for the child if EPO/ICO and removal are granted
 - c. Whether threshold is met for ICO/EPO and interim removal
4. A record of decision – and which officer made this decision (which HoS).

Mother and baby residential and foster care placements remain available and should be referred via normal processes to the placement team following the current placement authorisation process.

The test for interim removal is:-

The criteria to meet the threshold for interim removal is set out in case law. The case law requires the court to ask itself:

- Whether the **child's safety** (using that term to include both psychological and physical safety) **requires immediate removal; AND**
- Whether removal is **proportionate in light of the risks posed** by leaving the child where he or she is

If the legal advice states that threshold is **not** met for Interim removal, and the Head of Service and Team Manager are in agreement, then we do not make the application and these children will be designated as a "Priority" and will receive planned "Priority" visits by the social work team. This would mean as a "Priority" family, should we be required to reduce the number of visits as a direct result of staff resource, they would not receive fewer visits.

Where there is disagreement whether threshold is met

If the Head of Service and Team Manager are not in agreement with legal advice about whether threshold is met for interim removal, the case will be raised with the responsible Assistant Director and Director as necessary to agree a final decision.

2. CP and CIN cases and where consideration is being given to entering into PLO

Key changes

- **During this period, we will NOT be initiating new Pre-Proceedings cases (APART FROM FOR UNBORN CHILDREN) unless the plan is to initiate immediate court action and seek removal of the child/ren**

Identifying and managing Risk in CIN/CP cases

Initial Child Protection and Review Child Protection Conferences and Core Group meetings will continue to take place. These meetings will take place remotely.

The Core Group Meeting must ensure the consideration of the threshold for issuing care proceedings and seeking interim removal and issues of proportionality and the immediacy of the risks are discussed/identified and raised with the HoS.

If HoS is in agreement that consideration needs to be given to issuing care proceedings, an LPM will need to be arranged, and in an emergency, the "Issuing an urgent EPO/ICO application during COVID-19" template should be followed.

Where consideration is being given to a matter entering PLO

Due to current circumstances and restrictions in place as a result of Covid-19, it would be very difficult, and in some cases not possible, to complete assessments outlined within PLO Agreements. This applies both to social work assessments and external assessments, for example by a psychologist or psychiatrist due to the inability to conduct face to face sessions with parents and carers.

As a local authority we consider it would be unfair to families to inform them that they are entering PLO, but as a local authority we are not able to progress this work due to current circumstances. This could incite unnecessary anxiety in families who would not be able to demonstrate change.

Furthermore, given current circumstances, the support that is offered to families as part of the PLO process would not be available and this would hinder the ability of families to make the changes that would be expected by the local authority, putting families at an unfair

disadvantage.

If within LPM the threshold for interim removal is not met, but it is met for the initiation of PLO pre-proceedings, then the “adjournment of PLO during COVID-19” template should be utilised. The PLO process will then be placed on hold and ongoing risk management will be carried out including by way of robust safety plans, and frequent visits/contact with the child.

PLEASE NOTE THAT THE PLO PROCESS FOR UNBORN CHILDREN WILL NOT BE “ADJOURNED” AND THESE CASES WILL CONTINUE TO FOLLOW THE PLO PROCESS.

3. Cases already in PLO or Care Proceedings

Key changes

- **During Covid-19 we will be continually reviewing the ability to continue with social work assessments on a case by case basis. These will be completed where possible, and alternative methods of carrying out assessments will be adopted where appropriate, for example Skype/WebeX.**
- **Where an assessment cannot continue as face to face sessions are absolutely necessary, legal advice will be given and if absolutely necessary, a c2 application will be made to court to alert them to the impact on the timetable.**

Decision Making on Cases in pre-proceedings and care proceedings

Where the outcome of our Court Social Work Assessment advocates the removal of child(ren) who have remained in the care of their parents/carers during care proceedings, a risk assessment will be completed. This assessment will consider whether the sharing and filing of the proposed care plan with the Court could result in harm to the child in the period running up to the Final Hearing (especially if this final hearing is a contested final hearing, it could result in a child being exposed to risk of significant harm in the care of their parent/carer for a significant period). In these cases, consideration will need to be given to whether the Local Authority make representation to the Court to delay the submission of final evidence; this will be done on a case by case basis.

