

The Law Society

Good practice in drafting care proceedings documents

Introduction

The Law Society has developed guidance for local authority solicitors to use when drafting documents in care proceedings. It has been developed to take account of the Public Law Outline which was implemented from 1 July 2013 and to support the 26 weeks requirement, and covers the drafting of the following local authority documents:

- threshold statement
- schedule of proposed findings
- case summary
- position statements
- skeleton arguments
- chronologies
- draft case management orders

and supports templates for the following documents:

- threshold statement
- schedule of proposed findings
- case summary

which can be found at:

www.lawsociety.org.uk under Practice Areas.

The guidance and templates will be kept under review.

Acknowledgements

The guidance and the templates have been prepared by the Law Society's Children Law Sub-Committee, and we are especially grateful to committee members Dorothy Simon, Uma Mehta, Graham Cole and previous committee member Lorene Hodkinson for their work on them.

The guidance and the supporting templates are intended to inform and support good practice. They are intended as a guide to be adapted or modified for the facts of a particular situation. Whilst all reasonable care has been taken in their preparation, the Law Society cannot accept any responsibility for any loss occasioned to any person acting or refraining from action as a result of relying upon their contents.

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Threshold Statement

Pursuant to the PLO, a threshold document must be available on issue as it will assist the court as to appropriate allocation and case management.

The following is a summary of the points to bear in mind when drafting:-

(a) Threshold is the gateway to intervention. It follows that the documents which purport to satisfy it should be shorter rather than longer. In other words, they should be succinct and focused on the purpose for which they are intended.

(b) Think carefully about the draft and what the Local Authority is actually trying to prove. What is the nature of the harm involved? Is it physical or emotional or both? Is it actual or likely or both?

(c) The document should be well-ordered: sub-headings are helpful. The succinct findings sought under each heading should always be considered by reference to the evidence. Set out the nature of the harm using the template document.

(d) Include only relevant matters. A child who has suffered a bone fracture which medical professionals say is non-accidental is plainly relevant. On the other hand, the fact a mother was in care herself as a child is not relevant unless this experience has in some way affected her ability to provide good enough parenting.

(e) Include only matters which are capable of being proved. Speculative matters must be avoided.

(f) Exercise a degree of selection. A very lengthy threshold will invariably include matters which provoke unnecessary disagreement in circumstances where the threshold is obviously crossed.

(g) Avoid using meaningless phrases e.g. “mental health issues” or vague statements of concern e.g. “failure to co-operate with professionals”. "Mental health" or “failure to co-operate with professionals" may be appropriate as sub-headings, but this is not evidence without specific examples.

(h) Avoid using other inappropriate phrases such as:-

  (i) “The Local Authority submits…” A submission or argument is distinct from a finding.

  (ii) “The Local Authority reserves the right to add …” This is redundant as the threshold document will be under review during the proceedings.

(i) Avoid a lengthy recital of the law. The threshold document is a statement of the facts.

(j) Avoid setting out a chronology which essentially fails to set out a threshold finding at all.

(k) There is no need to refer to "reasonable grounds" or "balance of probabilities".

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(l) Use quotations, if necessary. Alternatively, summarise succinctly the relevant material by reference to the evidence.

(m) A threshold is not a skeleton argument. For example, in a NAI case it is not an opportunity to set out all the logical steps in the forensic argument. Rather, it is an opportunity to set out the facts which you seek to be proved e.g. “On or around x date the Father inflicted y and z injuries on the child”.

(n) Only facts relevant to the threshold should be in the threshold statement. The Local Authority will inevitably rely on matters which go to the welfare stage of the case and it is important to make a distinction between the two.

(o) The spelling and grammar should be impeccable.

(p) A poorly drafted threshold document may cause the court and parties to wonder whether the Local Authority case is in fact sound.

(q) The document which crystallises the threshold statement should be continually reviewed and available in any event on the issue of care proceedings.

Schedule of proposed findings

The court will direct the local authority to draft a schedule of proposed findings if the threshold statement is not agreed or is actively opposed, or if findings are considered necessary in the circumstances of a particular case.

The schedule of proposed findings should plead the most significant and relevant incidents upon which findings are required, rather than plead every incident which has occurred.

The schedule of proposed findings should be presented to the court in a format which allows for the responses of the other parties to be entered below each proposed finding. This will ensure that under each proposed finding is the relevant response or the fact that a response is absent.

It is unhelpful to use a table format with columns or responses alongside proposed findings because this risks the format becoming irregular and lengthens the document unnecessarily. Separate documents for responses are equally unhelpful, because they too make the correlation of the proposed findings with the responses difficult.

The template of proposed findings provides an example of good practice.

Case summary

The local authority will draft the case summary for each hearing. The case summary is a document which should be drafted in neutral terms if it cannot be agreed between the parties.

The template case summary provides and example of good practice.
At paragraph 5 the template provides information about previous proceedings. The court should give early directions in the absence of agreement between the parties about the relevant documents to be extracted from bundles in previous proceedings, bearing in mind the 350 page bundle limit.

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The arrangements for the child at paragraph 6 of the template must not include the names and addresses of the child's carers unless they are already known to the parties. If appropriate, file Form C8.

At paragraph 7 the summary of events and case update should provide a **succinct overview** of the circumstances giving rise to the application or the progress of proceedings. This might be capable of being extracted for use in letters of instruction if appropriate, but the immediate purpose of the paragraph is to provide a succinct summary for the court of the steps already taken in the proceedings to date.

The timetable for the child at paragraph 8 needs to provide relevant information about how the timescale of the care proceedings will impact upon outcomes for the child.

Position statements

If the position of any party including the local authority needs to be set out in more detail then a separate position statement should be filed.

A position statement is not a statement of evidence. If it seeks to set out the position of that party rather than the legal position on their behalf, then this should be filed as a statement or report of evidence and signed by the witness appropriately.

Skeleton arguments

Skeleton arguments are filed as directed by the court if the position of each party either in relation to the facts and/or the law needs to be addressed by detailed legal arguments.

Additional Evidence

The court must be notified by formal application as soon as a need arises for additional evidence.

Non-compliance

The court must be notified in writing as soon as possible of any non-compliance identified. In the absence of agreement to a revision of the timetable by the court, a formal C2 application with draft order must be issued prior to the deadline for compliance.

Chronologies

A social work chronology of significant events should be filed as part of the local authority's evidence on the issue of care proceedings (and will usually be contained within the initial social work statement).

A legal chronology should not normally be required to be filed in addition to the social work chronology.

The social work chronology will contain all significant and relevant information in relation to the circumstances of the case and it should include not only significant harmful events but also examples of good parenting and details of services offered and work undertaken with the child and family. Events included in the chronology should not be more than two years old unless historical events are significant to the case.

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It is not envisaged that the social work chronology will extend into the care proceedings beyond removal of the child, unless this is directed by the court in the circumstances of a particular case. Updating information form the local authority following the removal of the child will ordinarily be filed within updating statements and reports.

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