

CHILD CARE

Duty of Local Authority

Under Section 17 of the Children Act 1989 every Local Authority has a duty to safeguard and promote the welfare of the children within their area who are in need and in so far as is consistent for that duty to promote the upbringing of such children by their families and in so doing they may provide a range and level of services to meet the needs of those children.

It is important to note that the duty of the Local Authority in the first instance is to try and support families in bringing up their children as long as that does not place the children at risk of harm.

The duty arises in respect of any family where there is a child in need. A child is taken to be in need if a) he/she is unlikely to achieve or maintain or have the opportunity of maintaining a reasonable standard of health or development without the provision for him of the services by the Local Authority or b) his/her health or development is likely to be significantly impaired or further impaired without the provision for him/her of such services or c) he/she is disabled. In this context development means physical, intellectual, emotional, social or behavioural development and health means physical or mental.

The services provided can be practical advice and support; provision of appropriate housing and on some occasions financial.

Whilst the Local Authority have a duty to provide services for families with children in need and in the first instance to try to support families bringing up children together the Local Authority have an overriding duty to protect children who are at risk of suffering significant harm.

Under Section 31 of the Children Act 1989 a Court (Magistrate/County Court/High Court) can make a care or supervision order in favour of the Local Authority if the Court is satisfied that the child concerned is suffering or is likely to suffer significant harm *and* b) the harm or likelihood of harm is attributable to i) the care given to the child, or likely to be given to him/her if a care or supervision order were not made, not being what it would be reasonable to expect a parent to give him/her, *or* the child is beyond parental control.

No care or supervision order would normally be made in respect of a child who has reached the age of 17 or 16 in the case of a child who is married.

The above is often referred to as the "threshold criteria" meaning this is what the Local Authority has to establish before a Court can consider making a care order or supervision order.

However, even if a Court has found that this “threshold criteria” has been established a Court is not required to make an order in every case. Under Section 1(5) of the Children Act the Courts are directed not to make an order at all unless they consider that doing so would be better for the child. This means that a Court will only make an order if it is demonstrably the case that the making or existence of an order would be to the positive advantage of the child.

Under Section 1 (1) the welfare of the child is of paramount importance and outweighs any other consideration in any other care case.

Under Section 1(2) of the Children Act any delay in coming to a decision relating to a child’s future is deemed to be prejudicial of the welfare of the child concerned. The effect of this principle is that the Court would normally expect a care case to be concluded within 40 weeks of it being started. However in the Oxford County Court the target is to resolve cases if possible within 25 weeks from start.

In deciding whether or not to make an order the Court is required to consider a number of factors set out in Section 1(3) of the Children Act, these factors are known as the welfare checklist and are as follows:-

- i) The ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding)
- ii) His/her physical, emotional and education needs
- iii) The likely effect on him/her of any change in his/her circumstances
- iv) His/her age, sex, background and any characteristics which the Court consider relevant
- v) Any harm which he/she has suffered or is at risk of suffering
- vi) The capability of his/her parents in meeting his/her needs
- vii) The range of powers available to the Court under the Children Act

Although it is possible for the “threshold criteria” to be made out and for the Court considering the welfare checklist to decide that there is no need to make an order possibly because the parents are working together with the Local Authority to bring about change, the change necessary for them to successfully care for and bring up their children and meet their children’s needs.

In respect of the “threshold criteria”, that is what the Local Authority have to prove before Court can consider making a care or supervision order, harm is defined as ill treatment or impairment to health or development. **Harm** relates to health and development the child’s health and development is compared with what could be reasonably expected of a similar child. This definition covers everything from abuse to neglect whether physical or mental, injured or emotionally damaged are both included within the definition. **Development** includes physical, intellectual, emotional, social or behavioural development. This would include a child that does not grow through inadequate feeding, is under stimulated or runs wild through lack of control. **Health** means physical or

mental health. Any aspect of the child's life may be looked at by the Court, health is a word capable of wide interpretation. **Ill treatment** includes sexual abuse and forms of ill treatment which are not physical ie. emotional harm caused to a child by witnessing domestic violence between the child's parents.

Interim and Final Care Supervision Order

If the Court find that the "threshold criteria" is made out namely that the child is suffering or likely to suffer significant harm and the harm is attributable to the care given or likely to be given by the parents and the Court determines on considering the welfare check list that it should make an order and in the first instance it will make an interim order.

Before the Court can make a final care order it has to be satisfied that "threshold criteria" made out in order to make a interim order the Court merely have to be satisfied that there are reasonable grounds for believing that the threshold criteria are made out.

An interim order only lasts for a specific period of time. In the first instance it will 8 weeks and thereafter it will be 4 weeks ie. 28 days. At the expiration of that time limit it is for the Local Authority to justify the renewal of the care order. However it is often agreed between all the parties in the case that the grounds for the interim order remain and that the renewals can be undertaken by the Court in the absence of the parties by agreement.