Heads of Service, Legal services representatives, with input from Team Managers and the Case Progression Officers will be reviewing all children who are currently subject to PLO pre-proceedings and Care Proceedings to consider and agree what is achievable in terms of outstanding work/assessments, and review all planned work and consider what SW's can do, and what they cannot do, given that they will not be undertaking face to face assessments, direct work with children etc

A decision will be made on a case by case basis as to whether anything requires adjournment or whether it can be progressed as per the original PLO agreement/court timetable. If an adjournment is required, the "Adjournment of assessment for Covid-19" template shall be completed and this record will be kept on Mosaic so there is a clear audit trail for the decision to adjourn.

4. Discharge of Care Order and s20 Care Order Applications

Key changes

- **Where a decision has been made to initiate proceedings to discharge a Care Order (and replace with SGO/CAOetc), and we have completed assessments, then we should not delay an application to discharge a Care Order**
- **Where a discharge of care order application includes inviting the court to grant an SGO, and an assessment has not yet been completed, a decision will be made on a case by case basis about the ability to carry out this assessment without face to face sessions and the use of alternative methods of communication e.g Skype, FaceTime, telephone.**
- **Where a placement panel decision was to make a new application regarding a s.20 child/YP, this application will not be made during current circumstances. Provided the child is not at risk of any harm or there isn't a requirement to make a DOLs application to ensure that the child is kept safe in placement, then any s.20 Care Order Applications will not be made at the current time.**
- **Reviews of those children and young people who are accommodated pursuant to section 20 will continue to take place, and for those cases where no-one is exercising PR, consideration will be given to issuing proceedings.**

Heads of Service and the allocated solicitors are reviewing all such cases to consider

and agree what is achievable in terms of outstanding work/assessments, and reviewing all planned work and considered what SW's can do, and what they cannot do, given that they will not be undertaking face to face assessments, direct work with children etc.

It is agreed that discharge applications where assessments have been completed, can continue to be issued at the Court in line with recommendations of final care plans or otherwise.

If is further agreed that where a discharge of care order application includes inviting the court to grant an SGO, and an assessment has not yet been completed, a decision will be made on a case by case basis about the ability to carry out this assessment without face to face sessions and the use of alternative methods of communication e.g Skype, FaceTime, telephone.

Where a discharge application includes a child being reunified to their parents, and the child is already subject to placement with parent regulations then this should not incur any further delay. However, where there is a reunification plan, where reunification has not yet commenced, then there may delay in implementing this reunification due to the restrictions that are in place as a result of COVID-19.

It is the view of HC that given current circumstances, and resource levels, that applications for Care Orders for s.20 children will not be made at the current time, given that they are in safe placements and not at risk of significant harm (unless an application is required to make a DOLs application and in this instance, an application for a Care Order and DOLs order would be made to ensure the safety of the child in placement). Should an emergency occur, for example a parent/holder of PR withdrawing consent, then this would be treated in the same way as any other urgent application and the "Issuing an urgent EPO/ICO application during COVID-19" template should be adopted.

Furthermore, reviews of those children and young people who are accommodated pursuant to section 20 will continue to take place at ACP, and for those cases where no-one is exercising PR, consideration will be given to issuing proceedings.

5. Secure Accommodation Applications/Deprivation of Liberty

Applications

Key changes

- **The process for making an application for a Secure Order will remain as business per usual, an LPM will be arranged or if this is an urgent application the "Issuing an urgent EPO/ICO application during COVID-19" template should be adopted.**

- **The process for making an application for a Deprivation of Liberty will also remain as per business as usual and the decision will be taken for a DOLs application by HoS and Team Manager.**

Secure Accommodation Criteria

Section 25 of the Children Act 1989 sets out the 'welfare' criteria which must be met before a Looked After Child may be placed in secure accommodation.

The 'welfare' criteria are that:

- The child has a history of absconding and is likely to abscond from any other description of accommodation; and
- If the child absconds, (s)he is likely to suffer Significant Harm; or
- If the child is kept in any other description of accommodation (s)he is likely to injure her/himself

N.B only one of these two criteria above need be established, the welfare principle (established in section 1 Children Act 1989), although it remains relevant, is not of paramount consideration under section 25.

