

Public Law Care Proceedings Quick Guide

Pre-Proceedings Issues

Social services involvement with your family

On some occasions the Social Services Department of the Local Authority are concerned about a child who lives within their area. If their concerns are not so serious that they wish to start court proceedings, the Social Services Department will often try to work with the child's family and, in the best interests of that child and with a view to avoiding future court proceedings. It is very important that parents and other family members work in a positive and open way with the Social Services department.

Social Services Investigation into a child's circumstances

If the Local Authority Social Services Department has reasonable cause to suspect that a child in its area is suffering or is likely to suffer significant harm, they have a duty to conduct an investigation into that child's circumstances. This is sometimes called a *section 47 investigation*. The investigation will help social services decide whether they ought to take any action in order to safeguard that child's interests.

Social Services usually undertake an initial assessment and then, if the child's circumstances warrant further investigation, social services complete a fuller assessment which should take place within 35 days. This assessment is called a *core assessment*. The Department of Health has published guidance about how the Social Services should conduct its assessment and the assessment process will, of course, usually involve the allocated Social Worker, discussing the case with the child's parents, extended family and school. The assessment should identify the child's particular needs and any risk factors in relation to the care the child is receiving.

Child Protection Conferences and Child Protection Plans

Where there are significant concerns regarding a child the Social Services Department may convene a Child Protection Conference. This is a meeting with all those concerned with the child including, of course the parents, family members and all professionals involved with the child who have a significant contribution to make. The purpose of the Child Protection Conference is to share information concerning the child's welfare and for key people in the child's life to work together to improve that child's circumstances.

If the conference concludes that the child is suffering or is likely to suffer significant harm, a Child Protection Plan will be devised in order to keep the child safe, promote his/her welfare and, where possible, to support the family in caring for the child.

After the Initial Child Protection Case Conference, the child's circumstances will be reviewed at a Review Child Protection Case Conference. When a Review Conference takes place, depends on the circumstances of the case but, it is not unusual for there to be three or six months between each conference.

The conference will also nominate a Core Group which will comprise of the key persons involved in the child's life, nearly always including the Social Worker and parents. The Core Group will meet on more than one occasion before the date of the review Child Protection Conference and will undertake primary responsibility for implementing the Child Protection Plan.

Each Local Authority will maintain an Integrated Children's System, the purpose of which is to make agencies and professionals working with children aware of the children judged to be at risk of serious harm and in need of active safe guarding.

Where Social Services can "look after" a child without a Care Order

There are some occasions where Social Services concerns for a child are such that that the parents (or any other person with parental responsibility for the child) are asked to provide their consent to the social services looking after the child, often in foster care. This is often called *section 20 accommodation*. The Local Authority cannot place a child in foster care where a parent or other person with parental responsibility objects. If the Local Authority is clear that the child's interests can only be met by providing accommodation for him or her and the parent does not agree the Local Authority will have to start Court proceedings or, in the case of an emergency, seek a Police Protection Order (see below).

The Local Authority can also provide accommodation for a child if there seems to be no person who has parental responsibility for the child, if the child is lost or abandoned or if the person who is caring for the child is prevented from providing him or her with suitable accommodation. Even in those circumstances if there is a person who has parental responsibility for a child to object to them being looked after the Local Authority would have no option but to start court proceedings.

It is important to note that where a Local Authority looks after a child with parental consent, it does not acquire parental responsibility for the child. This is retained by the parent or any other party who had parental responsibility prior to the child being looked after.

The effect of this is that the parents (or other person with parental responsibility) has the last say over contact issues and indeed has the right to remove the child from accommodation. It would, however, be highly inadvisable to take any important step such as this without first taking legal advice and consult with the Social Services Department. If a parent were, in these circumstances, to seek to remove the child from accommodation where the Local Authority

had serious concerns for the child it is likely that the Local Authority would make an emergency application to the Court.

Police Protection Order

In some circumstance the child may be removed from the care of his parent or carer under what is known as a Police Protection Order. If a designated police officer has reasonable cause to believe that a child would otherwise be likely to suffer serious harm, the police officer may remove that child to suitable accommodation (or prevent the child's removal from a place where the child is being accommodated). A Police Protection Order lasts for only 72 hours and if the Social Services Department considers that the child remains at risk after this period and wishes to keep the child in foster care in the face of the parent's opposition, an application would have to be made to the Court. Where there is the possibility of a Police Protection Order, the police and Social Services work very closely together and the child is usually removed to foster care arranged by the Local Authority.

Care Proceedings-Care Order

A large number of public law cases are care proceedings. If a local authority suspect that a child is at significant risk of harm they can apply to the court for a care order.

What is a Care Order?

An order of the Court placing a child in the care of a Local Authority.

When will a Court make a Care Order?

The Children Act 1989 states that a court may only make a care order or supervision order if it is satisfied;-

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to—

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child being beyond parental control.

The parents of a child should seek legal representation as soon as they are made aware that the local authority is considering making an application for a care order. If a care order is made, the Local Authority will make most of the important decisions about the child's upbringing including where they will live, who will look after them and how and where they are educated.

What will the Court have to consider?

During the course of the proceedings there will be meetings between a social worker and the parents and other family members to try and establish why the child is at risk and what action should be taken. The Court will order that there be reports setting out the outcome of those meetings. The Court may also order that other expert evidence should be provided. The parents will also have the opportunity to give their written evidence.