A final care order can only be made where the Court is satisfied that the threshold criteria is made out on the balance of probabilities that it is more likely than not and that on considering the welfare checklist there is a need to make a care or supervision order.

The Consequence of making a Final Care Order

The effect of a final care order is that the care of the child is placed in the hands of the Local Authority until the child's 18th Birthday or until the order is discharge if sooner. The Local Authority share parental responsibility for the child with the parents, but the Local Authority have the right to decide to what extent the parent or guardian may exercise their parental responsibility. In other words the Local Authority have the deciding vote as to what is to happen to the child during the child's life until the age of 18 years. Similarly on the making of an interim care order the Local Authority share parental responsibility with the parents of the child who have parental responsibility but again the Local Authority have the overriding right to decide issues in respect of the care of the child.

Under a final care order it is possible for the child to placed with the parents although this is unusual, it is more usual for the child to be placed firstly with another family member if one suitable family member can be found, this is in line

with the Local Authority's obligation of the Children Act to try to keep children and family's together or if there is no suitable family member to place the child with a foster carer.

Every Local Authority under the Children Act has an obligation to a **twin track plan** this means that whilst in the first instance the Local Authority should be looking at returning the child or allowing a child to remain with his/her parents or with other family members, at the same time the Local Authority should be looking for alternative long term carers outside the family for the child if it is not possible to allow the child to be brought up within his/her family. With regards to long term carers the Local Authority in the first instance will be looking to see if it is possible to find an adoptive placement for the child.

The Local Authority are obliged to provide a "**care plan**" wherever they have a care order whether it is interim or final. The care plan has to set out clearly the Local Authority's plan for caring for the child both now and in the future and concluding what assessments it needs to undertake to provide it with necessary information in order to make decisions relating to the child. If the Local Authority's care plan determines that it is not possible to return the child to its parents or to other family members and that the Local Authority therefore are considering long term placement including more particularly an adoptive placement then the Local Authority are obliged to apply for an involved placement order. This is an order allowing the Local Authority to place the child with prospective adopters. Under the new legislation the Local Authority are not able to place the child with potential adopters without a placement order. This allows the parents to challenge the Local Authority's decision to place the child with potential adopters when they are found before the child is placed.

Supervision Order

A supervision order does not give the Local Authority parental responsibility. Under a supervision order the child is left with the parents but the Local Authority becomes a supervisor and has a duty to advise, assist and befriend the child. A supervision order may include requirements on the child to live at a particular place at a particular time, to attend meetings when required or to play a part in activities. It may also require medical psychiatric examination and in certain specifying cases treatment. A supervision order generally lasts for one year however provision exists for the Court to extend an order to a maximum of three years. Any directions given under a supervision order may last up to 90 days and no longer.

Child's Guardian

In any specified proceedings which includes proceedings for care and supervision orders the Court will appoint at the earliest possible stage a child Guardian. This is an independent person appointed from a panel of Guardian administered by Cafcass. The Guardian's duty is to safeguard the interests of the child. The

Guardian does this by investigating the case ascertaining the wishes and feelings of the child, giving advice to the child and giving instructions to a solicitor to represent the child. The Guardian will do this by seeing all the parties in the proceedings, by investigating the Social Services records, by talking to the child's school teachers, doctors etc. The Guardian's sole duty is to represent the best interests of the child. The Guardian is separate from Social Services and from the parties. The Guardian is a very important and influential person and is there to advise the Court on what he/she feels is in the best interests of the child.

Parental Responsibility

Parental responsibility is defined under the Children Act as the rights, duties, powers, responsibilities and authority which a parent of a child has in relation to that child or to the child's property.

Who has Parental Responsibility

All mothers of children automatically have parental responsibility. All fathers of children who are married to the mother at the time of the child's birth have parental responsibility. All fathers who are not married to mothers at the time of birth but who are named on the Birth Registration Certificate acquire parental responsibility on registration. All fathers or other people who are granted a residence order under Section 8 of the Children Act acquire parental responsibility for the duration of the residence order. All guardians appointed under Section 5 of the Children Act acquire parental responsibility whilst they remain guardians.

What does Parental Responsibility mean?

Firstly it means that the person who holds parental responsibility is entitled as a right to be given information relating to the child in respect of whom they have parental responsibility ie. information from doctors, schools etc. All parents with parental responsibility have status, they are automatically party to any proceedings that may be brought in respect of a child for example care proceedings.

All parents with parental responsibility have the right to make decisions regarding the upbringing and care of their child ie. which school they should go to, what religion they should be brought up in, what medical treatment they should. The effect of a care order an interim care order, once such an order is made, the Local Authority acquires parental responsibility in respect of the child who is subject to the care order. They share that responsibility with any parent who has parental responsibility but importantly the Local Authority have the right to override the decisions of the parents with parental responsibility if they do not agree in determining how the child should be cared for.

