

Ref:

Name: K Bambridge

Agenda Item No 5a

DERBYSHIRE COUNTY COUNCIL

CABINET MEMBER FOR CHILDREN AND YOUNG PEOPLE

3 December 2013

Report of the Strategic Director for Children & Younger Adults

**DISPUTE RESOLUTION PROTOCOL – INDEPENDENT
REVIEWING OFFICERS**

1. Purpose of Report

To seek agreement to a dispute resolution protocol which outlines a clear and comprehensive way in which disputes between a child's allocated independent reviewing officer and the district that holds responsibility for the child is resolved.

2. Information and Analysis

Since the introduction of independent reviewing officers for children in care, it has been possible for them to challenge the case decisions made on behalf of the children they are responsible for. This would principally involve decisions about their care plan, placement or change of school. On the whole these decisions and challenges are resolved through good working relationships with the social workers, service managers and districts. However, since the introduction of the statutory guidance in the IRO Handbook in March 2010, it has become necessary to have a formally written protocol to set out how these disputes are resolved.

The proposed protocol (Appendix 1) is an updated and refined version of one that previously existed and draws on examples working in other parts of the country. It pulls together all the new statutory requirements in the handbook and goes some way to ensuring that the IRO team is complying with the requirements.

3. Legal and Human Rights Considerations

The whole protocol is to ensure that the department complies with the human rights of the children and young people it looks after, and the independent reviewing officers are charged with ensuring this takes place.

4. **Other Considerations**

In preparing this report the relevance of the following factors has been considered: - prevention of crime & disorder, equality of opportunity; and environmental, financial, health, human resources, property and transport considerations.

5. **Key Decision** No

6. **Strategic Director's Recommendation**

That Cabinet Member notes the report and approves this protocol in full.

Ian Thomas
Strategic Director for Children and Younger Adults

THE ROLE OF INDEPENDENT REVIEWING OFFICERS IN CARE PLANNING AND THE DISPUTE RESOLUTION PROCESS

Introduction

The appointment of a named independent reviewing officer (IRO) is a legal requirement under Section 118 of the Adoption and Children Act 2002. IROs make an important contribution to the goal of significantly improving outcomes for looked after children. Their primary focus is to quality assure the care planning process for each child, and to ensure that his/her current wishes and feelings are given full consideration.

In March 2010 the Government issued new statutory guidance for local authorities and independent reviewing officers on care planning and reviewing arrangements for looked after children. The **IRO handbook** provides guidance to IROs about how they should discharge their distinct responsibilities to looked after children. It also provides guidance to local authorities on their strategic and managerial responsibilities in establishing an effective IRO service. The aim is to give all looked after children the support and services that each one requires to enable them to reach their potential.

The statutory duties of the IRO include:

- monitor on an on-going basis the local authority's performance of their functions in relation to the child's case
- chair statutory reviews of the child's case
- ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the appropriate authority
- perform any other function which is prescribed in regulations.

In discharging these duties, the IRO has a number of specific responsibilities which include:

- promoting the voice of the child
- ensuring that Care Plans for looked after children are based on a detailed and informed assessment, are up-to-date, effective and provide a real and genuine response to each child's needs
- identifying any gaps in the assessment process or provision of service
- making sure that the child understands how an advocate could help and his/her entitlement to one
- offering a safeguard to prevent any 'drift' in care planning for looked after children and the delivery of services to them

- monitoring the activity of the responsible authority as a corporate parent in ensuring that care plans have given proper consideration and weight to the child's wishes and feelings and that, where appropriate, the child fully understands the implications of any changes made to his/her care plan.

The guidance was issued as part of a suite of statutory guidance which, together with the Care Planning, Placement and Case Review (England) Regulations 2010 ('the Regulations') set out how local authorities should carry out the full range of responsibilities in relation to care planning, placement and review for looked after children.

The monitoring role of the IRO is set out in the (Children Act 1989 S.25). Between reviews, if the care plan continues to meet the needs of the child there may be no need for any communication between the IRO and the social worker or the child. However, in the event of a change/event in the child's life that is significant, the social worker must inform the IRO.

This includes:

- proposed change of care plan, for example, arising at short notice in the course of proceedings following on directions from the court;
- proposed change of school;
- where agreed decisions from review are not carried out within the specified timescale;
- major change to contact arrangements;
- changes of allocated social worker;
- any safeguarding concerns involving the child, which may lead to enquiries being made under section 47 of the 1989 Act ('child protection enquiries') and outcomes of child protection conferences, or other meetings not attended by the IRO;
- complaints from or on behalf of child, parent or carer;
- unexpected changes in the child's placement provision which may significantly impact on placement stability or safeguarding arrangements;
- significant changes in birth family circumstances for example births, marriages or deaths which may have a particular impact on the child;
- where the child is charged with any offence leading to referral to youth offending services, pending criminal proceedings and any convictions or sentences as a result of such proceedings;
- where the child is excluded from school;
- where the child is running away or missing from the approved placement;
- significant health, medical events, diagnoses, illnesses, hospitalisations, serious accidents; and
- panel decisions in relation to permanence.