6. Social Work Evidence to Court

Key changes

- **If SW's are requested to give evidence this will be done remotely, but currently the Courts are not listing contested hearings and therefore social workers will not be required to give evidence remotely**
- **Social workers are not now required to attend remote court hearings, but rather provide their instructions to the allocated solicitor prior to the hearing**

The Family Courts have issued [guidance on moving towards delivering remote hearings](https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/). (<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>)

Remote hearing court procedure

There is no longer an expectation that social workers attend court hearings, however, social workers, managers and HoS are expected to give full instructions two days prior to any advocates meeting (all advocates meetings now take place the day before the listed hearing and are in lieu of pre-hearing discussions – it is here that court orders are agreed).

Where possible, instructions should be given in writing to the allocated social worker so that there is a record of instructions.

A social worker will also be expected to be available by telephone at the time of the hearing should any urgent instructions be required.

Solicitors will send out an attendance note/Court order following the hearing as per the usual procedures.

Solicitors will be using telephone conference and Skype for Business to engage in Advocates meetings (pre-hearing discussions) and hearings. The organisation of advocates meetings is the responsibility of the Local Authority Solicitor, but hearings are being organised by the Courts.

SW to encourage families/ parents to liaise with their solicitors prior to the hearings to ensure they give clear instructions so that if possible, the hearing is vacated by consent.

7. Contact

Key changes

- **As of 24th March, all face to face contact was suspended and all contact will now take place virtually, either by telephone, skype, facetime or similar means.**
- **For new-born and goodbye contacts, this decision will be made on a case by case basis and a LPM will be held to determine this decision**

Please see HC's separate guidance note which sets out the detail of supervised contact arrangements:-

[Supervised contact 25.3.2020.docx](#)

8. Viability/Kinship Assessments

Key changes

- All new and ongoing work on Viability and Kinship Assessments will be completed virtually via the telephone or skype.
- All full kinship assessment referrals will be prioritised for allocation based
- Due to the capacity of the service, Private Law and SGO assessments which are not in care proceedings will be on hold in order to prioritise care planning for the most vulnerable children
- If a Viability and Kinship Assessment has been completed and is positive, then a social work home visit must be completed to assess the home environment and ensure that these are suitable before a child is placed.
- During community lock down it will NOT be appropriate to move a child from one care arrangement to another unless the risk to the child in the current care arrangement is High and Immediate or it is unavoidable, for example due to carers giving notice, or their own family circumstances.

Viability Assessments

All new viability assessments will be completed virtually by kinship social workers by phone or video call, with the exception of the verifying home visit for any high and immediate risk cases requiring a child to be moved.

Full kinship assessments

Where an assessment is prioritised for allocation, An assessment plan will be drawn up with the applicants to set out clearly the plans for how the applicants will be prepared for the task of kinship care and fairly assessed, which will include the use of telephone interviews and WhatsApp video calls.

Where appropriate, the assessment plan agreement should be filed with all parties where the matter is in care proceedings to try to reduce the likelihood of an assessment being contested on the grounds of Covid 19.

It is an expectation that there should be 1 visit undertaken face to face for each assessment to meet the applicants and assess the home environment. This visit will be planned as part of the mid-point assessment review.

Timescales for kinship assessments may need to be extended to allow for delays in statutory checks to be completed by health and other public organisations who may

be impacted by the current situation.

National guidelines will be followed in relation to statutory checks to satisfy fostering regulations or special guardianship regulations. Current guidance from Ofsted issued on 27/03/2020 states:

Medical checks and repeat medical checks for foster carers

We recognise that medical checks are difficult to complete as GPs must prioritise other matters.

We have raised GP medicals with the DfE who are considering whether further guidance is needed. We expect providers to gather as much information as possible for the assessment. Panels should be able to make recommendations based on the health information provided in carers' assessment reports.

Serious health concerns should be assessed by a GP as soon as it is possible to do so.

9. Adoption

Key changes

- **Introductions following matching may be delayed, this will be reviewed by ACE (ACE have now finalised their risk assessment tool and guidance for introductions) and the SW Team on a case by case basis, including consideration as to the urgency for a placement move, for example ill health of foster carers or respite requests**
- **Furthermore, telephone and video calling can be used as a tool for preparing for transitions/introductions to support a child focused means of preparing them to move on.**

If you are making a Placement Order application, please follow the usual processes in completing the Child Permanency Report and share this upon completion with TMs quality assuring this report.

If the threshold is met for interim removal, foster to adopt placements can still be considered where applicable, there should be discussions with the HoS prior to approaching ACE.

