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Local Authorities and Children

Public Law Children Matters

Cases involving children commenced by a Local Authority or another official body, like the NSPCC, are known as public law proceedings and they are usually referred to as care proceedings. In any proceedings under the Children Act the welfare of the child is the guiding principle. Any decisions taken by the Court are based on what the Court considers to be in the child or children's best interests.

Local Authority Duties

Every Local Authority has a duty to safeguard and promote the welfare of children within its area who are in need, and insofar as this is consistent with that duty, promote the upbringing of such children by their families. This is done by providing a range and level of services appropriate to those children's needs.

Where a referral is made to Social Services, a decision will be made as to what response is required. A social worker may carry out an assessment of the needs of the child, and the ability of his or her parents and other members of the family to provide for those needs.

Such an assessment may involve other professionals and agencies involved with the family, such as Health Visitors, doctors and school teachers

The local authority will need to assess whether there is any reasonable cause to suspect that the child is suffering or is likely to suffer significant harm, and whether any emergency action is required to protect the child.

In any family proceedings, whether the local authority is involved or not, a Court may direct a local authority to investigate a child circumstances, and this is called a Section 37 Investigation. The purpose of such an investigation is for the Local Authority to consider whether it should apply for a **Care or Supervision Order**, provide services or assistance for the child and their family, or whether to take any other action with respect to the child.

Section 20 Accommodation

Where a local authority does not feel that the child can remain living with the parents it may ask the parents to agree to the child being voluntarily accommodated in local authority care This is an agreement under Section 20 of the Children Act 1989. A child cannot be placed in local authority accommodation if anyone with parental responsibility for the child objects to this proposal.

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Where a child is accommodated under Section 20, a person with parental responsibility has a right to remove the child at any time, as it is a voluntary agreement. However, where the local authority is carrying out an investigation this could result in Court action if there is an attempt to remove the child if the local authority considers that this may place the child at the risk of significant harm.

Emergency Protection Orders

In serious cases a local authority may apply for an **Emergency Protection Order** where it believes that there is reasonable cause to believe that a child is likely to suffer significant harm. These will only be made in cases where there is a genuine need for an order to be made as a matter of urgency.

The maximum time for an Emergency Protection Order is generally eight days. This can only be extended once for a further seven days. An Emergency Protection Order can contain other directions, such as requiring a person to disclose information as to the child's whereabouts. It can also include a direction preventing contact with a particular person, and can include an exclusion provision which prohibits a particular person from entering the home address.

Care and Supervision Orders

In other serious cases a Court may make an order placing a child in the care, or putting a child under the supervision, of a local authority.

When a local authority makes an application for a **Care or Supervision Order**, the mother is automatically made a party to the proceedings. A father who has parental responsibility, or anyone with a Residence Order in respect of a child will also become parties to the proceedings. Fathers without parental responsibility will be notified about the Court proceedings and can apply to be joined to the proceedings. Sometimes other family members who have been involved with the children can also apply to be joined as parties to the proceedings, but only if the Court agrees to this.

A solicitor is appointed from a special panel known as the Children Panel to represent a child in these proceedings. The Court will also appoint a **Children's Guardian** to represent a child's interests.

Role of the Children's Guardian

The Children's Guardian is an independent person who will visit a child and assess their needs. The Guardian is responsible for filing a report with the Court setting out

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what they feel to be in the child's best interests, for instance, whether the child should return home or be permanently placed in the care of the local authority.

In the course of preparing the report it is likely that the Children's Guardian will want to visit all of the parties and any professionals involved in the case. The Court often attaches a lot of weight to any recommendation made by the Children's Guardian. The Children Guardian will give his or her own opinion as to what is in a child's best interests. Sometimes this can be different to what the child himself or herself wants.

Court Procedure

The procedure that is followed by a Court in care proceedings is complicated and can take some months. Within any such proceedings a court can order the preparation of reports by independent experts and specialists who can advise the court. Whether these will be required will depend upon the nature of the case.

If the proceedings cannot be resolved by agreement the case will be listed for a contested final hearing where evidence will be given by the relevant parties and experts. In some cases these final hearings can take a number of days.

It is advisable to seek further advice and representation in care proceedings from a solicitor who specialises in these proceedings is a member of **The Children Panel**.

The Threshold Criteria

A Court can only make a final Care Order or Supervision Order, if it is satisfied:

- That the child concerned is suffering, or is likely to suffer **significant harm**; and
- That the harm, or likelihood of harm, is attributable to:
 - (a) 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 him; or
 - (b) the child's being beyond parental control.

This test for making the Care Order or Supervision Order is called the **Threshold Criteria**. The local authority has to prove that the Threshold Criteria is met i.e. that the child is suffering or is likely to suffer significant harm because of the care he or she is receiving or because they are beyond parental control. The standard of proof is on the balance of probabilities

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Significant Harm

“Harm” means ill-treatment or the impairment of health or development.

“Development” means physical, intellectual, emotional, social or behavioural development.

“Health” means physical or mental health.

“Ill treatment” includes sexual abuse and all forms of ill-treatments which is not physical.

Care Orders

If the Court decides to make a Care Order at the Final Hearing, then a Care Order remains in force until a child is 18.

During the course of the proceedings, the local authority will have had to consider if any members of the child's extended family are able to care for the child should the Court make a Care Order at the final hearing. If a relative thinks that the child should live with them then they can apply for a **Residence Order** or **Special Guardianship Order** from the Court, but this will need to be done before the final hearing.

Sometimes the a local authority may wish to place a child with long term alternative carers if a Care Order is made. The plans of the local authority must be set out in a Care Plan before the final hearing takes place so that the court can consider this.

Even if a Care Order is made in respect of a child any parents with parental responsibility will not lose this. The effect of a Care Order is that a local authority also obtains parental responsibility and shares this with the parents. However, they will generally make all of the day to day decisions about the care of the child. The local authority should continue to consult and inform the parents of any decisions regarding the children's education, religious upbringing and any medical treatment.

The Court can also make Orders about how often relatives may see a child, both during proceedings and once a final Court Order has been made. This is referred to as contact.

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Supervision Orders

Depending on the facts of the case, a local authority may wish to apply for a Supervision Order rather than a Care Order. A Supervision Order places the children under the supervision of a local authority. The local authority do not acquire parental responsibility. Supervision Orders normally last for one year but can be extended beyond that period if a further application is made to the court by the local authority. A Social Worker supervises the family under the Order and should “advise, assist and befriend” the supervised child.

Adoption Orders

If the Local Authority finally decides that the best option is for the child to be adopted, then they would have to return to Court for a further Order to allow them to do this. A Care Order does not give the local authority the right to consent to a child being adopted. If an Adoption Order is made, the birth parents lose their parental responsibility and the child becomes a child of the adopters.

Further Information

If you would like any further information about public law children matters, please contact Fairbrother & Darlow. We have a specialist solicitor who is a member of the Children Panel available to assist you (Tel: (01344) 420808 Email: info@fairbrotherdarlow.co.uk).