Contact

It is a requirement of the Children Act that any child in the care of the Local Authority must be allowed reasonable contact with his parents, guardian or anyone who had a residence order under the Act immediately before the care order was made.

Contact is seen as the right of the child not the parents. However it may be restricted by the Local Authority in considering the threshold criteria. The Local Authority may refuse contact if it is urgent and the refusal will only last up to seven days so long as the Local Authority's objective is to safeguard or promote the welfare of the child. The welfare of the child of course is the paramount consideration not only of the Court but of the Local Authority who has a duty to safeguard the welfare of the child in respect of whom it has a care order. It is important to remember that the child's right to contact does not include the wider family. Grandparents, Aunts, Uncles and others may need to apply for leave for contact. If there is more than one child in the care of the Local Authority then the Local Authority have a duty to promote contact between those children if they are not living together. The Local Authority have a right in certain circumstances to apply to the Court to terminate contact provided that they can show that it is in the interests of the child to do so. This is only done very infrequently and in extreme circumstances where the child's safety and wellbeing would be deemed to be at risk if contact took place. Parents can apply under Section 34 of the Children Act for a defined contact order. The Court in making an order can impose conditions on the contact detailing the frequency and duration of contact as well as the place where contact takes place and possibly requiring contact to be supervised by a named person or generally by a suitable family member of other.

Urgent Protection of Children

Whilst applications for care and supervision orders and interim care supervision orders have to be made on notice so that the parent or carer of the child is given notice of when the application is to be made and has an opportunity of attending the hearing and making representations to the Court. In urgent cases where the child's health and well being is at severe risk of harm it is possible for applications to be made on very short or no notice. For example, where a Police Officer has reasonable cause to believe that the child would otherwise be likely to suffer significant harm, he/she may remove the child to suitable accommodation and keep him there or take such steps as are reasonable to ensure the child's removal from hospital or other place in which he is then being accommodated is prevented. In so doing the Police have duties to inform the Local Authority and parents of the actions taken to safeguard the child. A Police protection order can last up to 72 hours only and during that time it is possible that the Local Authority may apply for an emergency protection order under Section 44 of the Children Act. In respect of such an application the Court may make an emergency protection order only if it is satisfied that there are reasonable grounds to believe that the child is likely to suffer significant harm if he/she is not removed to accommodation provided by or on behalf of the Local Authority or he does not remain in the place in which he is then

being accommodated. Such an application can be used to prevent parents removing the child from a hospital or from the home of a relative or to remove a child from home of parents where the child is at risk of significant harm. The Local Authority will seek an order restricting or disallowing contact between a child and any named person and an order requiring the medical or psychiatric examination or other assessment of the child. Such an order is only applied for by the Local Authority in extreme circumstances normally where cooperation between the parents and the Local Authority has come to an end and the Local Authority fear that the child is at risk of significant harm. The emergency protection order can only last for a period in the first instance of not exceeding 8 days but it may be extended for a further period up to a maximum of a further 7 days. The application can be made without notice to the parents in extreme emergencies or in other cases one days notice is required. There is no right of appeal against the making of an emergency protection order. A parent or person with parental responsibility or person with whom the child has been living before the order may apply for an emergency protection order to be discharged by giving one days notice of their intention to apply for a discharge but the Court cannot hear the application until 72 hours after the making of the EPO has expired. Where the EPO was made either without notice or where it was made on notice but a person did not attend. If the parent was present at the hearing of the emergency protection order there is no right to apply to the Court for it's discharge. During the continuation of the emergency protection order in many cases the Local Authority will apply for an interim care order.

Child Protection Register

Social Services Departments are required to keep a register of the names of the children within their area who they believe are at risk of harm.

The Local Authority have a duty to protect children from harm. Following referrals to the Local Authority that a child may be at risk of significant harm the Local Authority have a duty to investigate. In the first instance where they consider a child to be at risk they will call for an initial child protection case conference. The parents and the Social Worker and other people involved with the child such as school teachers, doctors, health visitors, Police will be invited to the initial child protection case conference. The case conference will be chaired by an independent chair and the purpose of the case conference is to determine whether or not there is a child at risk of harm and whether in such a case that child's name should be entered into the child protection register. If at the end of the initial child protection case conference it is determined that the child is at risk of harm then the child's name will be placed on the register. The consequence of this will be that every six months a child protection case conference will be called to consider whether the child's name should remain on the register or whether circumstances have changed and the child's name can be de-registered or indeed whether or not the Local Authority need to take legal action to protect the child. The Local Authority are required to identify the needs of the child and where possible to provide services to support the child in the care of it's family.

The above is a very general over view of care proceedings and the Local Authority's duty towards the children and parents. It is to assist parents in understanding the general principles relating to such proceedings and is not intended to be exhaustive.