However, a review must be convened in the following circumstances, **prior** to any of the following changes being implemented:

- whenever there is a proposal for a child to leave care before the age of 18, i.e. for the child to become a relevant child, rather than an eligible child;

- wherever there is a proposal for the child to move from foster care, a children's home or other placement, to supported lodgings, or to other kinds of 'semi-independent' or 'independent living' before the age of 18 (i.e. from accommodation regulated under the Care Standards Act to unregulated accommodation);
- prior to children subject to care orders being discharged from custody;
- wherever any unplanned change is proposed to a child's accommodation that would have the effect of disrupting his/her education or training;
- where a change of placement is proposed that would interrupt the arrangements for the education of a child in Key Stage 4; and
- where a change of placement is proposed for a child who has remained settled and established with the same carer for a significant period of time.

The Dispute Resolution Process

It is important for the IRO to have a collaborative relationship with social work staff and management with the responsibility for on-going care planning for the children in the care of the local authority. As the IRO fulfils a quality assurance function it is important that they also recognise and report on good practice by individuals or teams.

Where poor practice is identified that impacts on the implementation of the Care Plan or outcomes for the child, the IRO should ensure that they negotiate with the council's management up to the highest level, if necessary, in order to resolve the dispute by negotiation.

The IRO's line manager is responsible for monitoring the performance of IROs and ensuring that they are discharging their responsibilities in relation to the regulations and this guidance. Workers or their line managers should feel free to speak to the IRO directly or the IRO's line manager directly if they have feedback with regard to the IRO's performance.

Regulations now state that *decisions*, not *recommendations*, are made at a statutory review and that a Care Plan should not be changed unless the proposal is agreed at a statutory review (unless this is not reasonably practical). The Service Manager will be sent statutory review decisions within five working days of the statutory review and will consider within five working days of receiving them and advise the IRO if they are unable to agree them. If no response is received the decisions should be considered/agreed by the local authority and should be implemented within the timescales set out in them. If the Service Manager disagrees with any of the decisions within that initial five working day period, this should be notified in writing to the IRO and all those who attended the review. In the first instance the IRO should attempt to resolve the issue informally. If this is not successful the IRO can consider activating the dispute resolution process.

The process for seeking dispute resolution is set out in 5 distinct stages. The IRO may bypass any stage and progress the dispute to the level s/he considers most appropriate subject to prior discussion with their manager

except in emergencies. The **formal** dispute resolution process within each local authority should have timescales in total of no more than 20 working days. This time frame should be seen as setting minimum standards and that every opportunity for taking less than the proposed times should be encouraged.

Stage 1 Informal Resolution

Significant concerns by an IRO over the development, implementation, operation of or proposed changes to, a Care Plan should be discussed with the Service Manager responsible for the case and recorded on the child's file as an IRO Intervention. Equally, where the Service Manager does not agree with the decisions from a review, they should be discussed with the IRO responsible for the case and recorded on the child's file. If non-agreement remains, the IRO must ensure that the child and, where appropriate, the child's family and/or advocate, are notified, in a style appropriate with the child's age and understanding. The IRO should also ensure that the child is informed about the Complaint Procedure and advised that it would be helpful to inform the IRO should they make a complaint.

It is important that the Complaints Manager is aware of the importance of notifying the IRO when complaints are made by children looked after.

This stage should be completed within 5 working days

Stage 2 Formal Dispute Resolution

Should IRO concerns persist, then contact should be made with the relevant District Manager. This concern should be documented using the 'Independent Reviewing Officer Dispute Log' template, copied to the line manager of the IRO and Deputy Assistant Director.

This stage should be completed within 5 working days

Stage 3

If a satisfactory resolution is not reached, the IRO and their line manager should seek an urgent meeting with the Deputy Strategic Director – CAYA for further consideration. If at the conclusion of the meeting the decision is reaffirmed and the Independent Reviewing Officer and their line manager are of the view that the matter constitutes a potential breach of the child's human rights and requires further action they should seek legal advice before moving to Stage 4.

This stage should be completed within 5 working days

Stage 4

Should the Deputy Strategic Director not change the original decision, the Independent Reviewing Officer and their line manager must refer the matter to CAFCASS, who will consider legal proceedings if, having exhausted all avenues of negotiation through the various levels of management within the Local Authority, **a danger of the child's human rights being breached due to the actions or inactions of the Local Authority** remains.

This stage should be completed within 5 working days

Note:

1. The IRO has the power to refer the matter to CAFCASS at any point in the dispute resolution process [\[regulation 45\]](#) and may consider it necessary to make a concurrent referral to CAFCASS at the same time that s/he instigates the dispute resolution process.
2. CAFCASS Legal has 14 working days to decide whether or not to proceed.
3. The IRO can request that a proposed action by the Local Authority is 'frozen' pending resolution of a dispute.