Ascertaining the wishes and feelings of the child in care proceedings is essential. A Children and Family Court Advisory and Support Service (Cafcass) guardian, must be appointed in most kinds of public law proceedings unless the court is satisfied that this is not necessary in order to safeguard the child's interests. A children's guardian should normally be appointed as soon as practicable after the commencement of proceedings. The guardian will also be asked to provide a report to the Court.

Supervision Proceedings

Each Local Authority has a duty to safeguard and promote the welfare of children living within their area. In some cases where the Local Authority are concerned that a child is suffering or is at risk of suffering very serious harm the Local Authority may apply for a supervision order.

A supervision order places a Local Authority under a duty to advise, assist and befriend the child. The order requires the supervisor, usually the child's social worker, to become directly involved in the child's life. The making of a supervision order does not give the Local Authority parental responsibility for the child and does not allow the Local Authority to remove the child from the care of a parent or other person with parental responsibility. The parent (or any other person who held parental responsibility before the making of the supervision order) continues to hold parental responsibility following the making of the Order. That person should not, however, act in any way which is incompatible with the supervision order.

A supervision order may contain certain requirements, for example to comply with specific directions by the supervisor. Whether requirements or conditions are attached to the supervision order depends on the circumstances of each case.

How does the court decide?

When considering whether to make a Care Order the court's decision-making process has two stages.

In the first instance the court must consider whether the statutory threshold criteria is met, that is to say, the court may only make a supervision order if it is satisfied that:

- a) The child has suffered or is likely to suffer significant harm and;
- b) The cause of the harm is attributable either to the parenting the child has received or due to the child being beyond parental control. The Local Authority must prove that the harm to the child is serious and this includes, but is not limited to, physical or emotional harm.

If the Local Authority is unable to establish that the threshold criteria are met the court is not able to make a supervision order.

If, on the other hand, the Local Authority can establish that the threshold criteria are met the court will go on to consider the second stage i.e. whether an order should be made and, if so, what type of order should be made. This is known as the disposal stage. The choices for the court include a supervision order, care order or no order.

In reaching its decision the court will need to apply the principle that the child's welfare is the paramount consideration.

The court will also need to consider what is known as the "welfare checklist" in respect of each child who is the subject of the application. The welfare checklist consists of the following factors:

1. The ascertainable wishes and feelings of the child (in light of his age and understanding).
2. The child's physical, emotional and educational needs.
3. The likely effect on the child of any change in his circumstances.
4. The child's age, sex, background and any characteristics of his which the court considers relevant.
5. Any harm which the child has suffered or is at risk of suffering.
6. How capable each of the child's parents (and any other person in relation to whom the court considers the question to be relevant) is of meeting his needs.
7. The range of powers available to the court under the Children Act 1989 in the proceedings in question.

The court will also consider what is known as the "no order" principle. This means that the court should not make an order unless it considers that doing so would be better for the child than not making an order at all.

The court will need to carefully consider the Local Authority's care plan which will set out the Local Authority's proposed arrangements for the child, including details of where the child should live whilst the supervision order is in force and the arrangements for contact between the child and important people in the child's life.

How long does the order last?

If the Local Authority is able to satisfy the court at the start of the case that there should be a supervision order, the court will usually make an interim supervision order in the first instance. This is a short-term order which lasts up to eight weeks on the first occasion and which would need to be renewed after that, if appropriate, at four weekly intervals. The interim supervision order can be renewed by consent without the need for the parties to attend court. In some circumstances the renewal of the interim supervision order can be opposed if there has been a change in circumstances or if new evidence comes to light.

If at the end of a case a court decides to make a final supervision order it can be made for a duration of one year. Whilst at the end of the one-year period, the Local Authority may apply back to the court to seek an extension, this does not frequently happen.

How long will the proceedings last?

The law says that delay should be avoided in proceedings concerning children. Having said that, the proceedings often last some months although the courts aim to ensure that the cases are concluded within 40 weeks. The length of proceedings can however vary from case to case.

Cases can often be delayed because the court will need expert assessments, which can be undertaken by the Local Authority or by medical or other experts. The outcome of these assessments will assist the court in making a decision at the conclusion of the case.

The child's representatives

In supervision proceedings a child is represented by a Children's Guardian (often referred to as the guardian) and the child's solicitor. The guardian, who is quite independent of the Local Authority, is an officer of the Children and Family Court Advisory and Support Service and is a professional appointed by the court who has experience of child care issues. The duties of the guardian, amongst others, are to investigate the child's circumstances, meet with the child's parents and other people who are significant in the child's life and prepare a report to the court as to the arrangements the guardian considers to be in the child's best interests. The guardian works very closely with the child's solicitor who is appointed either by the court or by the guardian. As the guardian is independent and acts in the child's best interests, his/her view carries a great deal of weight with the court in reaching a final decision. It is important that any party to the proceedings cooperates fully with the guardian, as with other professionals, during the course of his/her investigations.

Documents in the proceedings

During the course of proceedings there are often many statements, care plans and reports prepared and circulated for consideration amongst the parties. These documents are, however, confidential and they should not be shown to anyone who is not involved in the case without the courts permission. There are certain exceptions to this rule and if a party wishes to disclose documents legal advice should be sought. Only the court can overrule the confidentiality of documents and only where it is satisfied that it is right to do so in the interests of the children. Breach of the confidentiality rule is a contempt of court and may be punishable by a fine or imprisonment.

If you have any further questions, do not hesitate to contact us today to see how we can help you.