

This guidance supplements the Practice Note dated 28 July 2006 entitled **Official Solicitor, Cafcass and the National Assembly for Wales: Urgent and Out of Hours Cases in the Family Division of the High Court**.

It should also be read in conjunction with [Practice Direction 12E \(Urgent Business\) which supplements Part 12 of the Family Procedure Rules 2010](#)<sup>1</sup>

The guidance is intended to assist the judiciary and legal representatives when dealing with urgent out of hours applications for orders in relation to medical treatment concerning children.

Applications made under the Inherent jurisdiction or for a section 8 specific issue order in relation to a child are not specified proceedings. As such the child is not automatically a party. The court will need to make an order under rule 16.2 Family Procedure Rules joining the child. The court must, unless the child already has legal representation and is of sufficient age and understanding to instruct a solicitor directly, appoint a children's guardian. In most circumstances the court will appoint a children's guardian from Cafcass.

Paragraph 14 of the 2006 Practice Note (above) confirms that Cafcass Legal are prepared to discuss medical treatment cases before proceedings are issued and if an urgent out of hours application is envisaged then Cafcass should, if possible, be provided with prior notice. Cafcass Legal has no locus in any proceedings until the child is joined and a guardian appointed. However, in some circumstances Cafcass Legal will attend a first hearing to assist with timetabling. If an application is not urgent Cafcass Legal may not attend a hearing until the guardian has been appointed and their role has been determined.

Cafcass does not have an out of hours welfare service and the court is not able to appoint a children's guardian to act out of hours.

Cafcass Legal does have an out of hours telephone number which is made available to the High Court out of hours clerk and the High Court judiciary. Cafcass Legal is able to provide legal submissions only to the court in the event of an out of hours application. It cannot provide a best interests view in the absence of a guardian and Cafcass Legal cannot act as children's guardian. The court may seek assistance on the legal basis for an order or appoint Cafcass Legal as Advocate to the court.

The out of hours service is not available to solicitors or counsel but is set up to provide assistance to the judiciary out of hours.

Cafcass Legal also has a daily duty advice service for its staff and can be contacted on that number each day between 9am - 5 pm to discuss any application for urgent medical treatment that is pending, the urgency or otherwise of the application, the timescale for the appointment of a guardian, whether there may be a need for expert evidence and whether it is appropriate to refer to the Cafcass High Court team.

Cafcass represents children who are the subject of family proceedings. It is not the role of the Official Solicitor to represent children in family proceedings save in the very limited circumstances set out in the 2017 Practice Note of the Official Solicitor about her appointment in family proceedings (paragraph 11).

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<sup>1</sup> [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12e](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12e)

<https://www.gov.uk/government/publications/appointment-of-official-solicitor-in-family-proceedings-practice-note>

In medical treatment cases concerning children therefore, it is Cafcass and not the Official Solicitor who should be approached to provide representation for the child.

### **Applications for DoLs made by Hospital Trusts**

Applications for DoLs orders concerning children should be referred to the Cafcass intake teams in the relevant area and will not necessarily be allocated to the Cafcass High Court Team.

### **Procedure**

Cafcass Legal can be contacted during office hours on 07776 470065 and by email at [cafcasslegal@cafcass.gov.uk](mailto:cafcasslegal@cafcass.gov.uk).

There is an out of hours telephone number which has been made available to the out of hours clerk and the High Court judiciary

The appointment of the Official Solicitor in urgent out of hours applications for orders in relation to medical treatment in the Court of Protection is set out in paragraphs 24 and 25 of the Official Solicitor's Practice Note dated 3 February 2021

<https://www.gov.uk/government/publications/appointment-of-the-official-solicitor-in-welfare-proceedings-practice-note>

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January 2023