In cases where a Placement Order is being sought with a Care Plan of adoption for child/ren, ACE will continue to support with seeking placement matches. This will be completed by telephone, video link and email so that discussions can be held between SWs and adopters; between adopters and foster carers. Paperwork for panel can be completed as normal.

Matching panels are currently being held via conference call to ensure matches can be progressed.

Adoption Central England's interim plans for transitioning children from foster placements to adoptive placements during the Covid-19 pandemic is contained within the **Adoption Central England Emergency Practice Guidance: Covid-19 Pandemic Transitions Planning Risk Assessment April 2020**.

The intention is to ensure that children, foster carers and adoptive families are appropriately supported during the current time and that unnecessary delay is avoided for children who have a plan for adoption who should be supported to move into their adoptive families as promptly and as safely as possible.

In the current situation there may be a delay in introductions following matching. This will be reviewed by ACE using their risk assessment tool and the SW Team on a case by case basis including consideration to the urgency for a placement move due to i.e ill health of foster carers or respite requests. Despite this telephone and video calling can be used as part of the preparing for transitions/introductions to support a child focused means to preparing them for moving on.

If children are placed in their adoptive placements on a Care and Placement Order and adopters wish to make their Adoption Application after 10 weeks, this can continue to be supported however, there may be delays in the setting of a Court date. SW can progress their court reports in readiness for a court date. At present, the court are dealing with the initial hearing administratively (and setting down directions) and the second hearing is a listed hearing which will take place by video call/telephone.

If a match is agreed SW will liaise with ACE and potential carers via telephone, video link prior to agreeing and placing a child.

10. Private Law Cases

Key changes

- **As of 23rd April 2020, the courts are now operational in respect of private law proceedings and they are now therefore directing s7 and s37 reports be completed**
- **The LA will therefore be allocating s7 and s37 reports to social workers for completion, and where possible these assessments will be undertaken remotely**

Given the current circumstances and restrictions due to Covid-19 consideration will be given to how the assessment (s7 or s37) will be carried out.

For example, consideration will need to be given to whether the assessment can be conducted remotely by use of video call and whether a face to face visit is required in

order to complete the assessment. If for any reason an assessment cannot be completed due to COVID-19, the local authority will immediately inform the court of this so that the court can consider as soon as possible.

Where the courts are giving consideration to the requirement for a s37 report, they have been asked to consider the proportionality of such a direction given that the LA, as a result of COVID-19 restrictions, is only issuing care proceedings where the threshold for removal is met.

11. Adoption and Children (Coronavirus Amendment) Regulations 2020

Key principal changes:

- The regulations (which came into force on 24.4.20) temporarily amends 10 sets of Regulations relating to children's social care to relax requirements in order to assist and allow support services to manage the COVID-19 outbreak
- The effect of the changes are to ensure that the needs of children are prioritised, whilst providing for the relaxation of timescales and procedural requirements of children's services functions.
- The LA will not as a general rule be adopting the changes and will continue "business as usual", unless it is absolutely necessary and this decision will have to be taken by the relevant Head of Service and duly recorded.

The full measures are set in the following link:

<http://www.legislation.gov.uk/ukSI/2020/445/contents/made>

12. Fostering panel changes

Key principal changes:

- The regulations (which came into force on 24.4.20) temporarily amends the ability of the LA to hold fostering panels with fewer members:-
- The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 allows Fostering Panels to be convened with:-
 - The appointed chair or one of the vice chairs;
 - One member who is a Social Worker with at least 3 years relevant post-qualifying experience; and
 - One other panel member who is independent of the Fostering Service.
- Herefordshire will now be reducing the number of fostering panel members to a minimum of one, and a maximum of two in addition to the Chair and Social Worker whilst we are operating "virtual" panel meetings during the COVID-19 pandemic.

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The Fostering panel has been operating virtual panels since lockdown restrictions commenced. Fostering panels are particularly busy at the moment with new applications and long-term matches and virtual meetings are very difficult to chair and for all panel members to concentrate when they are having to use a laptop screen. Inevitably the more panel members there are, the longer the discussions take.

Having fewer panel members will enable panels to run more smoothly and more easily and will allow better levels of concentration for all panel members. Continuing to have at least 3 and on most occasions 4 panel members will ensure that there is a robust discussion regarding the suitability of applicants to foster.